



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR**

Misc. Civil Application (ARBN) No. 295 of 2025

M/s Shagun Exports, Mumbai through its Vice President and authorized
representative Shri Sharukh Kesri Master

Versus

Shri Kavinder Kumar Jogindernath Talwar and others

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri Shadan Khan Advocate h/f Shri Masood Shareef, Advocate
for the applicant.

Ms. Anvita Pande, Advocate for the respondent nos. 1 to 3.

CORAM : NIVEDITA P. MEHTA, J.

Reserved on : 25th SEPTEMBER, 2025.

Pronounced on : 14th OCTOBER, 2025.

The applicant has preferred the present application under
Section 11 of the Arbitration and Conciliation Act, 1996
(hereinafter referred to as “the Act of 1996”) for appointment of
Arbitrator. The applicant has invoked clause no. 30 of the
Supplementary Agreement dated 29.04.1997 entered into
between Smt. Amritbala Wd/o Late Shri Jogindernath Talwar
and M/s Shagun Exports and clause no.29 of the Agreement of

Development and Sale dated 31.12.1994 entered into between Smt. Amritbala Wd/o Late Shri Jogindernath Talwar and M/s Satyam Exports, a proposed Company (later on M/s Shagun Exports since the said proposed Company could not be incorporated). The subject matter of the application is reproduced below :

(a) Apartment No.A-001 on the Ground Floor of the building known and styled as “Shubham Apartments” covering a built up area of about 1213 square feet; and

(b) Row House No.-B-002 consisting of Ground Floor, First Floor and Top or Terrace of the building known and styled as “Shubham Apartments” together with restricted area of 169.00 Sq. Mtrs. comprising of the restricted area of the earlier retained Apartment (i.e. 95.00 Sq. Mt.).

2. Pursuant to the said Agreement of Development M/s Shagun Exports prepared a plan of a multi-storey building known and styled as “Shubham Apartments”. The respondent no.1’s mother had entered into an agreement dated 29.04.1997

with the applicant captioned as “Supplementary Agreement” whereby it was agreed that applicant shall sell to her the entire RCC Superstructure comprising Row House No. B-001 consisting of ground floor, first floor and top or terrace of the building admeasure 1363 Sq. Ft together with restricted area of 169.00 Sq. Mtrs. It was specifically agreed that the entire cost of construction was to be paid by the respondents’ late mother which was fixed for a total consideration amount of Rs.8,00,000/-.

3. The respondents’ mother had entered into an Agreement of Development & Sale on 31.12.1994 in relation to entire land bearing Nazul Plot No-5, Sheet No-34-C, admeasuring 19500 sq.ft. and in which it was agreed that the respondents’ mother shall be entitled for owning one Apartment on ground floor covering a super built area of about 1213 sq. ft. in the proposed Multi-storied Building No-A which was to be constructed by the developer at its own costs. After completion of the same, the delivery of possession was given in favor of respondents’ late

mother and accordingly a possession letter was duly signed by both parties.

4. It is the contention of the learned counsel for the applicant that in consequence of the agreement of sale which was executed between the applicant and the mother of the respondent, the apartment was duly handed over to the mother of the respondent vide possession letter dated 22.05.1997. However, as per the "Supplementary Agreement" dated 29.04.1997, it was agreed that the applicant shall sell to the respondent no.1's mother the entire RCC superstructure comprising Row House No.-B-001 consisting of Ground Floor, First Floor and Top or terrace of the building admeasuring 1363 Sq. Ft together with restrict area of 169.00 Sq. mtrs. It was necessary on the part of respondent No.1's late mother to make necessary payments towards the cost of construction of the which was fixed for a total consideration amount of Rs. 8,00,000/-. However, the said payment was not made and therefore till date the possession of the row house has not been handed over. The respondents'

mother passed away on 22.03.2007. During her life time, she had failed to pay the balance amount of Rs.6,00,000/- along with necessary interest.

5. The learned counsel for the applicant further contends that in May, 2021 the respondents had illegally and without any legal right or authority started work of constructing a water tank on the terrace of the said Row House. On coming to know about the same, applicant had visited the said row house and was shocked to note that the lock of the applicant stood replaced with a new lock on the door; which had been illegally done by the respondents. In February 2021, the applicant had last visited the said building, placed his lock on the entry door, and maintained exclusive possession throughout the period. Due to these illegal activities, the applicant issued a notice to the respondents alleging therein that, (1) the removal of the applicant's lock amounts to criminal offense and (2) the demolition of a portion of the ground floor wall, and subsequent construction amounted to trespass and illegal

construction, as the respondents had allegedly unlawfully entered the row house. This legal notice was duly replied to by the respondents.

6. The learned counsel for the applicant further pointed out that there is a specific clause i.e., clause 30 of the supplementary agreement dated 29.04.1997 and clause 29 of the development and sale agreement dated 31.12.1994 which specifies that if any dispute arises between the parties, the same shall be referred to the panel of Arbitrators to be appointed by each of the party and in view of the said agreement clause, the applicant has preferred the present application for appointment of the arbitrator.

7. The applicant submits that he has also issued a notice to that effect on 20.08.2024 which has been duly received by the respondents on 21.08.2024. However the respondents have failed to comply with the said notice.

8. Learned counsel for the applicant has placed reliance on the judgments of the Hon'ble Apex Court in Uttarakhand Purv

Sainik Kalyan Nigam Limited v. *Northern Coal Field Limited*, reported in (2020) 2 SCC 455, and *Interplay between Arbitration Agreements under the Arbitration and Conciliation Act, 1996 and the Indian Stamp Act, 1899*, reported in 2023 SCC OnLine SC 1666, to contend that, in view of the mandate of Section 16 of the Arbitration and Conciliation Act, 1996, judicial intervention at the pre-reference stage is limited. It is submitted that the issue of limitation is a jurisdictional question that falls within the domain of the arbitral tribunal and, therefore, ought to be decided by the arbitrator under Section 16, rather than by the High Court at the pre-reference stage.

9. Per contra, the learned counsel for the respondents submits that present application is ex-facie barred by limitation and is not maintainable. It is her further contention that as per Section 11 of the Act of 1996, the period for referring a dispute to arbitration or for seeking appointment of an arbitrator is three years from the date on which the cause of action arises. According to her, the cause of action arose on 26.03.1998 when

late Smt. Amritbala Talwar took possession of the incomplete row house bearing No.B-002. As per the clause 3 of the supplementary agreement wherein it is specifically mentioned that it is agreed between the parties the developer will strictly deliver the possession of the said row house duly completed and finished by 25.03.1998. In case failure to do so by the Developer it was agreed that the owner will be entitled to take possession of the row house no. B-002 on 26.03.1998 and accordingly possession was taken by the respondent no.1's mother. The late mother of the respondent no.1, completed the remaining construction of the row house at her own expenses. Moreover, the respondents continue to remain in possession till date and the applicant has never raised any objection to the possession of the respondents.

10. Learned counsel for the respondents further contends that the applicant even after issuing the legal notice dated 07.06.2021 failed to take any further steps for nearly three years thereafter. Inaction to complete the row house on part of the

applicant clearly reflects lack of diligence and renders the present application not only belated but also illegal and unsustainable. She further submits that almost 27 years have passed from the date of execution of the agreement to sale and development and also supplementary agreement and therefore the application under Section 11 of the Arbitration and Conciliation Act is devoid of merits and should be dismissed.

11. Upon considering the pleadings, submissions of both parties, and the documents on record, the core issue that arises for adjudication is whether the present application under Section 11 of the Act of 1996, is maintainable in light of the respondent's objection that the claim is ex facie barred by limitation.

12. The Act of 1996, while facilitating party autonomy and minimal judicial interference, does not itself prescribe a limitation period for invocation of arbitration. However, it is now well settled through judicial pronouncements that the

general provisions of the Limitation Act, 1963, govern the commencement of arbitration proceedings. Article 137 of the Limitation Act prescribes a three-year limitation for applications where no specific period is provided, which includes an application under Section 11 of the Arbitration Act for the appointment of an arbitrator. This period begins to run from the date when the cause of action first arises.

13. In the present matter, the Supplementary Agreement dated 29.04.1997 clearly stipulated in Clause 3 that possession of the Row House No. B-002 was to be delivered on or before 25.03.1998, and in the event of failure to do so by the developer, the purchaser late Smt. Amritbala (respondent no.1' mother) would be entitled to take possession on an "as is where is" basis from 26.03.1998. The respondents have consistently maintained that possession was accordingly taken on 26.03.1998, that the structure was completed by them at their own cost, and that they have remained in peaceful, continuous possession ever since. This assertion is not effectively denied by the applicant, nor is

any credible evidence placed on record to show that possession was retained by the applicant until the alleged incident in 2021.

14. The applicant's case rests on the contention that cause of action arose in May 2021, when he discovered alleged unauthorized entry by the respondents, and thus the arbitration clause could be validly invoked in 2024. However, this argument lacks legal substance and factual credibility. First, the agreement itself fixes a date for performance and possession, making the date of accrual of cause of action as 26.03.1998, when according to the applicant, the respondents failed to make the remaining payment and allegedly took unauthorized possession. Secondly, the long period of inaction from 1998 until 2021 spanning over two decades is neither explained nor justified by the applicant. Even assuming the cause of action revived in 2021, there is a delay of over three years before the arbitration clause was invoked in August 2024, again without any explanation or action in the intervening period.

15. The applicant's plea that discussions for settlement were ongoing cannot be accepted at face value in absence of any correspondence or documentary proof. On the contrary, the reply to the legal notice issued in 2021 reveals that the relationship between the parties was adversarial, not conciliatory. The claim of ongoing settlement talks appears to be an afterthought, aimed merely at explaining the long inaction. It is further relevant to note that no civil suit, police complaint, or any form of legal proceeding was initiated by the applicant at any time prior to 2024, despite alleging trespass, illegal possession, and non-payment of substantial consideration.

16. It is important here to address the judgments relied upon by the applicant:

In *Uttarakhand Purv Sainik Kalyan Nigam Ltd. v. Northern Coal Field Ltd.*, (2020) 2 SCC 455, the Hon'ble Supreme Court held that issues relating to limitation and arbitrability are primarily within the domain of the arbitral tribunal under Section 16 of the Act. However, the Court also

clarified that where the issue of limitation is not ex facie apparent, it should be left to the arbitrator. The aforesaid ruling does not help the applicant in the present case because the delay is apparent on the face of the record the cause of action (whether based on non-payment or possession) clearly arose in 1998, and the arbitration was invoked only in 2024, well beyond the three-year limitation period. Hence, this is not a case where limitation is debatable; rather, it is ex facie and demonstrably barred.

The applicant's reliance on *N.N. Global Mercantile Pvt. Ltd. v. Indo Unique Flame Ltd., 2023 SCC OnLine SC 1666*, to argue that pre-reference scrutiny by the courts must be minimal, and issues such as validity, limitation, and arbitrability should be left to the arbitral tribunal, is misplaced. The Hon'ble Apex Court in this case as dealing with the interplay between arbitration clauses and stamping requirements not limitation per se.

17. It is no more res-integra that at the stage of section 11 proceedings the court does not conduct a detailed examination.

However, when there is no reasonable doubt that arbitration cannot proceed viz., when the claim is barred by limitation, should it refuse reference. In this context ***Vidya Drolia v. Durga Trading Corporation, (2021) 2 SCC 1***, which is the leading authority on Section 11 post-*N.N. Global*, makes it abundantly clear that courts can refuse reference if the claim is ex facie barred by limitation. Specifically, in *Vidya Drolia* (supra), the Supreme Court held in paragraph in 147.11, 148 and 154.4:

“147.11 The interpretation appropriately balances the allocation of the decision-making authority between the court at the referral stage and the arbitrators’ primary jurisdiction to decide disputes on merits. The court as the judicial forum of the first instance can exercise prima facie test jurisdiction to screen and knockdown ex facie meritless, frivolous and dishonest litigation. Limited jurisdiction of the courts ensures expeditious, alacritous and efficient disposal when required at the referral stage.

148. Section 43(1) of the Arbitration Act states that the Limitation Act, 1963 shall apply to arbitrations as it applies to court proceedings. Sub-section (2) states that for the purposes of the Arbitration Act and Limitation Act, arbitration shall be deemed to have commenced on the date referred to in Section 21. Limitation law is procedural and normally disputes, being factual, would be for the arbitrator to decide guided by the facts found and the law applicable. The court at the referral stage can interfere only when it is manifest that the claims are ex facie time barred and dead, or there is no subsisting dispute.....

154.4 Rarely as a demurrer the court may interfere at the Section 8 or 11 stage when it is manifestly and ex facie certain

that the arbitration agreement is nonexistent, invalid or the disputes are non-arbitrable, though the nature and facet of non-arbitrability would, to some extent, determine the level and nature of judicial scrutiny. The restricted and limited review is to check and protect parties from being forced to arbitrate when the matter is demonstrably ‘non-arbitrable’ and to cut off the deadwood....”

Applying this principle to the present case, the cause of action admittedly accrued in 1998, and the delay of over two and a half decades is not only inordinate but also unexplained. The claim, therefore, amounts to “deadwood”, and the Court would be abdicating its responsibility if it were to mechanically refer such a stale claim to arbitration. Thus, hopelessly time barred claims can be treated as “deadwood”. In the case in hand there is “no vestige of doubt” that the claim of applicant is deadwood.

18. Furthermore, in *National Insurance Co. Ltd. v. Bophara Polyfab Pvt. Ltd.*, (2009) 1 SCC 267, the Hon’ble Apex Court emphasized that limitation is part of substantive law and governs arbitration proceedings just as it governs civil litigation.

The Court held that if the claims are demonstrably barred by limitation, they may be rejected at the threshold.

19. In *Arif Azim Company Ltd v. Aptech Ltd.*, (2024) 5 SCC 313, the Hon'ble Supreme Court had observed that Section 11(6) would be covered by Article 137 of the Limitation Act, 1963 which prescribes a limitation period of 3 years from the date when the right to apply accrues. Furthermore, limitation is an admissibility issue, yet it is the duty of the Courts to prima facie examine and reject non-arbitrable or dead claims, so as to protect the other party from being drawn into a time-consuming and costly arbitration process.

20. Finally, the conduct of the applicant further reinforces the absence of diligence. Despite being aware of the alleged default in payment and unauthorized possession since 1998, no civil, criminal, or arbitral proceedings were initiated for over two decades. Even after alleging illegal acts in 2021, the applicant took no steps until August 2024. There is no document evidencing acknowledgment of liability or a fresh promise to

pay under Section 18 of the Limitation Act that could extend the limitation period.

21. Thus, the plea of ongoing settlement discussions, advanced without any supporting material and in the light of outright vehement denial of the same by respondents, is wholly unconvincing and insufficient to revive a long-dead claim.

22. In the present case, the claim sought to be referred to arbitration pertains to events that occurred in or before 1998. No acknowledgment of liability or promise to pay, as contemplated under Section 18 of the Limitation Act, is demonstrated. The application has been filed in 2024 over 26 years after the cause of action allegedly arose without any intervening steps that could extend or renew the limitation period. The cause of action sought to be pleaded vis-a-vis the incidence of 2021 does not inspire confidence as no steps available in law were taken by the applicant. As such, the invocation of arbitration clause is hopelessly delayed.

23. Therefore, in light of the settled legal position, the facts on record, and the unexplained and inordinate delay of over two decades, it is manifest that the claims are ex-facie barred by limitation. The arbitration clause cannot be invoked at such a belated stage, especially when the applicant has failed to act with reasonable diligence. This court, exercising jurisdiction under Section 11 of the Act of 1996, cannot turn a Nelson's eye to such glaring laches and stale claims. Arbitration, though a private dispute resolution mechanism, is not an exception to the law of limitation, and equity cannot be extended to a party who has slept over its rights for more than two decades.

24. Accordingly, the application under Section 11 of the Act of 1996, is dismissed as being barred by limitation. No order as to costs.

(NIVEDITA P. MEHTA, J.)