

Arbitration Original Petition (Com.Div).No.176 of 2025
and Original Application No.993 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.09.2025

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THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

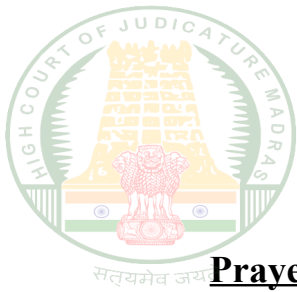
Arbitration Original Petition (Com.Div).No.176 of 2025
and Original Application No.993 of 2024

1. Madan Sundararajan,
S/o.Sundararajan
2. Malini Madan
W/o.Madan Sundararajan Petitioner & Applicant in both petitions

Vs.

1. Dr.K.Sampath,
S/o.Dr.B.R.Kulasekhar
2. Mrs.Sasirekha Sampath,
W/o.Dr.K.Sampath
3. Mrs.Suchitra Busch (Deceased)
W/o.Mr.Daniel Busch
4. Mr.Daniel Busch
5. Mr.Nathan Sampath Busch
S/o.Daniel Busch Respondents in both petitions.

[respondents 4 and 5 are brought on record as the legal heirs of the deceased 3rd respondent as per order dated 14.07.2025 in Appn.No.3258 of 2025]



Arbitration Original Petition (Com.Div).No.176 of 2025
and Original Application No.993 of 2024

Prayer in Arb.O.P(Com.Div)No.176 of 2025:

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Arbitration Original Petition filed under Section 11 of the Arbitration and Conciliation Act, 1996 to appoint an Arbitrator to decide the disputes between the petitioner and the respondent to the present petition along with costs.

Prayer in O.A.No.993 of 2024:

Original Application filed under Section 9 of the Arbitration and Conciliation Act, 1996, to pass an order of ad interim injunction restraining the respondents, their delegates, agents, nominees, legal heirs and/or any other person claiming through them from disturbing our peaceful possession in the schedule mentioned property pending arbitral proceedings.

For Petitioner : Mr.A.K.Sriram, Senior Counsel
[in both petitions] for M/s.A.S.Kailasam & Associates

For Respondents : Mr.S.R.Raghunathan
[in both petitions]

COMMON ORDER

The arbitration O.P.No.176 of 2025 has been filed under Section 11 of the Arbitration and Conciliation Act, 1996 [for brevity, hereinafter referred to as 'the Act'] for appointment of an arbitrator to decide the dispute between the petitioners and the respondents.

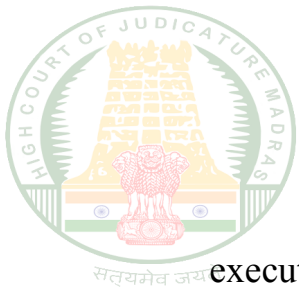


Arbitration Original Petition (Com.Div).No.176 of 2025
and Original Application No.993 of 2024

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2. O.A.No.993 of 2024 has been filed under Section 9 of the Act for interim injunction restraining the respondents from disturbing the peaceful possession and enjoyment in the schedule property pending the arbitral proceedings.

3. The case of the petitioners is that the parties in the present case are close relatives and the schedule mentioned property originally belonged to the first respondent, which was purchased through a sale deed dated 15.09.1971. Subsequent to the purchase, the first respondent declared that the schedule property can be equally divided amongst the second and third respondents in the year 1984. The second respondent was appointed as a power agent by the first and third respondent in the year 1995 and the second respondent in her capacity as the power agent and in her individual capacity, conveyed one-half share in the land and the superstructure to the second petitioner, the first petitioner's mother and the first petitioner through three separate sale deeds dated 18.08.1995. The second respondent thereafter acted as a power agent of the first and third respondents and in her individual capacity executed a power of attorney dated 18.08.1995 appointing the first petitioner as the sub-power agent. The first petitioner's mother viz., Mrs.Jayalakshmi



Arbitration Original Petition (Com.Div).No.176 of 2025
and Original Application No.993 of 2024

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executed a settlement deed dated 01.09.2004 in favour of the first petitioner, conveying her 1/6th share in the schedule mentioned property.

4. The petitioners and the respondents decided to construct a building in the first floor in the year 2007 and they entered into a supplementary agreement and memorandum of agreement dated 24.03.2007. The supplementary agreement confirmed the ownership of the superstructure in the ground floor to the petitioners as per the earlier oral arrangement and the respondents were given consent for putting up a superstructure in the first floor of the property. Thus, the ownership over the ground floor and the first floor was properly defined under the supplementary agreement dated 24.03.2007.

5. The above arrangement was going on without any problem till the year 2021. Thereafter, the first and second respondents wanted to sell their shares in the schedule mentioned property. They also offered the first and second petitioners with the right of first choice/refusal. Even though it does not form part of the supplementary agreement, the communication that took place between the parties made it clear that it is in continuation of the supplementary agreement dated 24.03.2007. In



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other words, the earlier supplementary agreement was amended by introduction of this offer made by the first and second respondents.

6. The petitioners communicated their acceptance to the respondents through e-mail dated 17.07.2023 and expressed their willingness to invoke their right of first choice. Pursuant to the same, the petitioners reached out to the bankers and independent valuers to ascertain the market value. The petitioners also sought for the title documents along with other documents to initiate the valuation process. The second respondent acknowledged the e-mail dated 17.07.2023 and requested for time to gather all the documents through e-mail dated 23.07.2023. The petitioners performed their obligations and initiated all necessary actions for completing the same. However, the respondents did not come forward to perform their part of the contract for over an year.

7. On 15.05.2024, a whatsapp message was received from the second respondent seeking for possession of the property in the next 4 to 6 months. Thereafter, the second respondent also informed the first petitioner on 06.06.2024 that she is not willing to go further with the sale



Arbitration Original Petition (Com.Div).No.176 of 2025
and Original Application No.993 of 2024

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agreement on a ground that the offer made by the petitioner was not on par with the market value of the property.

8. In the light of the above development, a cause of action arose for the petitioners to resolve the dispute by referring the same to the arbitrator as per the arbitration clause that was available in the supplementary agreement. Accordingly, a notice under Section 21 of the Act was issued on 07.08.2024 and pursuant to the same, a petition has been filed under Section 11 of the Act to appoint an arbitrator.

9. The application in O.A.No.993 of 2024 has been filed seeking for an interim injunction to restrain the respondents from disturbing the peaceful possession and enjoyment of the property pending the arbitral proceedings.

10. This Court carefully considered the submissions made on either side and perused the materials available on record.

11. The moot question that arises for consideration is as to whether the alleged agreement to sell and the right of pre-emption had

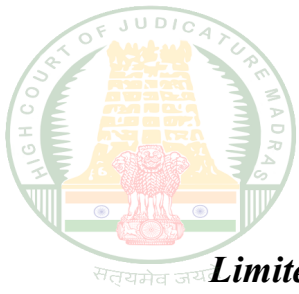


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actually arisen in the light of the communications/conversations that took place between the parties and whether it was in continuation of supplementary agreement dated 24.03.2007, which alone contained an arbitration clause and therefore, that arbitration clause can be read into the subsequent agreement between the parties, where it is alleged that the respondents were willing to sell their share of the property and a preemptive right was given to the petitioners to exercise their first option to purchase the share of the respondents.

12. The petitioners are attempting to rely upon Section 7(5) of the Act and develop a case as if the communication between the parties and the conversations that happened between them through whatsapp messages, actually constituted an agreement and that agreement was in continuation of the supplementary agreement dated 24.03.2007. Consequently the subsequent agreement that took place between the parties can also become a subject matter of arbitration before the Arbitral Tribunal.

13. The scope of Section 7(5) of the Act was dealt with by the Apex Court in the case of *M.R.Engineers and Contractors Private*



Limited Vs. Som Datt Builders Limited reported in **2009 7 SCC 696**.

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Paragraph 24 in that judgment is extracted hereunder:

"24. The scope and intent of [section 7\(5\)](#) of the Act may therefore be summarized thus:

(i) An arbitration clause in another document, would get incorporated into a contract by reference, if the following conditions are fulfilled : (i) The contract should contain a clear reference to the documents containing arbitration clause, (ii) the reference to the other document should clearly indicate an intention to incorporate the arbitration clause into the contract,

(iii) The arbitration clause should be appropriate, that is capable of application in respect of disputes under the contract and should not be repugnant to any term of the contract.

(ii) When the parties enter into a contract, making a general reference to another contract, such general reference would not have the effect of incorporating the arbitration clause from the referred document into the contract between the parties. The arbitration clause from another contract can be incorporated into the contract (where such reference is made), only by a specific reference to arbitration clause.

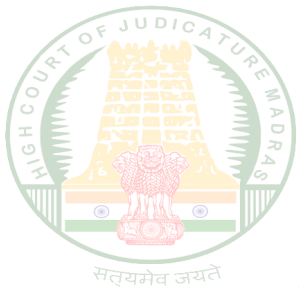


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(iii) *Where a contract between the parties provides that the execution or performance of that contract shall be in terms of another contract (which contains the terms and conditions relating to performance and a provision for settlement of disputes by arbitration), then, the terms of the referred contract in regard to execution/performance alone will apply, and not the arbitration agreement in the referred contract, unless there is special reference to the arbitration clause also.*

(iv) *Where the contract provides that the standard form of terms and conditions of an independent Trade or Professional Institution (as for example the Standard Terms & Conditions of a Trade Association or Architects Association) will bind them or apply to the contract, such standard form of terms and conditions including any provision for arbitration in such standard terms and conditions, shall be deemed to be incorporated by reference. Sometimes the contract may also say that the parties are familiar with those terms and conditions or that the parties have read and understood the said terms and conditions.*

(v) *Where the contract between the parties stipulates that the Conditions of Contract of one of the parties to the contract shall form a part of their contract (as for example the General Conditions of Contract of the Government where Government is a party), the arbitration clause*



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forming part of such General Conditions of contract will apply to the contract between the parties."

14. The above judgment was taken note in the subsequent judgment in the case of **NBCC (India)Limited Vs. Zillion Infra Projects Private Limited** reported in **2024 7 SCC 174**. The relevant portions are extracted hereunder:

"17. It could thus be seen that this Court has held that when the parties enter into a contract, making a general reference to another contract, such general reference would not have the effect of incorporating the arbitration clause from the referred document into the contract between the parties. It has been held that the arbitration clause from another contract can be incorporated into the contract (where such reference is made), only by a specific reference to arbitration clause. It has further been held that where a contract between the parties provides that the execution or performance of that contract shall be in terms of another contract (which contains the terms and conditions relating to performance and a provision for settlement of disputes by arbitration), then, the terms of the referred contract in regard to execution/performance alone will apply, and not the



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arbitration agreement in the referred contract, unless there is special reference to the arbitration clause also.

18. This *Court further held* that where the contract provides that the standard form of terms and conditions of an independent trade or professional institution will bind them or apply to the contract, such standard form of terms and conditions including any provision for arbitration in such standard terms and conditions, shall be deemed to be incorporated by reference. It has been held that sometimes the contract may also say that the parties are familiar with those terms and conditions or that the parties have read and understood the said terms and conditions. It has also been held that where the contract between the parties stipulates that the conditions of contract of one of the parties to the contract shall form a part of their contract, the arbitration clause forming part of such general conditions of contract will apply to the contract between the parties.

19. A perusal of sub-section (5) of Section 7 of the Arbitration Act itself would reveal that it provides for a conscious acceptance of the arbitration clause from another document, by the parties, as a part of their contract, before such arbitration clause could be read as a part of the contract between the parties.

20. It is thus clear that a reference to the document in the contract should be such that shows the



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intention to incorporate the arbitration clause contained in the document into the contract.

21. The law laid down in the case of M.R. Engineers and Contractors Private Limited(supra) has been followed by this Court in the cases of Duro Felguera, S.A. vs Gangavaram Port Limited and Elite Engineering and Construction (Hyderabad) Private Limited represented by its Managing Director vs Techtrans Construction India Private Limited represented by its Managing Director³.

22. No doubt that this Court in the case of Inox Wind Limited vs Thermocables Limited has distinguished the law laid down in the case of M.R. Engineers and Contractors Private Limited(supra). In the said case (i.e. Inox Wind Limited), this Court has held that though general reference to an earlier contract is not 2 (2017) 9 SCC 729 3 (2018) 4 SCC 281 4 (2018) 2 SCC 519 sufficient for incorporation of an arbitration clause in the later contract, a general reference to a standard form would be enough for incorporation of the arbitration clause. Though this Court in the case of Inox Wind Limited (supra) agrees with the judgment in the case of M.R. Engineers and Contractors Private Limited (supra), it holds that general reference to a standard form of contract of one party along with those of trade associations and professional bodies will be sufficient to incorporate the arbitration clause. In the said case (i.e. Inox Wind Limited), this Court found that the purchase



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Arbitration Original Petition (Com.Div).No.176 of 2025
and Original Application No.993 of 2024

order was issued by the appellant therein in which it was categorically mentioned that the supply would be as per the terms mentioned therein and in the attached standard terms and conditions. The respondent therein by his letter had confirmed its acceptance. This Court found that the case before it was a case of a single-contract and not two-contract case and, therefore, held that the arbitration clause as mentioned in the terms and conditions would be applicable."

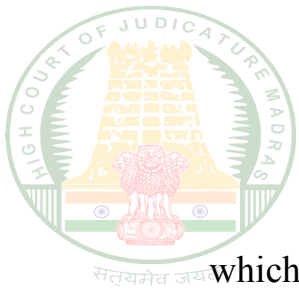
15. The above judgments makes it clear that an arbitration clause in other documents, would get incorporated into a contract that takes place subsequently, where such reference is made to the earlier agreement only if the contract contains a clear reference to the document containing the arbitration clause and the reference to the other document should clearly indicate an intention to incorporate the arbitration clause into the subsequent contract and making a general reference to another contract would not have the effect of incorporating the arbitration clause from the referred document into the subsequent contract between the parties, unless the arbitration clause from another contract is incorporated into the subsequent contract.



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16. If the above test is applied to the facts of the present case, it is seen that the supplementary agreement dated 24.03.2007 merely dealt with the manner in which the parties wanted to enjoy the subject property. That agreement had nothing to do with the so called agreement of sale claimed by the petitioners or the right of first choice given to them by the respondents. Even though a passing reference has been made to the supplementary agreement in some of the communications, there is absolutely no material to show that the arbitration clause in the supplementary agreement was intended /agreed upon to be incorporated in the subsequent agreement of sale that is claimed to have arisen by the conduct of the parties in terms of the communications/conversations that took place between the parties.

17. The cause of action for filing these applications has arisen on the claim made by the petitioners for purchasing the share of the respondents on the alleged agreement of sale. This Court finds that the supplementary agreement had nothing to do with the subsequent conversation that took place between the parties and it is too far-fetched for the petitioners in making an attempt to read the arbitration clause contained in the supplementary agreement in a subsequent development,



Arbitration Original Petition (Com.Div).No.176 of 2025
and Original Application No.993 of 2024

WEB COPY

which took place where the parties were discussing about possibilities of selling their respective shares.

18. In the case in hand, there exists no arbitration agreement between the parties in the so called agreement of sale/right of preemption offered in favour of the petitioners. Apart from that, the entire materials placed before this Court show that there was no concluded agreement of sale between the parties and the letters dated 15.05.2023, 17.07.2023 and 23.07.2023 only show that the respondents had expressed an initial interest in selling their shares and subsequently decided not to pursue with this decision. It is an ingenious attempt made by the petitioners to read an arbitration clause into the so called agreement of sale, which is not in existence.

19. If an arbitration clause is non-existent, there is no scope for dealing with the application under Section 9 of the Act and obviously there is no question of appointing an Arbitrator, when this Court finds that the arbitration clause does not exist.

20. In the light of the above discussions, this Court does not



Arbitration Original Petition (Com.Div).No.176 of 2025
and Original Application No.993 of 2024

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find any merits in these application/petition and accordingly, both the
petitions stand dismissed.

09.09.2025

Neutral Citation:Yes
Speaking Order

mp

N.ANAND VENKATESH, J.
mp

Arbitration Original Petition (Com.Div).No.176 of 2025
and Original Application No.993 of 2024



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Arbitration Original Petition (Com.Div).No.176 of 2025
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09.09.2025