NC: 2025:KHC:53055
CMP No. 413 of 2025

HC-KAR

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 12TH DAY OF DECEMBER, 2025

BEFORE

THE HON'BLE MR. JUSTICE SURAJ GOVINDARAJ

CIVIL MISC. PETITION NO. 413 OF 2025

BETWEEN:

1. SRI MANJUNATH N
   S/O LATE L.NAGAPPA
   AGED ABOUT 59 YEARS
   RESIDING AT NO.65, 34TH CROSS
   16TH MAIN, JAYANAGAR 4TH 'T' BLOCK
   BENGALURU 560 041

...PETITIONER

(BY SRI. SUDHAKAR G V., ADVOCATE)

AND:

1. M/S VASUNDHARA BUILDERS
   A REGISTERED PARTNERSHIP FIRM
   HAVING ITS OFFICE AT NO.286/A
   9TH MAIN, 7TH CROSS, HANUMANTHANAGAR
   BENGALURU-560 019.
   REP. BY ITS MANAGING PARTNER
   MR.ANIL MANAKAME.

2. MR.ANIL MANAKAME
   MANGING PARTNER OF
   M/S. VASUNDHARA BUILDERS AT
   NO.286/A, 9TH MAIN, 7TH CROSS
   HANUMANTHANAGAR
   BENGALURU-560

...RESPONDENTS

(BY SRI. H MANJUNATH., ADVOCATE)

Digitally signed by SHWETHA RAGHAVENDRA
Location: HIGH COURT OF KARNATAKA

THIS CMP IS FILED UNDER SECTION 11(6) OF ARBITRATION AND CONCILIATION ACT, PRAYING TO APPOINT JUSTICE SRI.KUKKE RAMADKRISHNA BHAT, A RETIRED DISTRICT AND SESSIONS JUDGE, AS A SOLE ARBITRATOR TO ADJUDICATE THE DISPUTE ARISING OUT OF THE JOINT DEVELOPMENT AGREEMENT DATED 28.08.2013,

AS DOCUMENT NO.5581/2013-14, IN THE OFFICE OF THE SUB REGISTRAR, JAYANAGARA (JP NAGAR) BENGALURU, IN THE OFFICE OF THE SUB REGISTRAR JAYANAGAR AS PER CLAUSE NO.15 OF JOINT DEVELOPMENT AGREEMENT (ANNEXURE A) AND ETC.

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

CORAM: HON'BLE MR. JUSTICE SURAJ GOVINDARAJ

ORAL ORDER

1. The petitioner is before this Court seeking for the following reliefs:

> *a. to appoint Justice Sri.Kukke Ramakrishna Bhat, a retired District and Sessions Judge, as a sole Arbitrator to adjudicate the dispute arising out of the Joint Development Agreement dated 28-08-2013, as Document No.5581/2013-14, in the office of the Sub Registrar, Jayanayar [JP Nagar] Bengaluru, in the office of the Sub-registrar Jayanagar as per Clause No.15 of Joint Development Agreement (Annexure-A) and*
>
> *b. to pass such other suitable orders as necessary under the facts and circumstances of the case and in the interest of justice and equity.*

2. A Joint Development Agreement dated 28.08.2013 was entered into between the petitioner and the respondents, which is governed by an arbitration clause in terms of Clause 15, which is reproduced hereunder for easy reference:

> ***15. Arbitration:***
>
> *In case any dispute or difference should arise between the parties hereto, the same shall be referred to arbitration consisting of a sole Arbitrator appointed by Second Party, who shall deal with the dispute under the provisions of the Arbitration and Conciliation Act, 1996, or any statutory modification thereof. The award of the Arbitrator or Arbitrators as the case may be, shall be final and binding on the parties.*

3. The petitioner alleging that there are certain disputes, had got issued a legal notice on 23.12.2022 on the respondents. As there was no reply received, the petitioner had invoked the arbitration clause vide notice dated 12.12.2023. Another notice was issued on 5.04.2025 again invoking the arbitration clause reiterating the nomination of its arbitrator.

4. The respondents issued a notice on 22.04.2025 after receipt of the aforesaid notices contending that since the petitioner is willing to terminate the Joint Development Agreement, respondents are ready to fulfil the terms if certain payments were made by the petitioner. It is in that background that the

petitioner has approached this Court seeking for the aforesaid reliefs.

5. Notice having been issued, respondents have entered appearance.

6. Learned counsel for the petitioner submits that since a reply had been issued on 22.04.2025 contending that the respondent is in possession of the property and that the respondent agreed to execute a cancellation of joint development agreement, the demand however made not being justified, no amounts are required to be paid by the petitioner, but the cancellation is required to be executed by the respondent. On that basis, he submits that there being disputes between the parties, the matter is required to be referred to arbitration.

7. Learned counsel for the respondent submits that

7.1. the dispute between the parties is *ex facie* barred by limitation. Firstly, he submits that in terms of the joint development agreement, the construction was to be completed within a period of 36 months from the date of issuance of the commencement certificate.

7.2. The commencement certificate had been issued on 10.05.2016, the construction was required to be completed by 09.05.2019. The dispute raised by the petitioner much thereafter is barred by limitation at the most the dispute ought to have been raised, within 3 years of 09.05.2019.

7.3. In this regard, he relies upon the decision of the Hon'ble Punjab and Haryana at Chandirgarh in the case of ***M/s.Garg Construction Company vs. State of Haryana and others***[1] more

[1] ARB-122-2017 (O & M) dtd 8.7.2022

particularly Para 19, which is reproduced hereunder for easy reference:

> *In view of the aforesaid law laid down by the Supreme Court, it is evident that in the present case the dispute between the parties arose in the year 2007. whereafter the applicant for the first time sent a legal notice to the respondents for the appointment of an arbitrator on 11.04.2011, whereupon the respondents responded by their letter dated 28.04.2011 asking the applicant to deposit the necessary 10% of the claim amount failing which it would be responsible for the delay and, therefore, deserves to be dismissed, as evidently, the limitation as far as filing of the application under Section 11 of the Act is concerned would start running from that date and, therefore, the present application filed by the applicant before this Court on 28.04.2017 is apparently delayed and barred by limitation, as it has been filed well beyond three years, in view of the law laid down by the Supreme Court in Secunderabad Cantonment Board's as well as Bharat Sanchar Nigam Ltd. 's cases (supra).*
>
> *The application, accordingly, stands dismissed.*

7.4. He also relies upon the decision of the Hon'ble Gujarat High Court in the case of ***Dipakkumar Nathabhai Patel vs. Narmadaben Dhirajlal Radadia & others***[2] more particularly Para 12 thereof, which is reproduced hereunder for easy reference:

[2] R/Petn. Under Arbitration Act No.173/2018 dtd 5.8.2022

12. *Applying the aforesaid authoritative principles of law laid down by the Hon'ble Apex Court, when the facts on hand are looked into, at the cost of repetition, it would emerge therefrom that even according to the petitioner, he was removed from the firm on 09.05.2005 and deed of dissolution was forwarded to him by first respondent on 16.05.2005, followed by issuance of legal notice dated 19.05.2005 as well as publication of advertisement in Gujarat Samachar on 09.06.2005. This would evidence the fact that petitioner was well within the knowledge of he having been removed from the firm. Thus, cause of action having arisen on 16.05.2005, 19.05.2005 or on 09.06.2005 for invoking arbitration clause, for reasons best known, petitioner did not seek such recourse. On the other hand, petitioner filed a suit being R.C.S. No. 486 of 2005 for declaration of his removal as illegal and to grant injunction from preventing him from entering the shop premises, in which suit no interim order came to be passed in his favour. Be that as THE HIGH COURT Yet another suit being Regular OF GO it may. Yet another suit being Regular Civil Application No. 409 of 2006 for settlement of accounts came to be WEB COPY filed in which an application under section 8 of the Act was filed by respondent No. 1 herein on 18.11.2006 which came to be allowed. on 08.03.2007. As noticed hereinabove, third suit viz. Regular Civil Suit No. 764 of 2007 came to be filed for declaration and permanent injunction and it came to be disposed of 10.06.2013. In Regular Civil Suit No. 486 of 2005, an application under Order VII Rule 11 for rejection of plaint came to be filed and learned trial Judge after taking note of the facts that in Regular Civil Suit No. 409 of 2006, the proceedings therein had been stopped and subsequent suit would not be maintainable, rejected the plaint by order dated 04.09.2018. It is thereafter petitioner has attempted to revive dead cause of action by filing this application. Even according to petitioner, cause of action arose on his alleged removal way back on 09.05.2005 and instead of taking recourse to*

> *invoke arbitration clause and seek for settlement of his claim immediately thereafter assuming he had a right to do so, he resorted to file Civil Suit and THE HIG COUR even after first order came to be passed in Regular Cisil order came to be pa RA Suit No. 409 of 2006 on 08.03.2007 if being construed as WEB COPY the date on which petitioner had cause of action for filing an application under section 11(6) for appointment of an Arbitrator, he did not choose to do so and said cause of action to sue had stood extinguished on expiry of three years period even if it had commenced on 07.03.2010 and as such by the present application filed on 24.09.2018 under section 11(6) of the Act, petitioner cannot be allowed to urge his claim on the basis of a dead cause of action or revive the claim which is barred by Law of Limitation namely not raising it within three years from the date cause of action arose.*

7.5. He also relies upon the decision of the Telangana High Court in the case of ***Sri.Athelli Mallikarjun and others vs. SSB Constructions***[3] Arbitration No. 169 of 2022, more particularly para 9 thereof which is reproduced hereunder for easy reference:

> ***9.*** *It is settled law that mere negotiations will not postpone the cause of action for the purpose of limitation. Since there is no provision in the Arbitration and Conciliation Act, 1996 specifying the period of limitation for filing an application under Section 11, one would have to take recourse to the Limitation Act, 1963. Section 43*

[3] Arbitration Appln No.169/2022

of the Arbitration and Conciliation Act, 1996 provides that the Limitation Act shall apply to arbitrators, as it applies to proceedings in Court. Since none of the Articles in Schedule to the Limitation Act, 1963 provide a time period for filing an application for appointment of arbitrator under Section 11, it would be covered by the residual provision under Article 137 of the Limitation Act which provides that the period of limitation is three years for any other application for which no period of limitation is provided elsewhere in the division. The time limit starts from the period when the right to apply accrues. In the instant case, the applicants except stating that they have repeatedly requested the respondents to make good the loss and pointing out the deficiencies in the construction, have not raised any dispute to resolve the disputes by the Arbitrator. As per the Development Agreement, construction has to be completed within twelve months and the grace period was allowed for a further period of six months. Thus the total time granted in the development agreement for completion of work is 18 months from the date of entering into the Development Agreement. If the respondents failed to comply with the terms and conditions of the Development Agreement, the applicants ought to have issued notice to resolve the dispute by invoking arbitration clause at earlier point of time. Having taken over possession and enjoying the property since more than 7 years, the applicants are not entitled to invoke the arbitration clause saying that limitation has to be calculated from the date of issuance of legal notice dated 19.05.2022. The notice invoking arbitration is ex facie time-barred, and the disputes between the parties cannot be referred to arbitration in the facts of this case. In view of the above circumstances, as the present Arbitration Application is not filed within the period of limitation as prescribed under Article 137 of Limitation Act, the same is liable to be dismissed.

7.6. He relies upon the judgment of the Hon'ble Supreme Court in the case of ***B and T AG vs. Ministry of Defence***, more particularly Paras 47, 49, 55 and 56, which are reproduced hereunder for easy reference:

> ***47.*** *xxxx*
>
> *The following two questions fell for the consideration of this court.*
>
> - *The period of limitation for filing an application Under Section 11 of the Act 1996; and*
> - *Whether the Court may decline to make the reference Under Section 11 where the claims are ex facie time barred?*
>
> *This Court observed that the Act 1996 has been framed for expeditious resolution of disputes and various provisions have been incorporated in the Act 1996 to ensure that the arbitral proceedings are conducted in a time bound manner. The Act 1996 does not prescribe any time period for filing an application Under Section 11(6). Since there is no provision in the Act 1996 specifying the period of limitation for filing an application Under Section 11, one would have to take recourse to the Act 1963, as per Section 43 of the Act 1996 which provides that the Limitation Act shall apply to arbitrators, as it applies to proceedings in Court.*
>
> *Since none of the articles in Schedule to the Limitation Act provide a time period for filing an application for appointment of arbitrator Under Section 11, it would be covered by the residual provision Under Article 137 of the Limitation Act which provides that the period of limitation is three years for any other application for which no period of limitation is provided elsewhere in the division. The*

time limit starts from the period when the right to apply accrues.

49. *The present case is a case deadwood/no subsisting dispute since the cause of action arose on 4-8-2014, when the claims made by Nortel were rejected by BSNL. The Respondent has not stated any event which would extend the period of limitation, which commenced as per Article 55 of the Schedule of the Limitation Act (which provides the limitation for cases pertaining contract) breach to of immediately after the rejection of the final bill by making deductions.*

55. *Cause of action becomes important for the purposes of calculating the limitation period for bringing an action. It is imperative that a party realises when a cause of action arises. If a party simply delays sending a notice seeking reference under the Act 1996 because they are unclear of when the cause of action arose, the claim can become time-barred even before the party realises the same.*

56. *Russell on Arbitration by Anthony Walton (19th Edn.) at pp. 4-5 states that the period of limitation for commencing an arbitration runs from the date on which the "cause of arbitration" accrued, that is to say, from the date when the claimant first acquired either a right of action or a right to require that an arbitration take place upon the dispute concerned. The period of limitation for the commencement of an arbitration runs from the date on which, had there been no arbitration clause, the cause of action would have accrued:*

Just as in the case of actions the claim is not to be brought after the expiration of a specified number of years from the date on which the cause of action accrued, so in the case of arbitrations, the claim is not to be put forward after the expiration of the specified number of years from the date when the claim accrued.

Even if the arbitration Clause contains a provision that no cause of action shall accrue in respect of any matter agreed to be referred to until an award is

made, time still runs from the normal date when the cause of action would have accrued if there had been no arbitration clause.

7.7. By relying on all the above decisions, the submission made by learned counsel for the respondent is that the cause of action would have to be taken into consideration for the purpose of determining whether the application filed under Section 11 is within a period of limitation or not.

7.8. The cause of action in the present case arose upon the expiry of 36 months from the date of issuance of the commencement certificate, no action having been taken thereon, the first notice was issued on 23.12.2022 and as such, the above petition is hopelessly barred by limitation and as such is required to be dismissed.

8. Heard Sri.Sudhakar G.V., learned counsel for the Petitioner and Sri.H.Manjunath, learned counsel for the Respondents No.1 and 2. Perused papers.

9. The short question that would arise for consideration in the present matter is whether the petition filed by the petitioner can be said to be *ex-facie* and hopelessly barred by limitation?

10. It is undisputed that the petitioner had issued the first notice on 23.12.2022, followed up with another notice on 12.12.2023 and the third notice on 05.04.2025. Though it is contended by the respondents that they did not reply to any of the notices, the respondents have issued a notice on 22.04.2025 admitting the execution of the joint development agreement and referring to various orders passed by the National Green Tribunal and the Hon'ble Supreme Court as regards the delay in the construction.

11. The Corona pandemic is attributed to be the reason for the delay in the execution of works, and thereafter, having adverted to a notice of the year 2022, a statement has been made that the respondent was willing to terminate the joint development agreement if certain payments were made. Thus, even as on 22.04.2025, according to the respondents, the joint development agreement was subsisting and in currency and had not been terminated or expired by efflux of time, as sought to be contended. The judgments which have been referred to and relied upon by the respondents are ones where no action was taken by the addressee of the notice, nor any acknowledgement made by the addressee of the notice, as regards the claim made by the applicant under Section 21 notice to be valid and subsisting.

12. In the present case, even according to the respondents as of now, there are disputes as regards who is in possession, wherein the petitioner claims that the petitioner is in possession and the respondents claim that the respondents are in possession. However, there is an agreement to terminate the joint development document on receipt of certain amounts of money from the petitioner by the respondents. The dispute in this regard is that the petitioner contends that there is no amount which is liable to be paid to the respondents, whereas the respondents contend that there are certain amounts to be paid to the respondents by the petitioner.

13. In that view of the matter, I am of the considered opinion that when such a notice had been issued on 22.04.2025, though contended not to be a reply but a separate notice, the fact remains that by way of

the said separate notice, the respondents have confirmed that the joint development agreement is still valid and subsisting between the parties and the same would be cancelled on the petitioner making payment of certain amounts. Hence, as indicated supra, the dispute between the parties cannot be said to be *ex facie* barred by limitation. As such, I pass the following:

ORDER

i) CMP is ***allowed***.

ii) **Sri.Justice Ajit J. Gunjal**, former judge of this Court is appointed as a sole Arbitrator to arbitrate the dispute between the parties under the aegis of the Arbitration Centre attached to this Court.

iii) Registry is directed to forward a copy of this order to the Director, Arbitration and Conciliation Centre for doing the needful.

iv) Since the order is passed in the presence of all the counsel, they shall appear before the Director, Arbitration and Conciliation Centre without the requirement of any notice on **12.01.2026 at 2.30 p.m.**

v) All contentions are kept open.

vi) Registry is directed to return the original and/or certified copies, if produced, to the respective parties who have produced it/them by following due procedure.

Sd/-
(SURAJ GOVINDARAJ)
JUDGE

PRS
List No.: 1 Sl No.: 61