



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

MISC. CIVIL APPLICATION (ARBN) NO. 903 OF 2023

Sanjay Singh s/o Suresh Dixit,
Aged about 43 years, Occupation -Business,
R/o Om Sai Market, Plot No. 69,
Godani Road, Zingabai Takli,
Nagpur – 440030, Mob. 8208903076.

.... **APPLICANT**

VERSUS

- 1) Dr. Kunda Wasudeo Tayde,
Aged about 61 years,
Occupation – Medical Practitioner,
R/o 118-C, Pandey Layout, Khamla,
Nagpur – 440025.
- 2) Dr. Pushpa Shankarrao Junghare,
Aged about 63 years,
Occupation – Medical Practitioner,
R/o Ajinkya, Above Samyukta Hospital,
Camp Road, Amravati – 444602.
- 3) Smt. Madhavi Sudhir Ingole,
Aged about 58 years, Occupation – Service,
R/o 15-B, Nandadevi, Anushakti Nagar,
Mumbai – 4000094.
Alternate Address:
14-B, Purnima, Next to Sayadri Guest
House, B.G., Kher Road, Mallabar Hills,
Mumbai – 400006.
- 4) Mr. Vivek P. Damodaran,
Aged about 54 years, Occupation – Business,
R/o Flat No.504, Sterling Apartment,
Raj Nagar, Katol Road, Nagpur-440013.
Alternate Address:
402, Radhe Apartment, Clarke Town,
Nagpur – 440014.

5) Mr. Mahesh Bindaprasad Khangar,
Aged about 48 years, Occupation – Business,
R/o House No. 332/1, Khangar Layout,
Near Om Satyam Garden, Gondhani Road,
Nagpur – 441111.

6) M/s. Shiv Infratech,
through its Partner Manohar s/o
Vyenkatro Katole, Aged about 62 years,
Occupation – Business,
R/o Flat No. 501, Springdale-1,
Apartment, Rajnagar, Nagpur-440013.

...**NON-APPLICANTS**

Mr. S.S. Sitani, Counsel for the applicant,
Mr. U.A. Gosavi, Counsel for non-applicant Nos.1 to 3,
Mr. A.H. Lohiya, Counsel for non-applicant Nos.4 and 5.

CORAM : NIVEDITA P. MEHTA, J.

DATE OF RESERVING THE JUDGMENT : 08-12-2025

DATE OF PRONOUNCING THE JUDGMENT : 16-12-2025.

JUDGMENT :

Heard. With the consent of the learned Counsel appearing for the parties, the application is taken up for final disposal.

2. The present application under Section 11 of the Arbitration and Conciliation Act, 1996 (“the Act”) has been filed by the applicant seeking appointment of an arbitrator against the non-applicants, on the basis of a Memorandum of Understanding dated 30th December 2020 (“MOU”).

3. It is the case of the applicant that non-applicant Nos. 1 to 3 are owners of land bearing Khasra No. 58/2, admeasuring 0.91 Hectare and Survey No. 61/2, admeasuring 0.36 Hectare, situated at Mouza Zingabai Takli, Tahsil and District Nagpur. In total, non-applicant Nos.1 to 3 are stated to be owners of land admeasuring 1.27 Hectares.

3.1 It is further the case of the applicant that non-applicant Nos. 1 to 3 intended to sell the aforesaid land. However, in respect of the said property, a dispute arising out of a previous transaction between non-applicant Nos. 1 to 3 and Mr. Manohar Katole was pending adjudication in Commercial Suit No. 20 of 2018 before the learned Additional District Judge, Commercial Court, Nagpur.

3.2 The applicant states that non-applicant Nos. 4 and 5 were his partners, and that the applicant, along with non-applicant Nos. 4 and 5, agreed to purchase the said property, for which purpose the MOU dated 30th December 2020 was executed between non-applicant Nos. 1 to 3 as “Vendors” and applicant along with non-applicant Nos.4 & 5 as “Purchasers”.

3.3 According to the applicant, it was specifically agreed under the said MOU that the applicant and non-applicant Nos. 4 and 5 would purchase the aforesaid lands from non-applicant Nos. 1 to 3, after settling the dispute pertaining to the said property by way of

compromise with Mr. Manohar Katole in the pending commercial suit. The applicant alleges that non-applicant Nos. 1 to 5, in connivance with each other and by playing fraud upon the applicant, settled the said dispute and deprived the applicant of the profits arising out of the MOU.

3.4 The applicant states that he invoked the arbitration clause contained in Clause 13 of the MOU by issuing a notice dated 30th May 2023, calling upon the non-applicants to appoint Advocate Shri Nikhil Gaikwad as the sole arbitrator or to suggest an alternative name. It is alleged that despite receipt of the said notice, the non-applicants failed to appoint an arbitrator. Hence, the present application has been filed invoking the jurisdiction of this Court under Section 11 of the Act.

4. Upon issuance of notice, the non-applicants caused their appearance. Non-applicant No. 1 filed her reply opposing the application. In substance, it is contended that even assuming the applicant has any right or entitlement, the same can be enforced only against non-applicant Nos. 4 and 5 and not against non-applicant Nos. 1 to 3. She submits that the applicant's notice dated 21st February 2023, addressed to non-applicant Nos. 4 and 5, reveals that the applicant intended to invoke Clause 13 of the MOU only against non-applicant Nos. 4 and 5. It is further submitted that the MOU dated 30th December

2020 clearly stipulates that non-applicant Nos. 4 and 5 unanimously nominated non-applicant No. 4 to act and take steps on their behalf.

5. Non-applicant No.1 further contended that non-applicant Nos. 4 and 5 expressed their inability to continue with the MOU, pursuant to which a Deed of Cancellation of the MOU and Letter of Authority dated 27th January 2021 came to be executed. Therefore, according to non-applicant No. 1, no right or entitlement survives in favour of the applicant against non-applicant Nos. 1 to 3.

6. Additionally, it is submitted that the notice invoking arbitration does not satisfy the mandatory requirement of Section 21 of the Act, as it does not disclose the necessary particulars of the dispute. It is also contended that Clause 13 of the MOU does not encompass internal disputes between the applicant and non-applicant Nos. 4 and 5. Hence, dismissal of the application is sought.

7. Non-applicant Nos. 4 and 5 have also filed their reply. It is contended that the notice invoking arbitration is stated to be in continuation of earlier notices dated 8th March 2022 and 21st February 2023 and, which were never served upon them. Consequently, no arbitrable dispute, as contemplated under Section 21 of the Act, was ever referred.

8. It is further submitted that the arbitration clause does not contemplate arbitration of disputes *inter se* between the applicant and non-applicant Nos. 4 and 5, but only disputes arising out of or relating to the MOU itself. Reliance is placed upon Clause 13 of the MOU in this regard. Non-applicant Nos. 4 and 5 further submit that the token agreements and sale deeds relied upon by the applicant pertain to Plot Nos. 6, 7 and 8, situated at Khasra No. 198/1, City Survey No. 136, Mouza Zingabai Takli, Nagpur, which are not part of the property covered by the MOU dated 30th December 2020. The said plots were sold to the applicant and non-applicant Nos. 4 and 5 independently and have no nexus with the subject matter of the present proceedings. It is therefore prayed that the present application be rejected.

9. Learned Counsel for the applicant relied upon the judgments in:

- i. Shri Khatu Shyam Traders v. Western Coalfields Limited, 2023 SCC OnLine Bom 344;*
- ii. Veena wd/o Naresh Seth and another v. Seth Industries Ltd., Mumbai and another, 2011 (2) Mh.L.J. 226; and*
- iii. Bharat Sanchar Nigam Limited and Another v. Nortel Networks India Private Limited, (2021) 5 SCC 738.*

to contend that at the stage of Section 11, the Court's scrutiny is limited to the existence of the arbitration agreement.

10. Learned Counsel for non-applicant Nos. 1 to 3 relied upon the judgment in *Magic Eye Developers Pvt. Ltd. v. Green Edge Infrastructure Pvt. Ltd. and others*, (2023) 8 SCC 50, to submit that the Court must also examine whether an arbitrable dispute exists.

11. Learned Counsel for non-applicant Nos. 4 and 5 relied upon the judgment in *M.R. Engineers and Contractors Pvt. Ltd. v. Som Datt Builders Ltd.*, (2009) 7 SCC 696, to contend the position of law with respect to continuation of arbitration agreement in a subsequent contract when reference to the same is not made. He submits that the arbitration agreement stood extinguished upon cancellation of the MOU.

12. In the backdrop of such factual matrix and in view of the settled position of law, while exercising jurisdiction under Section 11 of the Act, this Court is required to examine:

1. The existence and validity of the arbitration agreement; and
2. Whether the dispute sought to be referred is arbitrable.

At the referral stage, the enquiry is limited but necessary.

13. Upon perusal of the documents on record, it is evident that the MOU dated 30th December 2020 was executed between non-applicant Nos. 1 to 3 (Vendors), the applicant, and non-applicant Nos. 4 and 5 (Purchasers). The MOU pertains to agricultural land admeasuring 0.91 Hectare in Survey No. 58/2 and 0.36 Hectare in Survey No. 61/2, situated at Mouza Zingabai Takli, Nagpur.

14. The MOU records that a dispute regarding the said land was pending in Commercial Suit No. 20 of 2018, and that the purchasers would endeavour to settle the dispute by compromise within four months from the date of execution of the MOU. Upon such settlement, for the purchase of land, the purchasers were to pay the agreed consideration of Rs. 7.30 Crores to non-applicant No. 1 to 3-the Vendors.

15. The applicant is described in the MOU as a “Non-investing partner”, whereas non-applicant Nos. 4 and 5 are described as “Investing partners”. It is expressly stipulated that non-applicant No. 4 was nominated to deal, communicate, assure and guarantee with the Vendors on behalf of all purchasers, and that the applicant and non-applicant No. 5 would unconditionally abide by the decisions taken by non-applicant No. 4.

16. The MOU further clarifies that only the investing partners would have authority to deal with the property and that the applicant's entitlement would be limited to profits or losses as reflected in the audited books of accounts. It is categorically stated that the vendors (non-applicant Nos. 1 to 3) would have no liability in respect of profit-sharing arrangements between the purchasers.

17. There is no dispute regarding execution of the MOU dated 30th December 2020. However, the MOU was contingent upon settlement of the pending litigation within four months. The Deed of Cancellation dated 27th January 2021, relied upon by non-applicant No. 1, demonstrates that the MOU and the Letter of Authority were subsequently cancelled.

18. While the applicant relies on MOU dated 19th February 2021 between non-applicant Nos.4 and 5 (on behalf of non-applicant No. 1 to 3) with respect to settlement of dispute pending before the Ld. Commercial Court, there is nothing on record to demonstrate that subsequent thereto, sale is executed by non-applicant No. 1 to 3 in favour of non-applicant No. 4 and 5.

19. The applicant's right to claim profits was conditional upon execution of a sale transaction in respect of the property covered by the

MOU. No material has been placed on record to establish that such sale was ever concluded pursuant to the MOU dated 30th December 2020.

20. The notices relied upon by the applicant merely allege apprehension that the non-applicants are trying to sell the property and earn profits. There is no assertion supported by material to show that a sale transaction, as contemplated under the MOU dated 30th December 2020, has actually taken place. Mere allegation of fraud and cheating would not by itself give rise to an arbitrable dispute if strictly viewed from the wordings of MOU dated 30th December 2020.

21. In view of the express stipulation in the MOU dated 30th December 2020, that the Vendors would have no liability regarding profit-sharing, the arbitration clause cannot be invoked against non-applicant Nos. 1 to 3. Similarly, non-applicant No. 6, who is not a party to the MOU, cannot be subjected to arbitration.

22. As regards non-applicant Nos. 4 and 5, the applicant has failed to demonstrate the existence of a live arbitral dispute arising out of the MOU. Allegations of fraud and cheating, without substantiation of completion of the sale transaction, do not constitute an arbitrable dispute under the MOU. There is nothing on record to establish that pursuant to such apprehension of fraud or cheating being played, any

steps are taken by the applicant. Moreover, mere publication of Public Notices in the newspaper would not come to the rescue of applicant as by no stretch of imagination can it be said that the right has accrued in favour of the applicant immediately after the settlement with Mr. Katole is reached. This has to be viewed in the light of cancellation of MOU pleaded by the non-applicant No.1 to 3, which is not responded to by the applicant.

23. This Court is conscious that at the referral stage, the enquiry is confined to the existence of an arbitration agreement and an arbitrable dispute. The authorities cited by the applicant is no doubt a law laid down with respect to reference to arbitration, however, in the present factual matrix when arbitrable dispute is not demonstrated, the same would not come to the rescue of applicant. The applicant has failed to establish the existence of a dispute capable of being referred to arbitration under Clause 13 of the MOU dated 30th December 2020. Accordingly, the applicant has failed to make out a case for appointment of an arbitrator. The application is therefore liable to be rejected and the same is rejected with no order as to costs.

(NIVEDITA P. MEHTA, J.)