



WEB COPY

O.A.No.527 of 2025 &
Arb.O.P.(Com.Div.)No.394 of 2025

In the High Court of Judicature at Madras

Reserved on
23.9.2025

Delivered on :
26.9.2025

Coram :

The Honourable Mr.Justice N.ANAND VENKATESH

Original Application No.527 of 2025 &
Arbitration O.P.(Com.Div.)No.394 of 2025

Mrs.Bharathi Radhakrishnan
W/o.V.Radhakrishnan
Flat 3A, No.7/2, Sivakumar
Sundari Apartment,
Mandaivelipakkam, Chennai-28.

...Applicant in OA
& Petitioner in OP

Vs

1.Rema Vasudevan
W/o P.Vasudevan

2.Mr.Pattathil Suresh,
S/O Mr.P.Vasudevan

both R1 & R2 are at
"Varalakshmi",
Kunnathurmedu,
Palakkad-678013,
Kerala State & also at
Old No.26, New No.49,
Ground Floor, Karpagam
Avenue 1st Street,
R.A.Puram, Chennai-28.



O.A.No.527 of 2025 &
Arb.O.P.(Com.Div.)No.394 of 2025

WEB COPY

3.Mr.Pattathil Sujith
S/o Mr.Vasudevan
Flat No.24, Anchor,
Emerald Bay, Dodda
Koplal, Surathkal,
Mangalore, Dakshina
Kannada, Karnataka &
also at Old No.26,
New No.49, Ground Floor,
Karpagam Avenue 1st Street,
R.A.Puram, Chennai-28.

...R1 to R3 in
both OA & OP

4.Mr.M.R.Gokula Krishnan
S/O Late K.Rajasekaran,
16/5, Hacienda Apartments,
Karpagam Avenue,
Raja Annamalai Puram,
Chennai-28.

5.V.Amul Anand
S/o V.Viyakulam
Door No.17, Kanniah Street
Kondithope, Chennai-1.

6.A Arokia Adaikala Arasi
W/o V.Amul Anand,
Door No.17, Kanniah Street
Kondithope, Chennai-1.

7.Anuradha Elangovan
W/o N.Elangovan,
Old No..26, New No.49,
Ground Floor, Karpagam
Avenue 1st Street,
R.A.Puram, Chennai-28.

...R4 to R7 in
OA



O.A.No.527 of 2025 &
Arb.O.P.(Com.Div.)No.394 of 2025

WEB COPY

(i) APPLICATION under Order XVI Rule 8 of the Original Side Rules read with Section 9(ii)(c), (d) & (e) of the Arbitration and Conciliation Act, 1996 praying to grant an order of interim injunction restraining the respondents herein, their men, agents, servants or any person claiming through them or under them from in any way altering the physical features of the schedule mentioned property, either by demolishing the building in the schedule mentioned property, either in whole or in part, or by cutting down the fruit yielding trees like coconut trees and mango trees in the schedule mentioned property, or in any other manner whatsoever pending the Arbitral proceedings viz.

Schedule of Property

All that piece and parcel of vacant site and a RCC terraced building situate in plot No.26 in L.A.No.136/1971 and comprised in R.S.No.4295/1 and 4300 (parts) of Mylapore Village, bearing door No. 49, Karpagam Avenue 1st Street, Karpagam Avenue, Raja Annamalaipuram, Chennai-600028

bounded on the

north by : plot No.33

south by : 30 feet road

east by : plot No.37

west by : 30 feet road

Land measuring 1.495 ground site and RCC terraced building measuring 1000 sq.ft. in the ground floor, 600 sq.ft. in the 1st floor with all superstructures, bore well, motor, compound wall with electric



O.A.No.527 of 2025 &
Arb.O.P.(Com.Div.)No.394 of 2025

WEB COPY

wiring & fittings, water tap connection, sewage connection, electricity connection including deposit in registration district of Central Madras and Sub-Registration District of Mylapore.

The above said property comprised in Block No.95, R.S.No.4295/31 and R.S.No.4300/22 as per revenue records.

The property lies within Chennai Corporation Limits; and

(ii) PETITION under Section 11(6) of the Arbitration and Conciliation Act, 1996 praying to appoint a sole arbitrator to decide the disputes between the parties namely the petitioner and respondents 1 to 3 that have arisen under the registered agreement for sale dated 16.10.2019 as per the provisions of the Arbitration and Conciliation Act, 1996.

For Applicant in OA/
& Petitioner in OP : Mr.T.V.Ramanujam, SC for
Ms.Ramya Rangarajan

For R1 to R3 in both
OA & OP : Mr.V.Raghavachari, SC for
Mr.R.Jayaprakash

For R4 in OA : Mr.S.Saravana Kumar
For R5 & R6 in OA : Mr.N.Manokaran

COMMON ORDER

O.A.No.527 of 2025 has been filed under Section 9 of the Arbitration and Conciliation Act, 1996 (for short, the Act) seeking for an interim order of injunction restraining the respondents from in any



O.A.No.527 of 2025 &
Arb.O.P.(Com.Div.)No.394 of 2025

WEB COPY

manner altering the physical features of the schedule mentioned property pending the arbitral proceedings.

2. Arb.O.P.(Com.Div.)No.394 of 2025 has been filed by the very same applicant seeking for appointment of an arbitrator to resolve the disputes between the applicant and respondents 1 to 3 that have arisen under the registered sale agreement dated 16.10.2019.

3. Heard the respective learned counsel on either side.

4. The case of the applicant/petitioner is as follows :

(i) Respondents 1 to 3 entered into a sale agreement dated 16.10.2019 with the applicant, by which, they agreed to sell the property more fully mentioned in the schedule to her for a total sale consideration of Rs.7.60 Crores. Pursuant to that, respondents 1 to 3 also received an advance amount of Rs.25 lakhs from the applicant. Clause 5 of the sale agreement dated 16.10.2019 deals with payment of the balance sale consideration of Rs.7.35 Crores within a period of six months and completion of sale. Clause 7 deals with the duty cast



O.A.No.527 of 2025 &
Arb.O.P.(Com.Div.)No.394 of 2025

WEB COPY

on respondents 1 to 3 to deliver possession of the schedule mentioned property to the applicant at the time of execution of the sale deed with all the required original title documents.

(ii) The schedule mentioned property is in possession of a tenant namely the 7th respondent in O.A.No.527 of 2025. According to the applicant, Clauses 5 and 7 of the sale agreement dated 16.10.2019 must be read together and handing over possession of the schedule mentioned property along with the original title deeds is a condition precedent for execution of the sale deed.

(iii) During January 2022, respondents 1 to 3 suggested that the sale could go on without possession by reducing the sale consideration to Rs.6 Crores. Based on that, a draft sale deed was prepared and the applicant's husband sent the same through whatsapp to the third respondent. Further, the third respondent made certain corrections in the draft sale deed and sent the document back to the applicant's husband.

(iv) Respondents 1 to 3 did not proceed further and they changed their stance stating that they would evict the tenant, hand over possession and receive the full consideration of Rs.7.60 Crores



O.A.No.527 of 2025 &
Arb.O.P.(Com.Div.)No.394 of 2025

WEB COPY

after giving credit to the advance amount of Rs.25 lakhs, which was already received by the applicant. One Mr.P.Vasudevan (who is none other than the husband of the first respondent and father of respondents 2 and 3) along with respondents 1 to 3 also filed eviction proceedings in RLTOP No.415 of 2020 on the file of the 12th Judge, Small Causes Court, Chennai against the tenant and obtained an order of eviction on 31.1.2025. However, the tenant continued to be in possession of the schedule mentioned property.

(v) While so, respondents 1 to 3 executed two sale deeds in favour of both the fourth respondent as well as respondents 5 and 6, dated 21.4.2025. On applying for the certified copies of the sale deeds dated 21.4.2025, it came to light that each sale deed has been executed for a sale consideration of Rs.3.25 Crores. In the light of the above development, a trigger notice dated 20.5.2025 under Section 21 of the Act came to be issued by the petitioner to the respondents proposing to invoke the arbitration clause in the sale agreement dated 16.10.2019.

(vi) Respondents 4 to 6 are not bona fide purchasers for value and they were fully aware of the registered sale agreement dated



*O.A.No.527 of 2025 &
Arb.O.P.(Com.Div.)No.394 of 2025*

WEB COPY

16.10.2019 executed by respondents 1 to 3 in favour of the applicant.

Later, the applicant and her husband noticed that some workmen were involved in the demolition of the existing building and that they were also making arrangements for cutting down the fruit yielding trees. It is under these circumstances, (i) O.A.No.527 of 2025 seeking for an interim order of injunction and (ii) Arbitration O.P.(Com.Div.)No.394 of 2025 seeking to appoint an arbitrator, have been filed before this Court.

5. The third respondent filed a counter affidavit in O.A.No.527 of 2025 for himself and on behalf of respondents 1 and 2 wherein they took the stand that the claim made by the applicant is hopelessly barred by limitation, that the limitation period came to an end much before the trigger notice dated 20.5.2025 under Section 21 of the Act was issued, that the applicant was never ready and willing to perform her part of the contract and that therefore, under the sale agreement dated 16.10.2019, respondents 1 to 3 were entitled to forfeit the advance amount and deal with the subject property.



*O.A.No.527 of 2025 &
Arb.O.P.(Com.Div.)No.394 of 2025*

WEB COPY

6. The fourth respondent filed a counter affidavit in O.A.No.527 of 2025 stating that the sale agreement dated 16.10.2019 had already been terminated by efflux of time long before filing of O.A.No.527 of 2025. He sought to dismiss this application with exemplary costs.



O.A.No.527 of 2025 &
Arb.O.P.(Com.Div.)No.394 of 2025

WEB COPY

7. The fifth respondent also filed a counter affidavit in O.A.No. 527 of 2025 for himself and on behalf of the sixth respondent wherein they justified as to how they were bona fide purchasers for value. They also toed the line of defence taken by respondents 1 to 3.

8. This Court has carefully considered the submissions of the learned counsel on either side and perused the materials available on record.

9. In so far as the relief sought for in O.A.No.527 of 2025 is concerned, the learned counsel appearing for the fourth respondent reported that the subject property has already been demolished and that the superstructure is no longer in existence. This is not disputed.

10. In the light of this development, the said submission of the learned counsel for the fourth respondent is recorded. ***O.A.No.527 of 2025 is closed as no further orders can be passed.***

11. In so far as the relief sought for appointment of an arbitrator



O.A.No.527 of 2025 &
Arb.O.P.(Com.Div.)No.394 of 2025

WEB COPY

is concerned, the main objection of respondents 1 to 3 is that the claim made by the applicant/petitioner is hopelessly barred by limitation. Respondents 1 to 3 took a stand that the sale agreement was entered into on 16.10.2019 and as per Clause 5 of the sale agreement, the remaining sale consideration ought to have been paid within six months from the date of the sale agreement namely 16.4.2020.

12. A legal notice dated 25.2.2021 was issued by respondents 1 to 3 to the applicant/petitioner, her husband one Mr.V.Radhakrishnan and one M/s.Kesthana Infrastructure Private Limited represented by its Managing Director - the said Mr.V.Radhakrishnan to pay the balance sale consideration together with interest at 9% per annum from 17.4.2020 and to register the sale deed within three weeks from the date of receipt of the said notice. Subsequently, two more legal notices dated 14.6.2021 and 19.7.2021 were sent to them. However, the applicant did not take any steps. Hence, the sale agreement dated 16.10.2019 itself was terminated on 19.7.2021 and the advance amount paid by the applicant was forfeited. Since the sale agreement



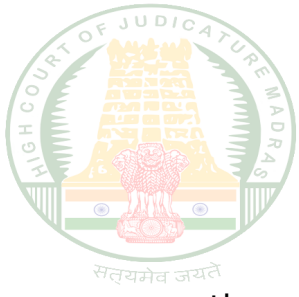
O.A.No.527 of 2025 &
Arb.O.P.(Com.Div.)No.394 of 2025

itself was terminated, the subject property was sold in favour of respondents 4 to 6 on 21.4.2025.

13. Thus, it was contended on the side of respondents 1 to 3 that the period fixed under Clause 5 of the sale agreement dated 16.10.2019 came to an end on 16.4.2020, that notices were sent to the applicant and two others repeatedly in the year 2021, that the sale agreement itself was terminated even on 19.7.2021 whereas the trigger notice was issued only on 20.5.2025 beyond the period of limitation and that therefore, no useful purpose would be served in referring the matter to arbitration since the claim itself is barred by limitation.

14. Per contra, the learned Senior Counsel appearing on behalf of the applicant/petitioner contended as follows :

(a) The stand taken by respondents 1 to 3 that the claim is barred by limitation is unsustainable. Mutual obligations would have to be performed as per the terms of the sale agreement dated 16.10.2019. Accordingly, respondents 1 to 3 ought to have taken steps to hand over possession of the subject property and only then,



*O.A.No.527 of 2025 &
Arb.O.P.(Com.Div.)No.394 of 2025*

WEB COPY

the obligation arises for the applicant/petitioner to pay the balance sale consideration and get the sale deed registered.



O.A.No.527 of 2025 &
Arb.O.P.(Com.Div.)No.394 of 2025

WEB COPY

(b) Possession was, admittedly, with the tenant. Further, respondents 1 to 3 decided to cancel the registered general power of attorney dated 16.10.2019, given in favour of the said M/s.Keshthana Infrastructure Private Limited represented by its Managing Director - the said Mr.V.Radhakrishnan, in the year 2020 itself and thereafter, they initiated proceedings for eviction against the tenant by filing a petition before the 12th Judge, Small Causes Court, Chennai and they were not able to get possession of the subject property. That apart, a draft sale deed was also prepared by the husband of the applicant/ petitioner at request of the third respondent and the corrected version of it was also received from respondents 1 to 3. This process was going on as late as April 2023.

(c) Reliance was placed on the whatsapp messages that were exchanged between the parties in this regard. It was brought to the notice of this Court the suit that was filed by respondents 1 to 3 during June 2024 in O.S.No.5899 of 2024 before the 19th Assistant Judge, City Civil Court, Chennai against the applicant, her husband and the said M/s.Kesthana Infrastructure Private Limited seeking for a declaration that the sale agreement dated 16.10.2019 executed



O.A.No.527 of 2025 &
Arb.O.P.(Com.Div.)No.394 of 2025

WEB COPY

between the parties was not acted upon and had become time barred and unenforceable against respondents 1 to 3 and for costs.

(d) In view of the above, the actual cause of action arose after April 2023 and the trigger notice was issued well within time on 20.5.2025 and the claim made by the applicant was not barred by limitation. The issue of limitation is a mixed question of both fact and law and the same cannot be gone into by this Court while deciding the petition under Section 11 of the Act.

15. I had an occasion to deal with the issue as to whether this Court can go into the question of limitation while dealing with a petition under Section 11 of the Act in the case of **S.Krishnamoorthy, Sole Proprietor of Sri Ram Engineering Company Vs. Engineering Projects India Ltd. [Arbitration O.P.(Com.Div.) No. 319 of 2025 dated 16.9.2025]** wherein I considered all the earlier judgments on this issue and came to the following conclusion :

"28. The result of the discussions is that the wheel has now come a full circle. The test formulated by the Hon'ble Supreme Court in the



WEB COPY



O.A.No.527 of 2025 &
Arb.O.P.(Com.Div.)No.394 of 2025

decision in Duro Felguera, S.A., departed from the decision of the Hon'ble Supreme Court in Hyundai Engineering & Construction Co. Ltd., has now been reinstated in the decision of the Hon'ble Supreme Court in Re: Interplay between Arbitration Agreements under the Arbitration and Conciliation Act 1996 and The Indian Stamp Act, 1899. Consequently, it must follow that the jurisdiction of the Court under Section 11(6A) is confined to examining the existence of an arbitration agreement. Nothing more and nothing less.

29. As the Hon'ble Supreme Court pointed out in the decision in Managing Director Bihar State Food and Civil Supply Corporation Limited, it is just as necessary to follow a precedent as it is to make one. The objections of the respondent on grounds of limitation and accord and satisfaction must, therefore, necessarily await adjudication before the Arbitral Tribunal."

16. On the contrary, the learned Senior Counsel appearing on behalf of respondents 1 to 3 submitted that in the said decision, this Court has not taken into consideration the judgment of the Hon'ble Apex Court in the case of **Arif Azim Co.Ltd. Vs. Aptech Ltd. [reported in 2024 (5) SCC 313]** wherein a Three Judges' Bench



*O.A.No.527 of 2025 &
Arb.O.P.(Com.Div.)No.394 of 2025*

WEB COPY

categorically held that where the claim is hopelessly barred by limitation, the Court need not refer the matter to arbitration since the Arbitrator will be virtually dealing with a deadwood claim and that therefore, the order dated 16.9.2025 in Arbitration O.P.(Com.Div.) No.319 of 2025 requires re-consideration of this Court.

17. While passing the order dated 16.9.2025 in Arbitration O.P. (Com.Div.) No.319 of 2025, I had taken note of all the earlier judgments and had come to the conclusion that the objections on the ground of limitation and accord and satisfaction must necessarily await the adjudication before the Arbitral Tribunal. Hence, the jurisdiction of this Court under Section 11(6A) of the Act is confined only to examine the existence of an arbitration agreement, nothing more and nothing less.

18. This Court cannot interpret the judgments of the Hon'ble Apex Court like interpreting a statute, as the purport of those judgments of the Hon'ble Apex Court must be understood and complied with as a precedent. To come to such a conclusion, I relied



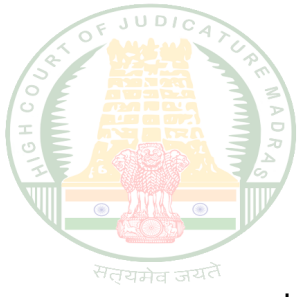
O.A.No.527 of 2025 &
Arb.O.P.(Com.Div.)No.394 of 2025

WEB COPY

upon the latest judgment in ***Managing Director, Bihar State Food and Civil Supply Corporation Limited Vs. Sanjay Kumar [reported in 2025 SCC OnLine SC 1604]*** wherein the Hon'ble Apex Court used the expression '***the curtains have fallen***' when dealing with the scope of Section 11(6A) of the Act and held that the scrutiny of the Court must be confined itself only to examination of the existence of an arbitration agreement.

19. The learned Senior Counsel appearing on behalf of respondents 1 to 3 wanted this Court to reconsider the said decision dated 16.9.2025 in Arbitration O.P.(Com.Div.) No.319 of 2025 in the light of the decision of the Hon'ble Apex Court in ***Arif Azim Co.Ltd.***

20. With an open mind, I proceeded to consider as to whether the decision in Arbitration O.P.(Com.Div.)No.319 of 2025 dated 16.9.2025 requires re-consideration. However, before getting into that exercise, I wanted to carefully scrutinize the materials placed before me in order to see as to whether the claim made by the applicant/petitioner is hopelessly barred by limitation. Only if I come to such a



*O.A.No.527 of 2025 &
Arb.O.P.(Com.Div.)No.394 of 2025*

WEB COPY

conclusion, the question of once again reconsidering the order dated 16.9.2025 in Arbitration O.P.(Com.Div.)No.319 of 2025 will arise.



O.A.No.527 of 2025 &
Arb.O.P.(Com.Div.)No.394 of 2025

WEB COPY

21. The specific case of respondents 1 to 3 is that the sale agreement was terminated as early as on 19.7.2021, that it was informed to the applicant/petitioner and that in spite of the same, the applicant/ petitioner issued the trigger notice dated 20.5.2025 under Section 21 of the Act, which itself would make the claim hopelessly barred by limitation.

22. For the above stand taken by respondents 1 to 3, the petitioner has replied that Clauses 5 and 7 of the sale agreement dated 16.10.2019 would have to be read together and that there was an obligation on the part of respondents 1 to 3 to deliver possession of the subject property to the petitioner for payment of the balance sale consideration.

23. Even though a claim was made on the side of respondents 1 to 3 that the said registered general power of attorney dated 16.10.2019 was issued in favour of the said M/s.Kesthana Infrastructure Private Limited represented by its Managing Director - the said Mr.V.Radhakrishnan and that they ought to have taken steps



*O.A.No.527 of 2025 &
Arb.O.P.(Com.Div.)No.394 of 2025*

WEB COPY

to evict the tenant, it is seen from the records that the said registered power of attorney deed dated 16.10.2019 was decided to be cancelled in the year 2020 itself. Only thereafter, respondents 1 to 3 initiated proceedings for eviction of the tenant in the year 2020 and the eviction proceedings was allowed on 31.1.2025.

24. In the meantime, the said power of attorney dated 16.10.2019 was cancelled and revoked with effect from 14.6.2021 and the deed dated 21.2.2025 in respect of cancellation of the said registered power of attorney came to be registered vide doc.No.642 of 2025 on the file of the Sub-Registrar, Mylapore. Ultimately, from the counter affidavit of respondents 5 and 6, it is also seen that the tenant namely the 7th respondent in O.A.No.527 of 2025 vacated and handed over possession of the subject property only on 14.5.2025.

25. In the light of the above facts, one important question that has to be considered is as to whether respondents 1 to 3 performed their part of the obligation under the sale agreement dated 16.10.2019.



O.A.No.527 of 2025 &
Arb.O.P.(Com.Div.)No.394 of 2025

WEB COPY

26. The other issue that was raised on the side of the applicant/petitioner is the purported draft sale deed that was sent by the petitioner's husband in the year 2023 to respondents 1 to 3 and on receipt of the same, the corrected version that is said to have been sent back to the petitioner's husband.

27. To substantiate the same, the documents found at page Nos.53 to 80 in the paper book filed on the side of the petitioner were relied upon. Apart from the above, the petitioner is also relying upon the whatsapp messages that were exchanged between the parties during April 2023.

28. It is also seen from the trigger notice dated 20.5.2025 issued under Section 21 of the Act that all these facts have been mentioned and a mention has also been made regarding the subsequent sale that took place in favour of respondents 4 to 6.

29. It is pellucid that the issue of limitation in the case in hand is certainly an issue, which involves both mixed questions of fact and



O.A.No.527 of 2025 &
Arb.O.P.(Com.Div.)No.394 of 2025

WEB COPY

law. It is not possible to straight away come to any conclusion that the claim made by the petitioner is barred by limitation. It also certainly requires appreciation of evidence. This Court cannot go into the issue as to whether the petitioner was ready and willing to perform her part of the contract. That is beyond the scope of this petition.

30. In the light of the above discussions, this Court holds that the issue of limitation in the present case is certainly a mixed question of both fact and law and it cannot be gone into in a petition under Section 11 of the Act. This is more so in view of the earlier order dated 16.9.2025 passed in Arbitration O.P.(Com.Div.) No.319 of 2025.

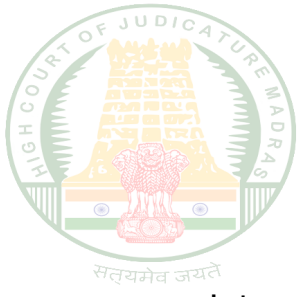
31. This Court intentionally did not go into the merits of the case even though detailed arguments were addressed on both sides in this regard. All those issues can be raised before the Arbitrator to be appointed by this Court and the same shall be dealt with on their own merits and in accordance with law. It is also left open to respondents 1 to 3 to raise preliminary objection touching upon the issue of limitation before the Arbitrator.



O.A.No.527 of 2025 &
Arb.O.P.(Com.Div.)No.394 of 2025

WEB COPY

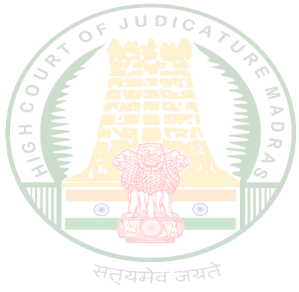
32. In the result, Arbitration O.P.(Com.Div.) No.394 of 2025 is allowed and **Mr.Srinath Sridevan, learned Senior Advocate, at 'Access House', II Floor, 24, Judge Jambulingam Street, Mylapore, Chennai-4, Mobile No.9841049950** is appointed as the sole Arbitrator to resolve the dispute between the parties by holding the sittings in any venue at Chennai to the convenience of all concerned and render an award. The fees of the learned Arbitrator shall be in accordance with the Madras High Court Arbitration Centre (MHCAC)(Administrative Cost and Arbitrator's Fees) Rules 2017. Respondents 4 to 6 are not parties to the sale agreement dated 16.10.2019. Therefore, this Court cannot straight away send them to the learned Arbitrator. However, as held by the Hon'ble Apex Court in the case of **ASF Buildtech Private Limited Vs. Shapoorji Pallonji and Company Private Limited [reported in 2025 SCC OnLine SC 1016]**, the Arbitral Tribunal has implied powers to implead parties, if necessary and the same can be taken note of by the learned Arbitrator if respondents 4 to 6 want to be a part of the arbitration proceedings. As the sale agreement is of the year 2019, the learned Arbitrator is requested to resolve the dispute, after issuing notice to all the



O.A.No.527 of 2025 &
Arb.O.P.(Com.Div.)No.394 of 2025

interested parties and upon hearing them, to pass an award as expeditiously as possible.

26.9.2025



WEB COPY



O.A.No.527 of 2025 &
Arb.O.P.(Com.Div.)No.394 of 2025

N.ANAND VENKATESH,J

RS

Index : Yes
Neutral Citation : Yes

O.A.No.527 of 2025 &
Arb.O.P.(Com.Div.)No.394
of 2025

26.9.2025