



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 5TH DAY OF MARCH, 2026

BEFORE

THE HON'BLE MR. JUSTICE E.S.INDIRESH

CIVIL MISCELLANEOUS PETITION NO. 591 OF 2024

BETWEEN:

SRI D M NARAYANASWAMY
AGED ABOUT 72 YEARS,
S/O.LATE D.V.MUNISWAMAPPA,
"SRICHARAN NILAYA", NEXT TO SBI,
PUTTAPPA GUDI STREET, OLD BUS STOP,
DEVANAHALLI TOWN,
BENGALURU RURAL DISTRICT - 562 110.

...PETITIONER

(BY SRI. ABHINAV RAMANAND A., ADVOCATE)

AND:

1. SMT. ANITHA D.V.
AGED ABOUT 52 YEARS,
D/O.LATE D.H.VENKATASWAMY,
W/O. LATE MANJUNATH V.,
NO.2/1, 9TH 'A' CROSS ROAD,
GAJANANAGARA, SUNKADAKATTE,
BENGALURU - 560 091.
2. SRI. SHYAMALA S.
AGED ABOUT 46 YEARS,
W/O. LATE D.V.NIRANJAN,
NO.41, BALAJI NILAYA, OMBR LAYOUT,
CHIKKABANASWADI,
BENGALURU - 560 043.
3. SRI. NARAYANASWAMY L.N.,
AGED ABOUT 54 YEARS,



S/O. NARAYANAPPA,
22ND WARD, SHANTHINAGAR,
DEVANAHALLI TOWN, DEVANAHALLI,
BENGALURU RURAL DISTRICT - 562 110.

...RESPONDENTS

(BY SRI. KRISHNA MURTHY V., ADVOCATE)

THIS CIVIL MISCELLANEOUS PETITION IS FILED UNDER SECTION 11(6) OF THE ARBITRATION AND CONCILIATION ACT, 1996, PRAYING TO APPOINT A SOLE ARBITRATOR IN VIEW OF THE ARBITRATION CLAUSE 2 CONTAINED IN THE SUPPLEMENTARY AGREEMENT DATED 21.08.2023 AT ANNEXURE-A TO THE PRESENT PETITION TO ADJUDICATE THE MATTERS IN CONTROVERSY BETWEEN THE PARTIES.

THIS PETITION COMING ON FOR ADMISSION HEARING, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE E.S.INDIRESH

ORAL ORDER

Heard Sri. Abhinav Ramanand A., learned counsel appearing for the petitioner and Sri. Krishna Murthy V., learned counsel appearing for respondents.

2. Sri. Abhinav Ramanand A., learned counsel appearing for the petitioner invited the attention of the Court to Clause-2 of the Supplementary Agreement dated 21.08.2023 (Annexure-A) and submitted that the



resolution of the dispute between the parties has to be made by an independent Arbitrator and also the learned counsel argued that the first party in the Supplementary Agreement are the daughter and daughter-in-law of the original agreement holder Sri. D.H.Venkataswamy as per Agreement to sell dated 16.09.1981 (Annexure-B) and therefore, the learned counsel submitted that the Supplementary Agreement is the continuation of the Agreement to Sell dated 16.09.1981 and therefore, sought for appointment of the Arbitrator is concerned. It is also argued that the suit in respect of the very same subject matter is pending consideration before the competent Civil Court in O.S.No.496/2024. Therefore, the learned counsel sought for allowing the petition by appointing an Arbitrator for resolution of the dispute between the parties.

3. Per contra, Sri. Krishna Murthy V., learned counsel appearing for respondent Nos.1 to 3 opposed the appointment of the Arbitrator on the ground that the Original Agreement dated 16.09.1981 entered into by the



father of the petitioner No.1 - Sri. D.H. Venkataswamy with the petitioner - Sri. D.M. Narayanaswamy was way back in the year 1981 and therefore, the subsequent agreement will not validate the void document which has been made at Annexure-A. In support of his contention, the learned counsel places reliance on the judgment of the Hon'ble Supreme Court in the case of **NBCC (INDIA) LIMITED vs. ZILLION INFRAPROJECTS PRIVATE LIMITED** reported in **(2024) 7 SCC 174** and contended that the appointment of the Arbitrator does not arise in the facts and circumstances of the case as the referred document does not provide for the clause for appointment of the Arbitrator in the event of dispute between the parties.

4. In the light of the submissions made by the learned counsels appearing for the parties and on careful consideration of Annexure-B/Agreement to Sell dated 16.09.1981, wherein it is stated that D. H. Venkataswamy- original vendor has entered into an



Agreement to Sell the subject matter of the property in favour of one Sri. D.M. Narayanaswamy, (petitioner herein) for the valuable consideration as stated in the contract and thereafter, after the demise of D.H. Venkata Swamy - original vendor, the daughter and the daughter-in-law of the original vendor had entered into a Supplementary Agreement dated 21.08.2023 (Annexure-A). The original Agreement to Sell dated 16.09.1981 does not provide for the appointment of the Arbitrator as to resolution of the dispute and in that view of the matter, it would be apt to extract paragraph-17 of the judgment in

NBCC (INDIA) LIMITED supra which reads as under:

"17. It could thus be seen that this Court has held that when the parties enter into a contract, making a general reference to another contract, such general reference would not have the effect of incorporating the arbitration clause from the referred document into the contract between the parties. It has been held that the arbitration clause from another contract can be incorporated into the contract (where such reference is made), only by a specific reference to arbitration clause. It has further been held that where a contract between the parties provides that the



execution or performance of that contract shall be in terms of another contract (which contains the terms and conditions relating to performance and a provision for settlement of disputes by arbitration), then, the terms of the referred contract in regard to execution/performance alone will apply, and not the arbitration agreement in the referred contract, unless there is special reference to the arbitration clause also."

5. It is also to be noted from the petition that the scheduled property has been purchased by the respondent No.3 after the execution of the Agreement to Sell dated 16.09.1981 (Annexure-B). In that view of the matter, as the original agreement does not provide for the appointment of the Arbitrator, I am of the view that consequently, the parties cannot confer or extend or continue the earlier Agreement to Sell dated 16.09.1981 seeking appointment of the Arbitrator in terms of the Supplementary Agreement dated 21.08.2023. Accordingly, I am of the view that, the petition does not survive for consideration.



5. However, it is open for the petitioner herein to avail the remedy as provided under law. In the event if the petitioner approached the competent forum for redressal of their grievance, the observation made by this Court in the present petition is only as to the appointment of Arbitrator under Section 11 of the Arbitration and Conciliation Act, 1996.

6. Accordingly, the Civil Miscellaneous Petition is ***dismissed.***

Sd/-
(E.S.INDIRESH)
JUDGE