



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23-07-2025

CORAM

THE HON'BLE MR JUSTICE ABDUL QUDDHOSE

Arb O.P(COM.DIV.) No. 185 of 2025

M/s.Samunnati Finance Private Limited,
(Formerly known as Samunnati Financial
Intermediation and
Services Pvt.Ltd.,)
Rep by its Authorised Signatory,
having its office at
Baid Hi-Tech Park, 8th Floor,
No.129-B, ECR Road,
Thiruvanmiyur, Chennai-600041.

..Petitioner(s)

Vs

1. Mr.J.Rajesh,
Proprietor of Paramount Trading Company
No.34,Pattalamman Kovil Street,
Thirumalapuram,
Bodinayakanur,
Tamilnadu-625513.
2. Mrs.R.Nivatheni
W/o.Mr.J.Rajesh
No.34,Pattalamman Kovil street,
Thirumalapuram,
Bodinayakanur,
Tamilnadu-625513.

..Respondent(s)

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a.To Appoint a sole arbitrator to adjudicate the disputes between the Petitioner and the Respondents in terms of the Arbitration Agreements both dated 01.02.2021 b.Directing the Respondents to pay the costs

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For Petitioner(s): Mr.M.R.Guruprasad
for Mr.Abdul Wafiq

For Respondent(s): Mr Bharathi Raja
For K. Selvam
For R1
Mr. V. Achuthanandhan,
For 2nd Respondent

ORDER

This petition has been filed under Section 11 of the Arbitration and Conciliation Act, 1996 (in short “the Act”) seeking for appointment of an Arbitrator by this Court.

2. There seems to be a dispute between the petitioner and the respondents arising out of the term loan agreement dated 01.02.2021. There exists an arbitration clause in the term loan agreement dated 01.02.2021 and the same is extracted hereunder:-

"14. GOVERNING LAW AND JURISDICTION: This Agreement shall be governed by, and construed and interpreted in accordance with,



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the laws of the Republic of India. Any dispute, controversy or claim arising out of or relating to the interpretation, application or performance of this Agreement, including its existence, validity or termination, shall be subject to the jurisdiction of the courts as stated in Schedule A.

All disputes, differences or claims of any kind whatsoever arising between the Parties hereto, out of or in connection with this Agreement, or the validity, interpretation, implementation or alleged breach of terms of this Agreement or omitted to be done pursuant to this Agreement, shall be first attempted to be resolved amicably between the Parties by mutual negotiations within 30 (thirty) days of commencement of negotiations. Failing which, such dispute shall be referred to a sole arbitrator to be appointed by NBFC. The arbitration proceedings shall be in accordance with the Arbitration and Conciliation Act, 1996 and shall be conducted in English. The arbitration shall take place at Chennai and shall be governed by the laws of India"

3. The petitioner had invoked arbitration in accordance with the arbitration clause by approaching the Council for National and International Commercial Arbitration (CNICA), an arbitral institution, who had nominated an Arbitrator. However, the second respondent had objected to the Arbitrator



nominated by CNICA by filing an application under Sections 12 and 16 of the Act. Thereafter, based on the request made by the petitioner, the arbitral claim lodged by the petitioner before the arbitral tribunal was withdrawn. Under the aforesaid circumstances, the petitioner has filed this petition under Section 11 of the Act seeking for appointment of an Arbitrator by this Court.

4. The petitioner has invoked arbitration by issuing notice to the respondents on 08.12.2022 to comply with the requirements of Section 21 of the Act. The first respondent, till date, has not filed a counter affidavit. The second respondent has already filed a counter affidavit. Admittedly, the second respondent is the wife of the first respondent. The second respondent in the counter affidavit has raised the following objections:-

(a) The second respondent has not executed any of the documents relied upon by the petitioner in this petition filed under Section 11 of the Act.

(b) The petitioner has fabricated the documents for the purpose of filing this petition under Section 11 of the Act.

(c) Even assuming the documents were executed by the second respondent to secure the loan availed by



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the first respondent, the document alleged to have been executed by the second respondent in favour of the petitioner, namely, Personal Guarantee Deed dated 01.02.2021, does not contain an arbitration clause and therefore, this petition is not maintainable.

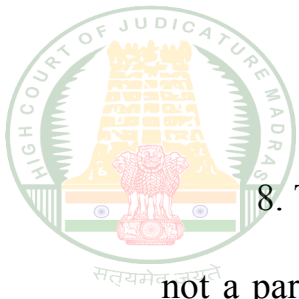
5. Admittedly, the second respondent is the wife of the first respondent. Admittedly, the term loan agreement dated 01.02.2021, which is the subject matter of the dispute between the petitioner and the respondents, contains an arbitration clause. The petitioner has also contended that the arbitration clause contained in the term loan agreement dated 01.02.2021 is also applicable to the Deed of Hypothecation dated 01.02.2021 as well as the Personal Guarantee Deed dated 01.02.2021. Under the Personal Guarantee Deed dated 01.02.2021, which is said to have to been executed by the second respondent in favour of the petitioner, the second respondent has guaranteed the due repayment of the loan availed by the first respondent to the petitioner. The statement of account dated 02.12.2022 filed by the petitioner discloses that the respondents are defaulters in the repayment of the loan.



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6. The learned counsel for the second respondent would reiterate the contents of the counter affidavit filed by the second respondent and would submit that the second respondent has never executed any loan document. He would also submit that the arbitration clause available in the term loan agreement dated 01.02.2021 is not applicable to the Deed of Personal Guarantee dated 01.02.2021, to which the petitioner claims that the second respondent is a party.

7. However, the contention of the learned counsel for the second respondent is disputed by the learned counsel for the petitioner and would submit that all the documents were executed on the very same date and therefore, the arbitration clause contained in the term loan agreement dated 01.02.2021 is also applicable to the Personal Guarantee Deed dated 01.02.2021 executed by the second respondent, who is none other than the wife of the first respondent. The second respondent has guaranteed the loan payable by the first respondent to the petitioner under the term loan agreement dated 01.02.2021. The existence of the arbitration clause contained in the term loan agreement dated 01.02.2021 is also not disputed by the second respondent in the counter affidavit filed before this Court.



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8. The law is now well settled that in cases where a party claims that he is not a party to the arbitration agreement and there is a prima-facie evidence to show that he is connected to the contract, which contains an arbitration clause, this Court, being a referral court, having limited scrutiny, will have to appoint an Arbitrator as prayed for in this petition by leaving it open for the respective respondents to raise all objections with regard to arbitrability of the dispute either under Section 16 of the Act or through the statement of defence filed by them before the Arbitrator.

9. In *SBI General Insurance Co. Ltd. Vs. Krish Spinning* [2024 (6) ALD 69]; and *Interplay between arbitration agreements under the Arbitration and Conciliation Act, 1996, and the Indian Stamp Act, 1899* [AIR 2024 SC 1], the Hon'ble Supreme Court has made it clear that the scope of judicial interference under Section 11(6-A) of the Act is only confined to the limited scrutiny of “prima-facie existence of the arbitration agreement, nothing more and nothing less” and the competence of the Arbitral Tribunal under Section 16 of the Act confers complete arbitral autonomy to rule, determine and act on the issues pertaining to impleadment or deletion of a party, signatory or non-signatory, arbitrability or non-arbitrability, necessary or not necessary party, joinder or



non-joinder to the arbitration in depth even if the ruling is contrary to that of the referral court under Section 11 of the Act.

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10. In the case on hand, admittedly, the second respondent is the wife of the first respondent. The existence of the arbitration clause in the loan agreement, which is the subject matter of the dispute, has also not been specifically disputed by the second respondent and no evidence is placed on record to show that the loan contract dated 01.02.2021 does not contain an arbitration clause. The Personal Guarantee Deed dated 01.02.2021 said to have been executed by the second respondent in favour of the petitioner was also executed on the very same date as that of the loan agreement. Therefore, the contention raised by the learned counsel for the second respondent as recorded supra cannot be adjudicated by this Court, as this Court is confined to limited scrutiny under Section 11 of the Act.

11. Once, on a prima-facie consideration, this Court finds that there exists an arbitration clause in the contract, based on which, the loan was availed by the respondents, and the petitioner also claims that the second respondent is the guarantor to the loan transaction, which is also executed in a separate Personal Guarantee Deed dated 01.02.2021 in favour of the petitioner, and the



petitioner has also pleaded that the arbitration clause contained in the term loan agreement dated 01.02.2021 is also applicable to the Personal Guaranteed Deed dated 01.02.2021, necessarily, this Court will have to appoint an Arbitrator as prayed for in this petition.

12. The first respondent has also not filed a counter affidavit till date in this petition. Therefore, no further time can be granted for the first respondent to file a counter affidavit, that too, in a petition filed under Section 11 of the Act. No useful purpose will also be served if some more time is granted to the first respondent to file a counter affidavit, when this Court finds that there exists an arbitration clause in the term loan agreement dated 01.02.2021 entered into between the first respondent and the petitioner.

13. For the foregoing reasons, this petition is allowed as prayed for with the following directions:-

(a) This Court hereby appoints Hon'ble Mr.Justice D.Krishnakumar, former Chief Justice of Manipur High Court, residing at No.13/7, 12th east street, Kamaraj Nagar, Thiruvanmiyur, Chennai-41, Mobile No.9445500225, as the Sole Arbitrator to adjudicate the dispute between the



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petitioner and the respondents arising out the aforesaid contract.

(b) The Sole Arbitrator appointed by this Court shall be paid remuneration/fees as per the schedule agreed upon by the parties to the dispute.

(c) The Arbitrator shall adhere to the provisions of Arbitration and Conciliation Act, 1996.

(d) The Arbitrator shall also pass the arbitral award within the stipulated period as prescribed under the Arbitration and Conciliation Act, 1996.

(e) The second respondent is at liberty to raise all objections, which have been raised through their counter affidavit filed before this Court, by filing an application under Section 16 of the Act before the Arbitrator, or through her statement of defence filed in the arbitral proceedings.

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Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No

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ABDUL QUDDHOSE J.

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