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Arb O.P(COM.DIV.) No. 45 of 2025

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03-09-2025

CORAM

THE HONOURABLE MR JUSTICE N. ANAND VENKATESH

Arb O.P(COM.DIV.) No. 45 of 2025

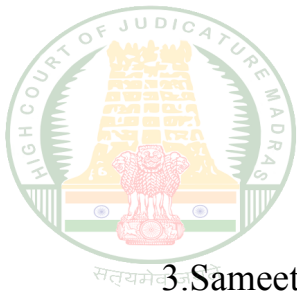
Inderchand Kochar
S/o. Dhanraj Kochar,
Door No.33, NSC Bose Road
Chennai 600 001
Now at, No.66, Montieth Lane,
Egmore, Chennai 600 008

Petitioner(s)

Vs

1. Praveen Kumar
S/o.Late J.Ghewarchand,
No.84, Govindappa Naicker Street,
Chennai 600 001

2.Sangeetha P Jain
W/o.Praveen Kumar
Door No.173/84, Govindappa Naicken Street,
Sowcarpet,
Chennai 600 001.



3. Sameet P Jain

S/o. Praveen Kumar

1st Floor, No.37, 2nd Cross Street,
9th Main Road, Dead-end, 4th Block,
Koramangala, Bangalore

4. Nishit Praveen

S/o. Praveen Kumar

Door No.40, 3rd Floor, 2nd Cross,
4th Block, Koramangala, Bangalore

Respondent(s)

PRAYER Petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996, praying to a) appoint an arbitrator to adjudicate the dispute between the Petitioner and the Respondents in terms of Memorandum of Understanding dated 22.10.2021 and b) direct the Respondents to pay costs.

For Appellant(s): Mr. Anirudh A Sriram

For Respondent(s): Mr. Joseph

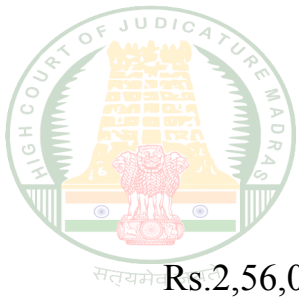
ORDER

This petition has been filed under Section 11 of the Arbitration and Conciliation Act, 1996 ('the Act' for the sake of brevity) for appointment of an Arbitrator to adjudicate the dispute between the petitioner and the respondents in terms of Memorandum of Understanding dated 22.10.2021.



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2.The case of the petitioner is that in the year 2025, the 1st respondent approached the petitioner for financial assistance for his business needs. The 1st respondent also informed the petitioner that he is the absolute owner of an immovable property. He promised that he will offer that property as a security for the financial assistance and will also handover the original documents to the petitioner. Pursuant to the same, the petitioner paid a sum of Rs.30 Lakhs on 13.06.2005 to the 1st respondent and the 1st respondent had also deposited the original deeds of the subject property. Promisory Notes were also executed by the 1st respondent, in which, the receipt of the loan and creation of the equitable mortgage was acknowledged. The 1st respondent once again approached the petitioner and sought for further financial assistance. The petitioner agreed for the same and the moneys were repaid by the 1st respondent during the period from 2005 till 2016. In furtherance of the same, the parties also entered into Memorandum of Understanding dated 22.10.2021. As per this Memorandum of Understanding, the 1st respondent acknowledged the fact that a total a sum of

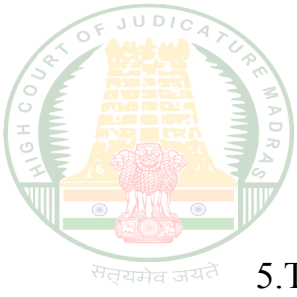


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Rs.2,56,00,000/- (Rupees Two Crores and Fifty Six Lakhs) is due and payable by the 1st respondent along with interest. Since this amount was not paid, a dispute arose between the parties.

3.The petitioner filed an application before this Court under Section 9 of the Act in O.A.No.810 of 2024 to restrain the respondents from in any manner alienating/encumbering the property that was given as a security. This application was heard on merits and a final orders came to be passed on 21.12.2024, making the interim injunction absolute.

4.The Trigger Notice under Section 21 of the Act dated 06.12.2024, was issued by the petitioner by nominating a retired Judge of this Court as the Arbitrator to adjudicate the dispute. Since there was no response from the side of the respondents, the present petition has been filed before this Court seeking for appointment of an Arbitrator.



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5.The 1st respondent has filed a detailed counter affidavit. The 1st respondent has denied having any transaction with the petitioner and has questioned the very genuineness/authenticity of the Memorandum of Understanding dated 22.10.2021, which is the basis for filing the present petition. That apart, the respondents has also filed a suit before this Court in C.S.No.28 of 2025 for a declaration to declare that the Memorandum of Understanding dated 22.10.2021 as null and void and non est in the eye of law and for other consequential reliefs. Accordingly, the respondents have sought for the dismissal of this petition.

6.Heard Mr.Anirudh A Sriram, learned counsel appearing on behalf of the petitioner and Mr.Joseph, learned counsel appearing on behalf of the respondents.

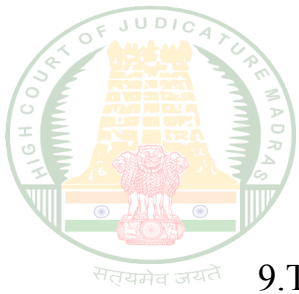
7.The relevant clause in the Memorandum of Understanding dated 22.10.2021 is extracted hereunder:



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a. All the disputes, differences and/or claims arising out of this agreement whether during Its subsistence or thereafter shall be settled by Arbitration in accordance with the provision of the arbitration and conciliation act, 1996 or any statutory amendments thereof and shall be referred to the Sole Arbitrator as governed under the Arbitration and conciliation act. The award given by such an arbitrator shall be final and binding on all the parties to this agreement. The venue of the arbitral proceedings will be at Chennai and the language for the arbitration proceedings shall be English, This agreement shall be constructed in accordance with the laws of India.

8.The crux of the issue that was raised on the side of the respondents is that the Memorandum of Understanding relied upon by the petitioner is a forged document and already a substantive suit has been filed before this Court in this regard and therefore, in the absence of the existence of an Agreement which contains the arbitration clause, no order can be passed under Section 11 of the Act.



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9.The counsel appearing on the either side made submissions touching upon the merits of the case and it is not necessary for this Court to enter into those disputes, since after the amendment was made to Section 11 of the Act, all that a Court has to see is as to whether there is existence of an arbitration clause in an Agreement, nothing more and nothing less. Useful reference can be made to the judgment of the Apex Court in *M/s.Duro Felguera S.A vs M/s.Gangavaram Port Limited* reported in **2017 9 SCC 729**.

10.In the case in hand, the respondents are seriously disputing the genuineness of the Memorandum of Understanding dated 22.10.2021, which is the fulcrum for filing the present petition. They have taken a very specific stand that the signature found in that Memorandum of Understanding is not the signature of the 1st respondent and it has been forged.

11.In order to deal with the above contention, it will be appropriate to refer to the earlier order passed by this Court in O.A.No.810 of 2024 dated

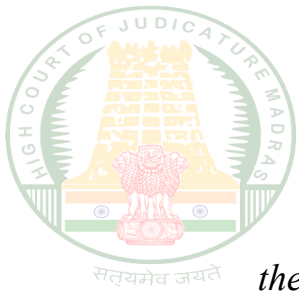


21.12.2024. That was an application filed under Section 9 of the Act. A specific

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ground was raised by the respondents to the effect that the Memorandum of Understanding is a forged and fabricated document and it was not signed by the 1st respondent. It was also contended that the petitioner is a stranger to the 1st respondent and no Promissory Notes were executed by the 1st respondent in favour of the petitioner. While dealing with this ground, this Court took into consideration the various facts and circumstances and came to the following conclusions:

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



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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 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



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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.

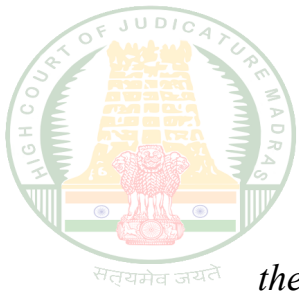
34. The balance of convenience is also in favour of the Applicant since if the Respondents who have already dealt with 22 undivided shares, proceed to encumber and alienate the remaining portions also, the Applicant, even if ending up successful in the arbitration proceedings, will be left high and dry. 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.



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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 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

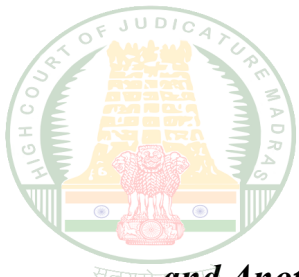


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the Hon^{ble} Supreme Court, it should be left to the wisdom of the Arbitrator to take evidence and go into the same and render findings. It cannot be done at the stage of a Section 9 application. Moreover, it is by now trite that the evidence of an 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.

12.Insofar as the issue regarding the genuineness of the Memorandum of Understanding, this Court held that the said issue would be amenable to the arbitration process while deciding the petition under Section 11 of the Act.

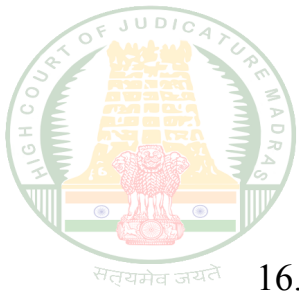
13.Insofar as the ground of fraud is concerned, simple allegations of fraud need not foreclose Section 11 petition. However, serious allegations of fraud that is fraud as regards the agreement itself may require scrutiny on a case to case basis. Useful reference can be made to the judgement of the Apex Court in ***Managing Director Bihar State Food and Civil Supply Corporation Limited***



सत्यमेव जयते *and Another v Sanjay Kumar* reported in **2025 SCC Online SC 1604**.
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14. In the case in hand, the respondents are seriously denying the genuineness of the Memorandum of Understanding which forms the basis for the present petition wherein, the petitioner is seeking for appointment of an Arbitrator.

15. Many of the reasonings that were given in the earlier order passed by this Court while dealing with the petition under Section 9 of the Act certainly has a bearing in this petition. Even though, the 1st respondent claims that the petitioner is a stranger to the 1st respondent, one important issue which drew the attention of this Court is the availability of all the original documents in the hands of the petitioner. This by itself would show that without their being any transaction between the parties, there was absolutely no reason as to how the original title documents reached the hands of the petitioner.



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16. In the case in hand, if the dispute is with respect to the signature found in the Memorandum of Understanding, it is not as if the Arbitrator does not have the jurisdiction to refer the document for expert opinion. After all, it is a private dispute between the parties and it does not involve any public interest. Therefore, even insofar as the fraud *inter se* parties, the Arbitrator is not denuded of the power of dealing with the same. Useful reference can be made to the judgement of the Apex Court in ***Vidya Drolia vs. Durga Trading Corporation*** reported in **2021 2 CTC 673**.

17. The 1st respondent has filed a suit before this Court challenging the genuineness of the Memorandum of Understanding. This issue can always be raised before the Arbitrator by way of a counter claim and if ultimately, the Arbitrator is able to get an opinion from the expert regarding the genuineness of the document, that will substantially enable the arbitrator to arrive at a conclusion as to whether the claim made by the petitioner has to be proceeded further or it has to be closed considering the report given by the expert.



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18.The other contention that was raised on the side of the respondents is that admittedly it is only the 1st respondent who was the signatory to the alleged Memorandum of Understanding and therefore, respondents 2 to 4 do not have any privity of contract with the petitioner and they cannot be made part of the arbitration proceedings.

19.Insofar as the above ground raised by the learned counsel for the respondents, for the present, this Court is inclined to refer to arbitration only the petitioner and the 1st respondent. Admittedly, respondents 2 to 4 are non-signatories to the Memorandum of Understanding. Therefore, the Tribunal which is vested with the power to implead the parties if necessary can deal with the same in light of the judgement of the Apex Court in ***ASF Buildtech Private Limited v Shapoorji Pallonji and Company Private Limited*** reported in **2025 SCC Online SC 1016**.



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20. In the light of the above discussion, this Court will proceed to appoint a sole Arbitrator. **Mr.S.R.Sundar, Advocate, W-460, 'C' Sector, 3rd Street, 'Sai Nivas', Anna Nagar West Extension, Chennai 600 101. [Mobile: 9444055853]** is appointed as sole Arbitrator. The sole Arbitrator is requested to enter upon reference, adjudicate upon arbitrable disputes that have arisen between the parties. The Arbitrator shall hold sittings in the 'Madras High Court Arbitration Centre under the aegis of this Court' (MHCAC) as per Madras High Court Arbitration Proceedings Rules 2017 and fee of Hon'ble sole Arbitrator shall be in accordance with the Madras High Court Arbitration Centre (MHCAC) (Administrative Cost and Arbitrator's Fees) Rules 2017.

21. This petition is disposed of in the above terms. No Costs.

03-09-2025

Index: Yes/No

Speaking/Non-speaking order

Internet: Yes

Neutral Citation: Yes/No

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To

1.Mr.S.R.Sundar

Advocate.

W-460, 'C' Sector,

3rd Street, 'Sai Nivas'.

Anna Nagar West Extension,

Chennai 600 101.

[Mobile: 9444055853]

2.The Director

Tamil Nadu Mediation and Conciliation

Centre-cum-Ex-Officio Member

Madras High Court Arbitration Centre

Chennai - 104.



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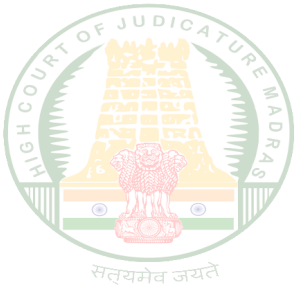
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Arb.O.P.(Com. Div.) No.45 of 2025N. ANAND VENKATESH, J.

Today, the matter is listed under the caption “for being mentioned”, at the instance of the learned counsel for the petitioner.

2. It is brought to the notice of this Court that the address of the learned Arbitrator is wrongly typed in the order dated 03.09.2025.

3. Hence, the same shall be replaced as under :

*“2nd Floor, New No.271, Old No.127,
ZS Towers, Angappa Naicker Street,
Chennai 600 001”*

4. Registry is directed to carry out necessary correction in the order dated 03.09.2025 and issue fresh order copy.

08.10.2025

gya