



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 09.12.2024

Pronounced on: 21.12.2024

CORAM

THE HONOURABLE **MR.JUSTICE P.B.BALAJI**

O.A. No.810 of 2024

Inderchand Kochar

... Applicant

vs.

1.Praveen Kumar
2.Sangeetha P Jain
3.Sameet P Jain
4.Nishit Praveen

... Respondents

PRAYER: The Original Application filed under XIV Rule 8 of OS Rules read with Section 9 of the Arbitration and Conciliation Act, 1996 to grant an order of Interim Injunction restraining the 1st to 4th respondents herein, their men, agents, servants or anybody claiming right either under or through them from further alienating, transferring or in any manner encumbering or creating third party interests in any manner whatsoever, the scheduled mentioned property in any manner whatsoever.

For Applicant : Mr.Nithyaesh Nataraj for
Mr.Vaibhav R.Venkatesh

For Respondents : Mr.M.L.Joseph for
M/s.Chennai Law Associates
for R1 & R2

ORDER



This is an Application under Section 9 of the Arbitration and Conciliation Act, 1996 seeking an order of interim injunction to restrain the Respondent, or anybody claiming under the Respondent, from further alienating or transferring or encumbering or creating third party interests in any manner whatsoever, the immovable property more fully set out in the Schedule to the Judge's Summons.

2. I have heard Mr.Nithyaesh Natraj for Mr.Vaibhav R. Venkatesh, learned counsel for the Applicant and Mr.M.L.Joseph, for M/s.Chennai Law Associates, learned counsel for Respondents 1 and 2.

3. It is the case of the Applicant that the 1st Respondent availed of financial assistance from the Applicant, offering his immovable property as security, by creating an equitable mortgage by deposit of title deeds. The borrowing is evidenced by execution of a promissory note on 13.06.2005 as well. According to the Applicant, the 1st Respondent was having a running account with the Applicant and has also executed several promissory notes beginning 2005 and ending 2016 and was due and payable a sum of Rs.1,31,44,460/- towards principal alone, leave alone interest agreed to be paid at the rate of 18% p.a.

4. It is the further case of the Applicant that the 1st Respondent was evasive and did not make payments as promised and finally on



22.10.2021, the 1st Respondent had entered into a Memorandum of Understanding with the Applicant in and by which the 1st Respondent acknowledged a total due of Rs.2,56,00,000/- and promised to settle the same on or before 31.03.2022 failing which, agreed to transfer the mortgaged property in favour of the Applicant.

5. The Applicant has come to know that the 1st Respondent by falsely representing that the original document of title had been lost, despite knowing that it was handed over by him to the Applicant, approached a Police Station in Karnataka and obtained a certificate that the original document was lost and not traceable and also gave notices in newspapers having circulation in Bangalore as well as Chennai and fraudulently executed a Settlement Deed on 17.02.2002 in favour of the Respondents 2 to 4, wife and sons of the 1st Respondent, who have in turn executed a General Power of Attorney in favour of the 1st Respondent in December, 2022.

6. It is also the further contention of the Applicant that based on the Power of Attorney deed, the 1st Respondent has sold portions of the subject property to various third parties in parcels. According to the Applicant, though the Respondents 2 to 4 are not signatories to the arbitration clause in the Memorandum of Understanding, they are proper



and necessary parties, especially being wife and sons of the 1st Respondent and therefore, all the Respondents are to be restrained by an order of interim injunction as prayed for.

7. The said application is resisted by the Respondents who have filed a counter affidavit which has been signed by the 1st Respondent for himself and as Power Agent of Respondents 2 to 4. It is the specific case of the Respondents that the Memorandum of Understanding is forged and not signed by the 1st Respondent and the claim, if any, was hopelessly time barred and not enforceable. Further, the Applicant is a stranger to the 1st Respondent and no promissory notes were executed by the 1st Respondent in favour of the Applicant. The deposit of title deeds and creation of mortgage in favour of the 1st Applicant is also emphatically denied. The claim of the Applicant that there was a running account between the Applicant and the 1st Respondent is also denied.

8. The police complaint given in respect of the originals being lost is claimed to be bona fide and well before the first communication that emanated from the Applicant. The Applicant has not come to Court with clean hands, according to the Respondents. The Applicant and his family members were also convicted in CC No.530 of 2017 and they have even earlier indulged in land grabbing acts. The Respondents 2 to 4 are also



falsely implicated and they are neither proper nor necessary parties to the proceedings. According to the Respondents, the Applicant is well aware of the alienations made by the Respondents in favour of 22 purchasers.

9. In the counter affidavit, the Respondents have also called upon the Applicant to produce the originals of the MoU dated 22.10.2021 and the promissory notes as well as the letter dated 13.06.2005 and to be subjected to forensic examination and also dismiss the injunction application.

10. The learned Counsel for the Applicant would submit that the parties would necessarily have to go for arbitration to have their disputes adjudicated and the Respondents have played fraud, suppressed material circumstances and gone about alienating the subject property in fractions and therefore, they should be enjoined as prayed for. Insofar as the request of the Respondents for a forensic report, he would contend that the said request is wholly unsustainable. He would also contend that the Applicant was ready to have an Arbitrator appointed by this Court and even the application for injunction can be relegated to the Arbitrator under Section 19 of the Act. He would further contend that despite objections being lodged with the SRO concerned, the Respondents have managed to encumber the property and that the Respondents have



wilfully given a police complaint as well as public notices as if the original deeds of title were lost, despite having deposited the same with the Applicant and created a mortgage.

11. The Learned Counsel would also rely on the following decisions:

- (i) *Roshan Lal Gupta v. Parasaram Holdings Pvt. Ltd. & another*, reported in (2009) SCC OnLine Del 293;
- (ii) *Ashwin Dimabar Raikar v. Sardar Baig*, order of the Karnataka High Court dated 29.01.2024 in C.M.P.No.21 of 2023;
- (iii) *Ashwin Digmabar Raikar v. Sardar Baig*, Order of the Apex Court dated 19.07.224 in SLP (Civil) Diary Nos.20690/2024;
- (iv) *S.Madhan v. A.Venkateshwaran and others*, order of the Madras High Court dated 03.11.2022 in CRP No.2996 of 2012;
- (v) *Crl.Rev.No.1577 of 2022 etc*, common order of the Madras High Court dated 4.3.2024; and
- (vi) *Interplay Between Arbitration Agreements under Arbitration and Conciliation Act, 1996 and Stamp Act, 1899 In Re*, reported in (2024) 6 SCC 1.

12. Per contra, the learned Counsel for the Respondents, Mr.Joseph, would vehemently contend that the Applicant has not approached this Hon'ble Court with clean hands. The fact that the Respondents are strangers to the Applicant and the claims being barred by limitation, according to him, would be evident from the fact that the MoU



has not even been whispered in any of the communications emanating from the Applicant and therefore, the MoU could have only been fabricated, forging the signature of the 1st Respondent in order to make the claim against the 1st Respondent.

13. He would further states that though the Applicant claims to have objected to the SRO, not even a copy has been marked to the 1st Respondent and admittedly, no Civil Suit also has been filed against the Respondents, though the Respondents have also lodged a caveat. He would also bring to my attention that a competent Magistrate has also convicted the Applicant in a land grabbing case already and therefore, the allegation of forgery in the present case is all the more probable.

14. According to the learned counsel for the Respondents, the Section 9 Application has been filed only in November, 2024 and the claim, if any was time barred. Further, when the MoU containing the arbitration Clause itself is forged, the parties cannot be referred to arbitration and this Court will have to give a finding with regard to the forged MoU and therefore, would argue that the original documents will have to be produced by the Applicant and the same will have to be sent to a forensic expert for opinion and until then an arbitrator cannot be appointed and the injunction petition will have to be necessarily

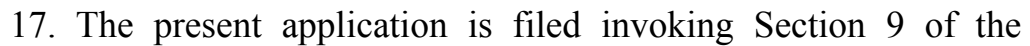


dismissed especially when the Applicant is well aware of the alienations made by the Respondents and more so when the Respondents 2 to 4 are not parties to any arbitration agreement with the Applicant, even as per the case projected by the Applicant.

15. The learned Counsel for the Respondents would rely on the following decisions:

- (i) *Bharat Rasikalal Ashra v. Gautam Rasikalal Ashra and another*, C.A.No.7334 of 2011, dated 25.8.2011, Hon'ble Supreme Court;
- (ii) *Indus Ind Bank Ltd. v. Harpreet Sign and another*, in CR No.2718 of 2014 (O&M), dated 12.3.2015, Punjab & Haryana High Court;
- (iii) *Velugubanti Hari Babu v. Parvathini Narasimha Rao and another*, CA No.6198 of 2016, dated 13.7.2016, Supreme Court of India;
- (iv) *Sulekha Agarwal v. M/s. Shiv Astha Constructions Co. Ltd.*, FAO(OS) Nos.104-06 of 2017 dated 12.4.2017, High Court of Delhi;
- (v) *Vidya Drolia and others v. Durga Trading Corporation*, CA No.2402 of 2019 dated 14.12.2000, Supreme Court; and
- (vi) *Ashiwn Digmabar Raikar v. Sardar Baig*, SLP(C) No.16829 of 2024 dated 29.11.2024, Supreme Court of India.

16. I have carefully considered the submissions advanced by the learned counsel on either side. I have also gone through the records as well as the decisions in which reliance is placed on by the learned counsel for the parties.



18. I am now therefore required to deal with the present injunction
 motion alone.

19. The case of the Applicant is that the 1st Respondent has



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borrowed monies and also secured the same by execution of promissory notes and also a mortgage by deposit of title deeds and that the MoU alleged to have been executed by the 1st Respondent confirms the liability of the 1st Respondent. It is his further case that suppressing the factum of the deposit of title deeds to the Applicant, the 1st Respondent has settled the property to his wife and sons, respondents 2 to 4 and has even got a power of attorney from them and has gone on an alienation spree, selling undivided shares to as many as 22 purchasers.

20. On the other hand, the specific case of the Respondents is that the Applicant is not even known to the Respondents and they have never had any financial dealings with the Applicant and even otherwise, the MoU is forged and all rights under the present Section 9 application flow only under the said MoU containing an arbitration clause and therefore, without this Court deciding the genuineness of the MoU and other documents alleged to be fabricated, no further proceedings can be taken under the Arbitration and Conciliation Act, 1996. It is in this regard that the Respondents want the Applicant to file all the original documents before this Court with a further request to send them for forensic examination.

<https://www.mhc.tn.gov.in/judis> 21. Before actually taking up the Section 9 Application on merits, I



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shall first take up the preliminary issue raised by the learned Counsel for the Respondents regarding this Court being required to give a finding as to the truth and validity of the MoU which contains the arbitration clause.

22. In *Bharat Rasiklal Ashra's* case, (referred herein supra) the Hon'ble Supreme Court held that an arbitrator can be appointed only if there is an arbitration agreement and when the agreement is suddenly propounded or where there exists a doubt regarding the genuineness of the Agreement, the issue will have to be examined under Section 11. Following this decision, a Single Judge of the Punjab and Haryana High Court held that the Arbitrator cannot be compelled to decide whether the arbitration agreement is forged or not and that the issue is to be left to the Civil Court to decide.

23. The Apex Court, in *Veulugubanti Hari Babu's* case (referred herein supra) held that the High Court will have to decide the question of legality, validity and genuineness of the agreement/MoU which is attacked as forged, under Section 11 of the Act.

24. The Delhi High Court, in *Sulekha Agarwal's* case (referred herein supra) upheld the decision of the learned Single Judge declining relief under Section 9 of the Act in the light of the defence raised that



receipts in question were forged and fabricated.

WEB COPY 25. The Apex Court in *Vidya Drolia*'s case (referred herein supra)

mainly deliberated on Section 8 & 11 and held that the Respondent has to establish a prim facie case of non-existence of a valid arbitration agreement and if the party is unable to satisfy the Court on the basis of documents produced, and it requires extensive examination of oral and documentary production, the matter has to be referred to arbitration. The Apex Court also held that when the validity of the arbitration agreement cannot be determined on a prim facie basis and '*when in doubt, do refer*'.

26. In *Ashwin Digmabar*'s case, (referred herein supra) by order dated 29.11.2024, the Apex Court following the ratio on *Vidya Drolia*'s case, (referred herein supra) appointed an Arbitrator and left it to the Arbitrator to decide the existence of the arbitration agreement, fraud etc. This final order was in pursuance of the earlier order dated 19.07.2024 where the Special Leave to Appeal (Civil) was entertained and it was observed that issues of fraud and concealment can be decided by the Arbitrator. This decision of the Hon'ble Supreme Court set aside the order of the Karnataka High Court holding that when there is serious allegation of fraud and agreement itself stood vitiated, the Civil Court alone and nor the Arbitrator could decide the issue.



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27. The seven Bench judgment of the Apex Court in *Interplay* case held that after the 2015 Amendment Act inserting sub-section (6-A) in Section 11, the High Court or even the Hon'ble Supreme Court while considering Applications under sub-sections (4) to (6) of Section 11 can confine itself to only examination of existence of an arbitration agreement and the object of the Amendment Act was intended to confine the jurisdiction of Courts at the pre-arbitral stage to as minimum a level as possible.

28. It was further held that the decision in *Vidya Drolia's* case, (referred herein supra) on the premise that Section 11(6-A) was effectively omitted from the statute book by the 2019 Amendment Act was erroneous since the omission of Section 11(6-A) has not been notified and continues to remain in force and therefore, the scope of power of the Court is limited to a prima facie determination of existence of an arbitration agreement on the basis of Section 7 of the Act and the referral Court is not an appropriate Forum to conduct a mini-trial by allowing parties to adduce evidence in regard to existence or validity of an arbitration agreement which has to be left to Arbitral Tribunal.

<https://www.mhc.tn.gov.in/judis> 29. I am conscious of the fact that the present application is only



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one under Section 9 and I am not deciding an Application under Section 11. For this limited purpose, in view of the legal position now being settled by the Seven Judge Bench of the Apex Court, which has in effect effaced the earlier decisions including *Rashikala Ashra* and other cases discussed herein above, especially in the light of the post 2015 Amendment Act scenario. it is not necessary for me to labour much as to whether the arbitration agreement is valid or enforceable and it would be suffice to see whether there is an arbitration agreement in writing in terms of Section 7 of the Act. Prima facie, having seen that such a clause does exist, it should be left to the wisdom of the Arbitral Tribunal to decide the validity or even existence of an arbitration agreement. Therefore, in the light of this, the MoU containing an arbitration agreement in writing in terms of Section 7 of the Act, I hold that the present Section 9 Application is maintainable and there is no necessity to render a finding on the allegation of forgery raised by the Respondents.

30. Coming to the Section 9 Application, this Court having found a prima facie case in favour of the Applicant, has granted an interim injunction as prayed for on 28.10.2024.

31. Though the Respondents have disputed the promissory notes as well as the Memorandum of Understanding on the grounds of fabrication



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as well as forgery respectively, the fact that the original documents of title are with the Applicant cannot be disputed by the Respondents as even at the hearing before me, the Applicant was having all the originals and was even ready and willing to produce the same, if this Court deemed it necessary. The Respondent's version is also shaky. In one breadth they claim they had borrowed from a consortium and they are not aware of how the promissory notes went to the Applicant and in another breadth they contend that they are not aware as to how many documents they handed over to the financier from whom they borrowed monies and that the loans were also repaid. Such a self serving claim of the Respondents has to be taken with a pinch of salt. It is very convenient to state that the Respondents borrowed monies, executed promissory notes from unknown persons and that such loans were settled in full and the Respondents did not bother to take back the promissory notes. Even if the promissory notes can be ignored, no prudent person, especially owning immovable property would behave in such a callous fashion especially when according to the Respondents the loan transaction was settled. The Respondents also admit the fact the execution of the letter dated 13.06.2005 by the 1st respondent.

32. Though the Respondents claim that the Applicant has been convicted in a criminal case for land grabbing, the Applicant has



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produced the orders of this Court to establish that the said conviction has been set aside by this Court in criminal revision. In any event, the said case has nothing to do with the facts of the present case.

33. The only contention of the Respondent that appears to be prima facie valid is that the MoU was never mentioned by the Applicant in any of his communications to the SRO and other letters which were admittedly issued after the date of the MoU. However, in the light of the overwhelming prima facie material placed by the Applicant and also the fact that the Respondents have not been able to take a definite stand with regard to the original borrowings, I find a prima facie case made out for grant of an interim injunction.

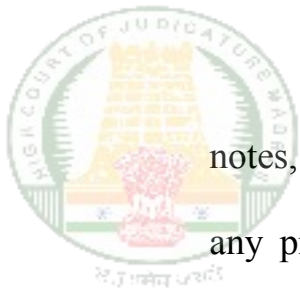
34. The balance of convenience is also in favour of the Applicant since if the Respondents who have already dealt with 22 undivided shares, proceed to encumber and alienate the remaining portions also, the Applicant, even if ending up successful in the arbitration proceedings, will be left high and dry. The conduct of the Respondents in making a false representation that the original documents are lost and proceeding to effect a Settlement Deed and thereafter, the beneficiaries executing a General Power of Attorney Deed in favour of the Settlor, the 1st Respondent himself and thereafter, conveying undivided shares in favour



of various third-party purchasers clearly militate against the bona fides of the Respondents. I therefore find that if an order of injunction is not granted, it will cause irreparable loss and hardships to the Applicant. The Applicant has thus passed the trinity tests for being entitled to an interim injunction.

35. No doubt, the Respondents 2 to 4 are not parties to the arbitration agreement, but at this stage of deciding the Section 9 Application, having found that the Respondents have not come out clean and the Settlement Deed is within the family and there is clear intent shown to keep the property away from the Applicant's reach, especially when the Applicant claims a mortgage by deposit of title deeds, the Respondents 2 to 4 who are in fact represented by none else than the 1st Respondent himself are also liable to be enjoined as prayed for. The issue of whether the Respondents 2 to 4 would be amenable to the arbitration process is left open to be decided in the Section 11 petition as and when it is filed and taken up for consideration. However, as far as this Section 9 Application, all the Respondents, for all the above reasons, are liable to be restrained by an order of interim injunction.

36. Coming to the request of the Respondents to direct the Applicant to produce the original documents including the promissory



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notes, firstly the said request is by way of a counter affidavit and without any prayer in that regard. In any event, this Court exercising powers under Section 9 cannot conduct a roving enquiry and decide the validity of the arbitration clause. As held by the Hon'ble Supreme Court, it should be left to the wisdom of the Arbitrator to take evidence and go into the same and render findings. It cannot be done at the stage of a Section 9 application. Moreover, it is by now trite that the evidence of an expert is weak evidence and it is not safe for the Courts to rely on the same. Therefore, any forensic report at this stage, as regards the claim of forgery, raised by the Respondents will only lead to uncertainty and it is always open to the Respondents to take up this issue before the Arbitral Tribunal/Arbitrator.

37. In fine, the interim injunction granted on 28.10.2024 is made absolute and the Application is closed. No costs.

21.12.2024

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Neutral citation: Yes/no
Index : Yes/No
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P.B.BALAJI, J.,

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Pre -delivery order in
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