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A.No.2562 of.



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON 25.07.2025	PRONOUNCED ON 29.07.2025
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CORAM :

THE HON'BLE MR.JUSTICE K.KUMARESH BABU

A.No.2562 of 2025

in

C.S.No.80 of 2025

Alankrit Vallabh Arora ...Applicant/ 1st defendant
vs.

1.M/s.American Internation School,
Represented by its Authorised Signatory,
Mr.Ravi Pillai ... 1st respondent/Plaintiff

2.Jiwan Prasai ... 1st Respondent/2nd Defendant

3.Veena V.Arora ... 3rd respondent/ 3rd defendant

For Applicant : Mr.M.S.Krishnan
Senior Counsel
Mr.Sivanandaraaj
Senior Counsel
for Mr.Adith Narayan Vijayaraghavan

For Respondent : Mr.Arun C.Mohan for R1
: Mr.K.Jayaganga for R2
: Mr.Avinash Wadhwani for R3



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ORDER

The instant suit had been initiated primarily seeking for a relief of declaration relating to various documents as to have been forged, fabricated and also to declare the arbitration clause in the letter dated 11.04.2022 as null and void and unenforceable apart from seeking a direction to the defendants to jointly and severally pay the plaintiff a sum of Rs.67,66,04,722/-. The parties herein are referred to as per the rank in the plaint.

2) An application had been filed by the first defendant under Section 45 of the Arbitration and Conciliation Act 1996 (hereinafter referred to as “Arbitration Act”) seeking to refer the parties to the arbitration.

3) Heard Mr.M.S.Krishnan, learned Senior Counsel and Mr.Sivanandaraaj, learned Senior Counsel appearing for Mr.Adith Narayan Vijayaraghavan, learned counsel for the applicant and Mr.Arun C.Mohan, learned Counsel for the first respondent, Ms.K.Jayaganga, learned Counsel for the second respondent and Mr.Avinash Wadhwani, learned Counsel for third



respondent.

A.No.2562 of.



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4) Mr.M.S.Krishnan, learned Senior Counsel appearing on behalf of the applicant/first defendant would submit that the suit itself as framed by the plaintiff is not maintainable. He would submit that the plaintiff being an unregistered Association cannot maintain a suit. That apart, he would submit that the claim in the suit itself would have to be thrown for misjoinder of parties. Apart from that he would submit that the plaintiff claims that certain documents relied upon by the first defendant are forged documents created fraudulently. If that is the case, the other signatories of the document who had signed on behalf of the plaintiff also ought to have been made as parties to the suit. Without being them made as parties, the relief sought for in the plaint could not be granted.

5) He would submit that the first defendant was working as Chief Business Officer and Principal Officer with the plaintiff. He had originally joined as a Director of Business Affairs and in appreciation of his work, he was promoted to the position of Chief Business Officer and was also appointed as the Principal Officer. He would submit that the first defendant played a



pivotal role in arranging for a loan during the financial crisis and was also responsible for the various statutory compliances. He would further submit that from the date of entry into the service, the plaintiff had been varying the contract of service by clarifications and addendums. Till the variation granted on 06.04.2022, any disputes that arose between the parties would have to be resolved before a Court of Competent jurisdiction. In the variations/addendums given on 06.04.2022, a Clause for arbitration came to be introduced with Chennai being the venue of arbitration. However, by a further addendum dated 11.04.2022, the compensation payable to the first defendant was also varied and altered with a Clause for arbitration of disputes at Singapore International Arbitration Center (hereinafter referred to as “SIAC”) under the SIAC Rules.

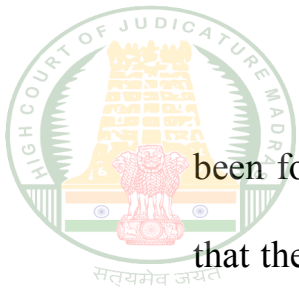
6) He would further submit, that the same has also been ratified by the Board of Directors of the plaintiff, which was reflected in the subsequent letters issued by the Chairperson of the Board, the Board Secretary apart from the e-mail sent to the first defendant by the Board Chairperson, the HR Manager and also the Financial Head. Under the said documents, the first defendant was entitled to various emoluments and he being the head was also



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authorised to withdraw such emoluments to himself. The first defendant faced with better opportunity, had decided to leave the services of the plaintiff and had also submitted his resignation to the plaintiff. He had also withdrawn the amount that he is entitled to as per the terms of the contract and he had not embezzled any amount. But, however, the plaintiff had given a Police complaint as against the first defendant and others, as if the first defendant had defrauded the plaintiff by embezzling amount to a tune of Rs.67 Crores. He would submit that even in the complaint, the plaintiff had placed reliance upon the various contract of service including 11.04.2022 which is now claimed to be forged at the hands of the first defendant. He would submit that the said complaint was given by the plaintiff on 08.03.2025 for which an FIR was also registered on 10.03.2025.

7) The first defendant had initiated arbitration against the plaintiff by issuing a notice of arbitration on 10.04.2025. The SIAC taking cognizance of the application, had issued a letter of commencement on 16.04.2025. Only after the receipt of a notice from the first defendant on 10.04.2025, the plaintiffs have presented the suit before this Court alleging the letter dated 11.04.2022 and the subsequent letters which recognised 11.04.2022 to have



been forged and fraudulently created by the first defendant. He would submit that the letters addressed to the first defendant, of which not only hard copies were given but were also sent as an attachment to mails of the Board Chairperson, Financial Head, Board Secretary and the HR Manager of the plaintiff. He would submit that even assuming that the letters were forged at the end of the first defendant, the plaintiffs have not explained as to how the soft copies of such documents were sent by mail from other persons including those letters which have been claimed to be forged. He would further submit that the plaintiff, to suit its convenience, particularly to avoid facing the arbitration proceedings is making pleadings contrary to the facts and its own claim. Therefore, he would submit that the entire suit itself would have to be rejected as being without cause of action to be proceeded with in this Court.

8) In support of his contentions, the learned Senior Counsel had relied upon the judgments of the Hon'ble Apex Court reported in 2021 (2) SCC 1, 2023 (7) SCC 1, 2024 (6) SCC 1 and the judgment of the Singapore High Court reported in 2015 SGHC 225.

9) Mr.Sivanandaraaj, learned Senior Counsel appearing on behalf of the



first defendant would would vehemently contend that his application under Section 45 of the Arbitration Act would have to be allowed. He would submit that pursuant to the arbitration notice issued by the first defendant, arbitration proceedings have been initiated before the SIAC also.

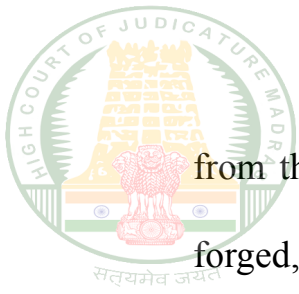
10) He would submit that the plaintiff is attempting to stall a valid arbitration proceedings by making a false and frivolous claim. He would submit that if the claim of the plaintiff is accepted that the 11.04.2022 letter, contract of service was forged, then it is for the plaintiff to explain as to why no action was taken against the first defendant for remunerating himself based upon the letter of service dated 11.04.2022. The first defendant had been availing the emoluments as envisaged under the letter dated 11.04.2022 and approved by the Board of Directors in their Meeting on 13.04.2022. Only after the resignation of the first defendant, the plaintiffs are attempting to arm twist the first defendant to retain him in service. What has all been recovered by the first defendant were all the emoluments that he was entitled to.

11) He would further submit that the first defendant through its officer had been varying the services of the first defendant including the increase of



his emoluments and other benefits including incentives. Such letters of contract of service have always been ratified by the Board of Directors in the subsequent Meetings. A Clause of arbitration was first introduced on 06.04.2022 which gave the venue of arbitration at Chennai and thereafter on 11.04.2022, a further detailed Contract of Service was served upon the first defendant which was also accepted by him, in which a Clause of arbitration was made with the venue at SIAC under the SIAC Rules.

12) He would submit that the said letter dated 11.04.2022 had been acknowledged by the plaintiff prior to the filing of the suit. He would submit that in the Board Meeting on 13.04.2022, all the letters of service contracts issued by one Andrew Hoover, who was to leave the services of the plaintiff were ratified. Even though, it is the case of the plaintiff that 11.04.2022 was not included, the plaintiffs have not substantiated such statement by producing documents which were placed during the said Board Meeting. He would further submit that by further communications of the Board of Directors, which enclose the letter of indemnity for the emoluments to the first defendant, various communications including the letter dated 11.04.2022 and the Board Resolutions were not only given to the first defendant but also shared through



from their respective e-mails. Even assuming that the letter could have been forged, there has been no explanation forthcoming as to how such letters form part of an attachment in an e-mail which could only be personally accessed by those individuals and no one else.

13) Relying upon Section 45 of Arbitration Act, he would submit that this Court is bound to refer the parties to an arbitration when it is brought to the notice of this Court that such an arbitration agreement is in existence and can refuse to refer the party if it *prima facie* finds that the said arbitration agreement is null and void, inoperative or incapable of being performed. He would submit that the Court would have to first satisfy itself that there was a *prima facie* case of forgery and fraud which would make the arbitration agreement null and void.

14) In this case, he would submit that the plaintiff had not made out any *prima facie* case that the documents that are relied upon by them particularly the letter dated 11.04.2022 which emanated from the plaintiff was forged by the first defendant. He would further submit that even in the police complaint given by the plaintiff as early as in March 2025, the said letter of service



condition were relied upon by the plaintiffs and the complaint was not that the said letter was forged but was that contrary to the said letters the first defendant had embezzled the amounts to the tune of Rs.67 Crores. He would further submit that the said letter dated 11.04.2022 had been acted upon by the plaintiff and only now when it non-suited them, to avoid the arbitration proceedings initiated by the first defendant it is making a tall claim as if the said letter dated 11.04.2022 itself was forged by the first defendant. He would further submit that forgery had not been specifically pleaded in the plaint. The averments in the plaint would also suggest that the plaintiff itself is in doubt whether such forgery had been committed.

15) Relying upon Order VI Rule 4 of Civil Procedure Code, he would contend that when a party pleads misrepresentation or fraud, the particulars such as dates and details should be pleaded. In the present case, a reading of the plaint according to him is bereft of any material facts which could only suggest that the plaintiffs had not made a case of fraud or forgery against the first defendant.

16) He would further rely upon the expert Report of Forensic Lab and



contend that the Forensic Lab had given an opinion that the signature of the persons who had signed on behalf of the plaintiff is the signatures of that person from the documents which have not been disputed to by the plaintiff.

He would submit that only if the Court comes to a prima facie conclusion that the arbitration agreement itself was forged or created on a fraud and misrepresentation, only then this Court would refuse to exercise its power under Section 45 of the Arbitration Act. He would further submit that the second and the third defendants has also been cleverly impleaded as parties to the suit to create a camouflage, that in view of the presence of the third parties the suit cannot be relegated to arbitration. He would submit that there is no relief as claimed against the second defendant. The third defendant is the mother of the first defendant who is alleged to be in possession of the monies withdrawn by the first defendant. He would submit that presence of the third party cannot be a reason for this Court to refuse exercise of powers under Section 45 of the Arbitration Act.

17) Adding to the contention of the Mr.M.S.Krishnan, learned Senior Counsel on the maintainability of the suit, he would submit that the plaintiff not being a juristic person cannot maintain a suit. He would draw attention of



this Court to the provisions of the General Clauses Act in that regard. He would also rely upon the judgments reported in AIR 1958 SC 514, 2008 (4) CTC 1, 2004 (4) CTC 129 and 2003 (8) SCC 413 in support of his contention.

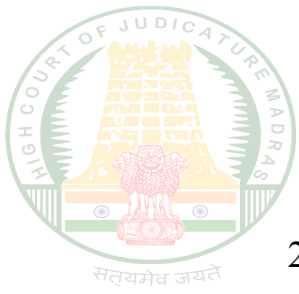
18) Mr.Arun C. Mohan, learned counsel appearing on behalf of the plaintiff on the other hand would contend that the documents which have been relied upon to seek the parties to be referred to arbitration are all documents which have been forged by the first defendant. He would at the outset submit that when an allegation of forgery had been made that too on the letter of service which contained the arbitration clause relied upon by the first defendant, this Court which will have to decide such claim as the Arbitrators do not have jurisdiction to decide the claim of forgery which is criminal in nature. He would further submit that criminal complaint has also been initiated and is under investigation in FIR No.46/2025 dated 19.03.2025 with the Central Crime Branch, Chennai.

19) He would further submit that it is only the Board which can fix the compensation of an employee and not the Head of the School. He would submit that even assuming that the letter dated 11.04.2022 is true, even then



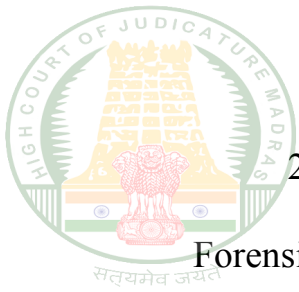
the same cannot be acted upon as being issued by a person without an authority. He would vehemently contend that the first defendant had stage managed various documents prior to his resignation as if they were the documents issued by the plaintiff and which are all to his advantage.

20) Mr.Arun C.Mohan, relying upon the contents of the said document would submit that such documents are all self certified documents of a person who had created it and no prudent management would give such a certificate to its employees much less give limitless remuneration to a future date and would entitle such an employee of the future remuneration even if he quits the service of the Management. In effect, he would submit that under the said letter the first defendant is sought to be entitled for emoluments for a period which he would not be in service of his own volition, which would amount to unjust enrichment. He would further submit that the letter also indicates payment of income tax by the plaintiff at the behest of the first defendant. He would vehemently contend that no prudent management would undertake payment of statutory dues of an employee. Such contents only creates a clout on the document which would suggest that the said document had been only created at the hands of the first defendant.



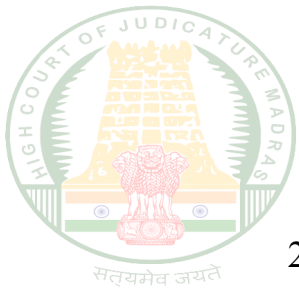
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21) He would contend that the first defendant had committed acts of forgery and embezzled the funds of the plaintiff. He would further submit that the acts of forgery had not only been committed by the first defendant in respect of his terms of employment but also created various fraudulent documents in connivance with third parties to divert the funds of the plaintiff. For which an application to amend the plaint had also been filed. In such an event, there have been serious allegations of forgery and fraud that had been committed by the first defendant, hence, it is his contention that the parties may not be relegated to the arbitration. He would submit that it is not only in view of the acts of first defendant in committing forgery and fraud for embezzling the funds of the plaintiff, the arbitration agreement itself is a forged and fraudulent document. He would submit that the authors of such letters who have signed on behalf of the plaintiff had filed their affidavits before this Court averring that they have not signed any such documents. According to him, this itself would substantiate the initiation of the arbitration proceedings based on the letter of service dated 11.04.2022 itself is bad in law as such arbitration agreement is null and void.



22) He would contend that this Court ought not to rely upon the Forensic expert Report submitted by the first defendant. He would submit that the reading of the Report itself would indicate that what was compared by the expert was two Xerox copies and not the original documents. He would further submit that in the day of advance technology such comparison ought to have been done in an well equipped laboratory only. Therefore, he would submit that this Court should not consider the said Report obtained by the first defendant which is self-certified.

23) Referring to the pleadings in the plaint, Mr.Arun C.Mohan would contend that the ingredients of forgery and fraud had been pleaded in the plaint. He would further submit that the defendants 2 & 3 have been instrumental in the forgery and fraud played by the first defendant. Without them being the parties to the *lis*, the claim of forgery and fraud could not be established. Therefore, they are necessary parties to the suit. Even assuming that the Arbitrator has the power to decide the forgery and fraud, the Arbitrator could not exercise his powers against a third party to the agreement and they cannot be parties to the arbitration proceedings and in that context also he would submit that the parties need not be relegated to arbitration at SIAC.



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24) He would further submit that no prejudice would be caused to the defendants to contest the suit. He would submit that a proceedings in a Foreign Arbitration would be more costlier and the parties would also be put to hardship and since the cause of action had arisen within the jurisdiction of this Court, this Court can very well deal with the issue.

25) He had also referred to Section 17 of the Contract Act and contend that the pleadings made by the plaintiff would all well fall within the four corners of the fraud that had been played by the first defendant and therefore, this Court ought to dismiss the application filed by the first defendant under Section 45 of the Arbitration Act.

26) In support of his contention, he had also relied upon the judgments reported in 2021 (2) SCC 1, 2021 (4) SCC 713, 2019 (8) SCC 710, 2023 (7) SCC 1, 2016 (10) SCC 386, 2006 SCC Online US SC 14 and 2007 UKHL 40.

27) In reply, Mr.M.S.Krishnan, learned Senior Counsel would submit that the allegations of forgery and fraud with respect to letter dated 11.04.2022



on which basis the arbitration have been initiated had been made only after the notice of arbitration was issued by the Plaintiff on 10.04.2025. He would submit that even in the complaint dated 08.03.2025, the plaintiff itself had relied upon the letter dated 11.04.2022. Only on the reliance placed on the letter dated 11.04.2022, 06.03.2024 and 08.10.2024, the anticipatory bail was also granted to the applicant. However, finding that 11.04.2022, a letter was inconvenient as the first defendant had initiated the arbitration proceedings, the plaintiffs had turned around to make a claim that 11.04.2022 itself was forged by the plaintiff. Claims have been made by the plaintiff to suit its convenience.

28) He would further submit that during June 2024, the first defendant has sought for certain clarification from the Board for which the Chairperson of the Board in its mail dated 13.06.2024 with the subject “Board indemnification and clarification letters” to a chain mail, the attachments were sent by the Board of Chairperson also included various letters which now the plaintiff claim to be forged. That apart, the Computation sheet appended by the Finance Head to the said chain e-mail would also show that the calculation co-relate to the terms of service under letter dated 11.04.2022. Hence, according



to him, it would be far stretched to claim that such letter was forged at the hands of the first defendant.

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29) Mr. Sivananda Raaj, learned Senior counsel for first defendant in reply would submit that the averments that had been taken through by the learned counsel for the plaintiff to substantiate fraud would only indicate the doubts in the mind of the plaintiff. There is no specific averment as required under Order VI Rule 4 indicating the date and the place where the fraud was committed. He would repel the contention of the learned counsel for the plaintiff with regard to the payment of income tax on behalf of the first defendant. It is always the Management who had paid the income taxes of the first defendant as it was an understanding that the income tax component payable by the first defendant would be borne by the Management. He would further submit that this Court ought not to look into the affidavits of the erstwhile employees, who are the signatories of the documents which are claimed to be fraud by the plaintiff as neither the affidavits are as indicated under Order XV of the Madras Original Side Rules or Order XIX of the Civil Procedure Code.



30) That apart, he would submit that such affidavits have been filed before this Court after the arguments made by the learned counsels for the first defendant substantiating that the documents are not forged and the claim made by the plaintiff was false. He would further submit that the notarised affidavits cannot be looked into as the notarisation of documents outside India in a Country which do not have a reciprocal signatory under the Notarisation Act to be a valid notary and hence, the affidavits itself would have to be thrown out. Such affidavits cannot form a basis of evidence for this Court to come to a *prima facie* conclusion that fraud had been played to not refer the parties to arbitration.

31) He would further submit that the judgments relied upon by the plaintiff firstly are not under Section 45 of the Arbitration Act and secondly the cases were initiated prior to 2019 amendment. He would further submit that it is true that in a case of fraud played in concluding to a Arbitration Agreement, the Court can refuse to refer the parties to the arbitration. To come to such a conclusion, the Court should first come to *prima facie* conclusion that fraud had been played. Just because a claim of fraud is being made, the Court should not refrain from exercising its power under Section 45 in the present case. This



would give rise to a situation that wherever an arbitration is sought to be initiated or proceeding before a Judicial Authority is sought to be interjected by referring to an Arbitration Agreement, then the party who wishes to wriggle out of the said agreement would simpliciter make an allegation of fraud. The Hon'ble Apex Court had laid a twin test which would envisage that the Court has to come to a *prima facie* conclusion that a serious allegation of fraud had been made, to not to refer the parties to arbitration. If the Court finds that the said allegations have been made, without any *prima facie*, substance then matter would have to be referred to arbitration where the allegation of fraud can also be taken as defence.

32) That apart, relying upon Article 31 of the SIAC Rules, he would contend that the SIAC Rules provide for a scenario where the Arbitrator himself can decide on the issue of fraud and maintainability of arbitration proceedings before him. Therefore, he would contend that there is no merits in the claim of the plaintiffs and the parties should be referred to Arbitration.

33) Ms.K.Jayaganga, the learned counsel appearing for the second defendant would contend that the second defendant was an employee of the



plaintiff and there are no averments as against the second defendant in the suit nor no relief had been claimed against him. Therefore, she would submit that the second defendant may be deleted from the array of parties.

34) Mr.Avinash Wadhwani, learned Counsel appearing for the third defendant would submit that the third defendant is the mother of the first defendant. No allegations of forgery or fraud has been alleged against the third defendant. Allegation made against the third defendant, is that certain of the monies that were withdrawn by the first defendant in his name has been deposited in the account of the third defendant. Therefore, neither in the suit nor in the arbitration proceedings, the third defendant would be a necessary and proper party and that almost the third defendant can only be said to be a third party garnishee of a dispute between the plaintiff and the first defendant. He would reiterate the arguments of the learned Senior Counsel for the first defendant that the third defendant being a party to the suit cannot be a reason for this Court to not to refer the parties to arbitration.

35) I have considered the submissions made by the learned counsels appearing for their respective parties and perused the materials available on



record.

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36) Various judgments have been placed before this Court by either side on this Court's power to refer the parties to arbitration in cases where allegation of fraud had been made. Before adverting to the facts of this case, this Court shall analyse the said judgments.

1) *Vidya Drolia and others Vs Durga Trading Corporation - 2021 (2) SCC 1*

The primary issues that arose from the order of reference before the Larger Bench was:-

- a) Meaning of non-arbitrability and when the subject matter of dispute is not capable of being resolved through arbitration.
- b) Whether the Court at reference stage or the Arbitral Tribunal in the arbitration proceedings would decide the question of non-arbitrability.

Answering the reference, Hon'ble Mr. Justice Sanjeev Khanna speaking for the Bench had propounded four fold test for determining whether a subject matter of dispute is not arbitrable. For better appreciation the relevant paragraphs are extracted hereunder:-



“...76. In view of the above discussion, we would like to propound a fourfold test for determining when the subject-matter of a dispute in an arbitration agreement is not arbitrable.

76.1. (1) When cause of action and subject-matter of the dispute relates to actions in rem, that do not pertain to subordinate rights in personam that arise from rights in rem.

76.2. (2) When cause of action and subject-matter of the dispute affects third-party rights; have erga omnes effect; require centralised adjudication, and mutual adjudication would not be appropriate and enforceable.

76.3. (3) When cause of action and subject-matter of the dispute relates to inalienable sovereign and public interest functions of the State and hence mutual adjudication would be unenforceable.

76.4. (4) When the subject-matter of the dispute is expressly or by necessary implication non-arbitrable as per mandatory statute(s).

76.5. These tests are not watertight compartments; they dovetail and overlap, albeit when applied holistically and pragmatically will help and assist in determining and ascertaining with great degree of certainty when as per law in India, a dispute or subject-matter is non-arbitrable. Only when the answer is affirmative that the subject-matter of the dispute would be non-arbitrable.

76.6. However, the aforesaid principles have to be applied with care and caution as observed in *Olympus Superstructures (P) Ltd.*[*Olympus Superstructures (P) Ltd. v. Meena Vijay Khetan*, (1999) 5 SCC 651] : (SCC p. 669, para 35)

“35. ... Reference is made there to certain disputes like criminal



offences of a public nature, disputes arising out of illegal agreements and disputes relating to status, such as divorce, which cannot be referred to arbitration. It has, however, been held that if in respect of facts relating to a criminal matter, say, physical injury, if there is a right to damages for personal injury, then such a dispute can be referred to arbitration (*Keir v. Leeman* [*Keir v. Leeman*, (1846) 9 QB 371 : 115 ER 1315]). Similarly, it has been held that a husband and a wife may refer to arbitration the terms on which they shall separate, because they can make a valid agreement between themselves on that matter (*Soilleux v. Herbst* [*Soilleux v. Herbst*, (1801) 2 Bos & P 444 : 126 ER 1376] , *Wilson v. Wilson* [*Wilson v. Wilson*, (1848) 1 HL Cas 538] and *Cahill v. Cahill* [*Cahill v. Cahill*, (1883) LR 8 AC 420 (HL)]).”

As to the issue who would be the best suiter to determine the arbitrability had been answered in paragraph 154 which is extracted hereunder:

154. Discussion under the heading “Who Decides Arbitrability?” can be crystallised as under:

154.1. Ratio of the decision in Patel Engg. Ltd. [SBP & Co. v. Patel Engg. Ltd., (2005) 8 SCC 618] on the scope of judicial review by the court while deciding an application under Sections 8 or 11 of the Arbitration Act, post the amendments by Act 3 of 2016 (with retrospective effect from 23-10-2015) and even post the amendments vide Act 33 of 2019 (with effect from 9-8-2019), is no longer applicable.



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154.2. *Scope of judicial review and jurisdiction of the court under Sections 8 and 11 of the Arbitration Act is identical but extremely limited and restricted.*

154.3. *The general rule and principle, in view of the legislative mandate clear from Act 3 of 2016 and Act 33 of 2019, and the principle of severability and competence-competence, is that the Arbitral Tribunal is the preferred first authority to determine and decide all questions of non-arbitrability. The court has been conferred power of “second look” on aspects of non-arbitrability post the award in terms of sub-clauses (i), (ii) or (iv) of Section 34(2)(a) or sub-clause (i) of Section 34(2)(b) of the Arbitration Act.*

154.4. *Rarely as a demurrer the court may interfere at Section 8 or 11 stage when it is manifestly and ex facie certain that the arbitration agreement is non-existent, invalid or the disputes are non-arbitrable, though the nature and facet of non-arbitrability would, to some extent, determine the level and nature of judicial scrutiny. The restricted and limited review is to check and protect parties from being forced to arbitrate when the matter is demonstrably “non-arbitrable” and to cut off the deadwood. The court by default would refer the matter when contentions relating to non-arbitrability are plainly arguable; when consideration in summary proceedings would be insufficient and inconclusive; when facts are contested; when the party opposing arbitration adopts delaying tactics or impairs conduct of arbitration proceedings. This is not the stage for the court to enter into a mini trial or elaborate review so as to usurp the jurisdiction of the Arbitral Tribunal but to affirm and uphold*



integrity and efficacy of arbitration as an alternative dispute resolution mechanism.

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Justice Mr.N.V.Ramana supplementing his view had held that it should be the Courts to assist and support arbitration and leave the substantive part of adjudication to the Arbitral Tribunal. Useful reference is made to paragraphs 188 and 189 and also 233 & 234, which are extracted hereunder:-

188. The present structure of arbitration is such that courts are to assist and support arbitration and leave the substantive part of adjudication to the Arbitral Tribunal. Some scholars have suggested that the judicial mechanism that comports with the rule of law may be fundamentally at odds with non-judicial/arbitral mechanism which is therefore less formal. But our understanding is that, that the rule of law is less in tension with arbitration than critics imagine, because they both aim to serve the same goal—the pursuit of justice.

189. On a plain reading of the Act, whenever a dispute arises between parties, they are free to approach an appropriate judicial forum to get their dispute resolved. If the parties have contemplated an arbitration agreement, then they can approach a tribunal for getting the matter resolved. Once they choose the non-judicial method, a party aggrieved by the award, has a chance to approach judicial institutions under Sections 34 and 37 (appeal jurisdiction),



if the award is violative of the grounds provided thereunder.

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“...**233.** From the aforesaid discussion, we can conclude that the respondent-defendant has to establish a prima facie case of non-existence of valid arbitration agreement, wherein it is to be summarily portrayed that a party is entitled to such a finding. If a party cannot satisfy the court of the same on the basis of documents produced, and rather requires extensive examination of oral and documentary production, then the matter has to be necessarily referred to the tribunal for full trial. Such limited jurisdiction vested with the court, is necessary at the pre-reference stage to appropriately balance the power of the tribunal with judicial interference.

234. The amendment to the aforesaid provision was meant to cut the deadwood in extremely limited circumstances, wherein the respondent is able to ex facie portray non-existence of valid arbitration agreement, on the documents and the pleadings produced by the parties. The prima facie view, which started its existence under Section 45 through *Shin-Etsu case* [*Shin-Etsu Chemical Co. Ltd. v. Aksh Optifibre Ltd.*, (2005) 7 SCC 234] , has been explicitly accommodated even under domestic arbitration by the 2015 Amendment with appropriate modifications.

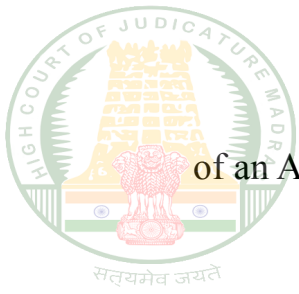
An analysis of the aforesaid judgment, would indicate that only if a



strong case had been made out substantiating the non-existence of a valid arbitration agreement, a party who claims so would be entitled to such a finding. Even for this Court to arrive at a *prima facie* finding of fraud alleged to have been played has to hold that the Agreement of Arbitration is null and void based on a strong case made out by the person claiming non-arbitrability of the agreement. It had been further held that it would be suitable for the Arbitrator to decide the arbitrability of a case before it as provisions of Section 34 & 37 imposes a check and balance on the decision of the Arbitrator even on the question of non-arbitrability.

2.) *N.N. Global Mercantile (P) Ltd. v. Indo Unique Flame Ltd., (2023) 7. SCC 1*

The learned Senior Counsel appearing on behalf of the first defendant had relied upon the findings at the paragraph 284. It is to be noted that the findings given on the said paragraphs have been the findings of the learned Judge who had dissented with the majority view. Be that as it may, the said judgment lays down the arbitrability of an issue when the agreement on which the arbitration had been entered was insufficiently stamped. The said judgment do not postulate the law on the issue of non-arbitrability due to non-existence



of an Arbitration Agreement or a claim of forgery or fraud.

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3.) Interplay Between Arbitration Agreements under Arbitration, 1996 & Stamp Act, 1899, In re, (2024) 6 SCC 1

The Hon'ble Apex Court in the said judgment had analysed Section 45 of the Arbitration Act after the amendment in the year 2019. Analysing the said provisions, the Hon'ble Apex Court had held that the *prima facie* finding given by the Referral Court would neither bind the Arbitral Tribunal or the Court enforcing the Arbitral Award. A *prima facie* finding by the Referral Court would still allow the Arbitral Tribunal to examine the issue in depth as it will protect the jurisdictional competence of the Arbitral Tribunal to decide the the issue pertaining to the existence and validity of an Arbitration Agreement. The said finding by the Seven Judge Constitution Bench of the Hon'ble Apex Court would indicate that the *prima facie* finding will not preclude the Arbitral Tribunal to go into the question of fraud claimed by a party. For better appreciation, the relevant paragraphs are extracted hereunder:-

“...168. In Shin-Etsu [Shin-Etsu Chemical Co. Ltd. v. Aksh Optifibre Ltd., (2005) 7 SCC 234] , this Court was called upon to determine the nature of adjudication contemplated by unamended Section 45



WEB COPY

A.No.2562 of.



of the Arbitration Act when the objection with regards to the arbitration agreement being “null and void, inoperative or incapable of being performed” is raised before a judicial authority.

Writing for the majority, B.N. Srikrishna, J. held that Section 45 does not require the judicial authority to give a final determination.

The Court observed that : (SCC p. 267, para 74)

“74. There are distinct advantages in veering to the view that Section 45 does not require a final determinative finding by the Court. First, under the Rules of Arbitration of the International Chamber of Commerce (as in force with effect from 1-1-1998), as in the present case, invariably the Arbitral Tribunal is vested with the power to rule upon its own jurisdiction. Even if the Court takes the view that the arbitral agreement is not vitiated or that it is not invalid, inoperative or unenforceable, based upon purely a prima facie view, nothing prevents the arbitrator from trying the issue fully and rendering a final decision thereupon (emphasis applied). If the arbitrator finds the agreement valid, there is no problem as the arbitration will proceed and the award will be made. However, if the arbitrator finds the agreement invalid, inoperative or void, this means that the party who wanted to proceed for arbitration was given an opportunity of proceeding to arbitration, and the arbitrator after fully trying the issue has found that there is no scope for arbitration. Since the arbitrator's finding would not be an enforceable award, there is no need to take recourse to the judicial intercession available under Section 48(1)(a) of the Act.”

169. When the Referral Court renders a prima facie opinion, neither



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A.No.2562 of.

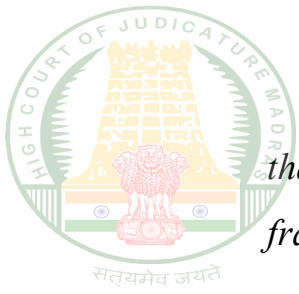


the Arbitral Tribunal, nor the Court enforcing the arbitral award will be bound by such a prima facie view. If a prima facie view as to the existence of an arbitration agreement is taken by the Referral Court, it still allows the Arbitral Tribunal to examine the issue in depth. Such a legal approach will help the Referral Court in weeding out prima facie non-existent arbitration agreements. It will also protect the jurisdictional competence of the Arbitral Tribunals to decide on issues pertaining to the existence and validity of an arbitration agreement...”

4.) A. Ayyasamy v. A. Paramasivam, (2016) 10 SCC 386

This is a judgment which had analysed the claim of fraud of an Arbitration Agreement. Hon’ble Mr.Justice A.K.Sikri writing on behalf of the Bench had held that simpliciter allegation of fraud cannot be a reason to not refer the parties to arbitration. Only in case of serious allegations of fraud which goes to the validity of the arbitration clause which satisfies the Court that such allegations are of such serious in nature and are complicated in nature, only then the Courts should refrain from relegating the parties to arbitration proceedings. For better appreciation, the relevant paragraphs are extracted hereunder:-

“...23. A perusal of the aforesaid two paragraphs brings into fore



WEB COPY

A.No.2562 of.



that the Law Commission has recognised that in cases of serious fraud, courts have entertained civil suits. Secondly, it has tried to make a distinction in cases where there are allegations of serious fraud and fraud simpliciter. It, thus, follows that those cases where there are serious allegations of fraud, they are to be treated as non-arbitrable and it is only the civil court which should decide such matters. However, where there are allegations of fraud simpliciter and such allegations are merely alleged, we are of the opinion that it may not be necessary to nullify the effect of the arbitration agreement between the parties as such issues can be determined by the Arbitral Tribunal.

24. Before we apply the aforesaid test to the facts of the present case, a word on the observations in *Swiss Timing Ltd. case* [*Swiss Timing Ltd. v. Commonwealth Games 2010 Organising Committee*, (2014) 6 SCC 677 : (2014) 3 SCC (Civ) 642] to the effect that the judgment of *N. Radhakrishnan* [*N. Radhakrishnan v. Maestro Engineers*, (2010) 1 SCC 72 : (2010) 1 SCC (Civ) 12] was *per incuriam*, is warranted. In fact, we do not have to labour on this aspect as this task is already undertaken by this Court in *State of W.B. v. Associated Contractors* [*State of W.B. v. Associated Contractors*, (2015) 1 SCC 32 : (2015) 1 SCC (Civ) 1] . It has been clarified in the aforesaid case that *Swiss Timing Ltd.* [*Swiss Timing Ltd. v. Commonwealth Games 2010 Organising Committee*, (2014) 6 SCC 677 : (2014) 3 SCC (Civ) 642] was a judgment rendered while dealing with Section 11(6) of the Act and Section 11 essentially confers power on the Chief Judge of India or the Chief Justice of the High Court as a



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A.No.2562 of.



designate to appoint an arbitrator, which power has been exercised by another Hon'ble Judge as a delegate of the Chief Justice. This power of appointment of an arbitrator under Section 11, by the Court, notwithstanding the fact that it has been held in *SBP & Co. v. Patel Engg. Ltd.* [*SBP & Co. v. Patel Engg. Ltd.*, (2005) 8 SCC 618] as a judicial power, cannot be deemed to have precedential value and, therefore, it cannot be deemed to have overruled the proposition of law laid down in *N. Radhakrishnan* [*N. Radhakrishnan v. Maestro Engineers*, (2010) 1 SCC 72 : (2010) 1 SCC (Civ) 12] .

25 [Ed. : Para 25 corrected vide Official Corrigendum No. F-3/Ed.B.J./101/2016 dated 17-7-2017.] . In view of our aforesaid discussions, we are of the opinion that mere allegation of fraud simpliciter may not be a ground to nullify the effect of arbitration agreement between the parties. It is only in those cases where the court, while dealing with Section 8 of the Act, finds that there are very serious allegations of fraud which make a virtual case of criminal offence or where allegations of fraud are so complicated that it becomes absolutely essential that such complex issues can be decided only by the civil court on the appreciation of the voluminous evidence that needs to be produced, the court can sidetrack the agreement by dismissing the application under Section 8 and proceed with the suit on merits. It can be so done also in those cases where there are serious allegations of forgery/fabrication of documents in support of the plea of fraud or where fraud is alleged against the arbitration provision itself or is of such a nature that



WEB COPY

A.No.2562 of.



permeates the entire contract, including the agreement to arbitrate, meaning thereby in those cases where fraud goes to the validity of the contract itself of the entire contract which contains the arbitration clause or the validity of the arbitration clause itself. Reverse position thereof would be that where there are simple allegations of fraud touching upon the internal affairs of the party inter se and it has no implication in the public domain, the arbitration clause need not be avoided and the parties can be relegated to arbitration. While dealing with such an issue in an application under Section 8 of the Act, the focus of the court has to be on the question as to whether jurisdiction of the court has been ousted instead of focusing on the issue as to whether the court has jurisdiction or not. It has to be kept in mind that insofar as the statutory scheme of the Act is concerned, it does not specifically exclude any category of cases as non-arbitrable. Such categories of non-arbitrable subjects are carved out by the courts, keeping in mind the principle of common law that certain disputes which are of public nature, etc. are not capable of adjudication and settlement by arbitration and for resolution of such disputes, courts i.e. public fora, are better suited than a private forum of arbitration. Therefore, the inquiry of the Court, while dealing with an application under Section 8 of the Act, should be on the aforesaid aspect viz. whether the nature of dispute is such that it cannot be referred to arbitration, even if there is an arbitration agreement between the parties. When the case of fraud is set up by one of the parties and on that basis that party wants to wriggle out of that arbitration agreement, a strict and



WEB COPY

A.No.2562 of.



meticulous inquiry into the allegations of fraud is needed and only when the Court is satisfied that the allegations are of serious and complicated nature that it would be more appropriate for the Court to deal with the subject-matter rather than relegating the parties to arbitration, then alone such an application under Section 8 should be rejected.. ”

In the facts of the said case, the Court having found that the allegations were not of such serious nature can also be dealt with by the Arbitrator and had referred the matter to the arbitration. The said view of Hon'ble Mr.Justice A.K.Sikri was also concurred by Hon'ble Dr.Justice D.Y.Chandrachud by a supplemental judgment.

5.) *Rashid Raza v. Sadaf Akhtar, (2019) 8 SCC 710*

The Hon'ble Apex Court after referring to a judgment of Ayyasamy's case referred supra on the facts of the said case had held that the allegations which have been made can be arbitrable as the allegations did not fulfil the twin test. For better appreciation, the relevant paragraphs are extracted hereunder:-



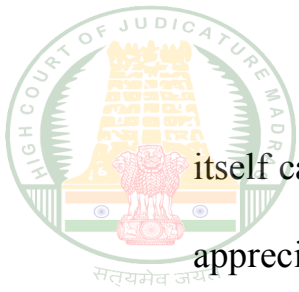
“...4. The principles of law laid down in this appeal make a distinction between serious allegations of forgery/fabrication in support of the plea of fraud as opposed to “simple allegations”. Two working tests laid down in para 25 are: (1) does this plea permeate the entire contract and above all, the agreement of arbitration, rendering it void, or (2) whether the allegations of fraud touch upon the internal affairs of the parties inter se having no implication in the public domain.

5. Judged by these two tests, it is clear that this is a case which falls on the side of “simple allegations” as there is no allegation of fraud which would vitiate the partnership deed as a whole or, in particular, the arbitration clause concerned in the said deed. Secondly, all the allegations made which have been relied upon by the learned counsel appearing on behalf of the respondent, pertain to the affairs of the partnership and siphoning off of funds therefrom and not to any matter in the public domain...”

6.) Avitel Post Studioz Ltd. v. HSBC PI Holdings (Mauritius) Ltd., (2021) 4.

SCC 713

The Hon’ble Apex Court in the aforesaid judgment placing reliance upon the twin test as culled out in Rashid Raza’s case and Ayyasamy’s case has held that if serious allegations of fraud arise and the first test as culled out is satisfied then it can be said that the arbitration clause or Arbitration Agreement



itself cannot be said to exist and cannot be referred to arbitration. For better appreciation, the relevant paragraph is extracted hereunder:-

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“...34. In a recent judgment reported as Rashid Raza [Rashid Raza v. Sadaf Akhtar, (2019) 8 SCC 710 : (2019) 4 SCC (Civ) 503] , this Court referred to Sikri, J.'s judgment in Ayyasamy [A. Ayyasamy v. A. Paramasivam, (2016) 10 SCC 386 : (2017) 1 SCC (Civ) 79] and then held : (Rashid Raza case [Rashid Raza v. Sadaf Akhtar, (2019) 8 SCC 710 : (2019) 4 SCC (Civ) 503] , SCC p. 712, para 4)

“4. The principles of law laid down in this appeal make a distinction between serious allegations of forgery/fabrication in support of the plea of fraud as opposed to “simple allegations”. Two working tests laid down in para 25 are : (1) does this plea permeate the entire contract and above all, the agreement of arbitration, rendering it void, or (2) whether the allegations of fraud touch upon the internal affairs of the parties inter se having no implication in the public domain.”

35. After these judgments, it is clear that “serious allegations of fraud” arise only if either of the two tests laid down are satisfied, and not otherwise. The first test is satisfied only when it can be said that the arbitration clause or agreement itself cannot be said to exist in a clear case in which the court finds that the party against whom breach is alleged cannot be said to have entered into the agreement relating to arbitration at all. The second test can be said to have



WEB COPY

A.No.2562 of.



been met in cases in which allegations are made against the State or its instrumentalities of arbitrary, fraudulent, or mala fide conduct, thus necessitating the hearing of the case by a writ court in which questions are raised which are not predominantly questions arising from the contract itself or breach thereof, but questions arising in the public law domain...”

In paragraph 43 the Hon’ble Apex Court had held that mere fact of a criminal proceedings which has been instituted in respect of the subject matter would not lead to a conclusion that a dispute which otherwise is arbitrable ceases to be so. For better appreciation, the relevant paragraph is extracted hereunder:-

“...43. In the light of the aforesaid judgments, para 27(vi) of Afcons [Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co. (P) Ltd., (2010) 8 SCC 24 : (2010) 3 SCC (Civ) 235] and para 36(i) of Booz Allen [Booz Allen & Hamilton Inc. v. SBI Home Finance Ltd., (2011) 5 SCC 532 : (2011) 2 SCC (Civ) 781] , must now be read subject to the rider that the same set of facts may lead to civil and criminal proceedings and if it is clear that a civil dispute involves questions of fraud, misrepresentation, etc. which can be the subject-matter of such proceeding under Section 17 of the Contract Act, and/or the tort of deceit, the mere fact that criminal proceedings can



or have been instituted in respect of the same subject matter would not lead to the conclusion that a dispute which is otherwise arbitrable, ceases to be so...”

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37) From an analysis of the aforesaid judgments rendered by the Hon'ble Apex Court, this Court culls out the following law laid therein:-

a) A party claiming forgery, fraud for nullifying the Agreement of Arbitration should substantially satisfy the same to arrive at a prima facie conclusion that such agreement had come into being because of the fraud that had been played.

b) Even if the Court comes to a prima facie conclusion that the party raising the issue of fraud can raise it as a defence before the Arbitrator and the Arbitrator can independently decide on the arbitrability of the dispute on the ground of fraud.

38. From the law culled out above, this Court shall analyse the facts placed before it. The claim of the plaintiffs in this case is that the documents which it is sought to be declared as unenforceable were not executed by the signatory of such documents on its behalf. The first defendant had pointed out that the letter dated 11.04.2022 had also been referred to in a complaint given



by the plaintiff as against him. When the same was pointed out, this court had directed the learned counsel for the plaintiff to produce the document dated 11.04.2022 referred to in the complaint. On instructions, the learned counsels had orally made a statement that there is no such document on record with it.

39) Further communications which refers to the letter dated 11.04.2022 are also sought to be declared as unenforceable on the very same ground. The first defendant had produced various e-mail communications from the very same signatories enclosing various documents including the documents which are sought to be declared as unenforceable as being a forged and fraudulent documents. The same had been specifically pleaded so in the affidavit filed in support of this instant application. The plaintiff, who is the first respondent had not specifically denied such communication through e-mail nor the averments in the affidavit being specifically denied except for a bald denial. The learned counsel appearing for the plaintiff had also disowned the e-mail communication during his arguments.

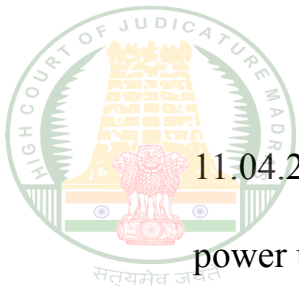
40) When the plaintiff in his complaint referring it to be a clarification



issued in respect of the first defendant's terms of contract, termination, payment and incentive structures, it would only mean that at least on the date of complaint namely 08.03.2025, the plaintiff had the knowledge of letter and its contents. Therefore, the present claim in the suit that the said letter dated 11.04.2022 which also includes a clause of arbitration to be forged and unenforceable in *prima facie* view of this Court had been made only to wriggle out of the arbitration proceedings that had been initiated by the first respondent in the facts of this case.

41) Having had the knowledge of the letter and its contents on 08.03.2025 as reflected in the complaint given by the plaintiff, it ought to have also initiated the complaint of forgery of the said letter. But, on the other hand, the complaint had been made as against the first defendant that various communications including 11.04.2022 did not authorise him to unilaterally withdraw the funds of the plaintiff.

42) In such findings of facts and applying the law that had been laid down in the judgments extracted *supra*, I do not find any strong case being made out by the plaintiffs of forgery, fraud which would make the letter dated



A.No.2562 of.



11.04.2022 to be null and void that would refrain this Court from exercising its power under Section 45 of the Arbitration Act.

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43) In view of the aforesaid reasonings and findings, this Court is not entering upon the other issues raised by the plaintiff and leave it open to it to raise the same before the Arbitrator as Article 31 of SIAC Rules empowers the Arbitrator to also deal with the issue of non-arbitrability even on the ground of fraud.

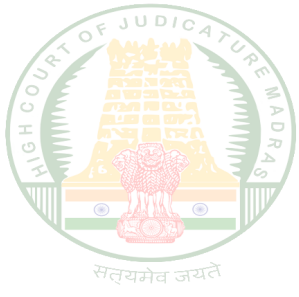
44) In fine, this application is allowed and the parties are referred to arbitration which have been initiated in SIAC Arbitration No.158 of 2025 as a consequence, the plaint as well as other connected applications shall stand struck off from the Register of this Court.

29.07.2025

Index : Yes / No

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A.No.2562 of.

K.KUMARESH BABU.J.,

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Pre-Delivery Order in
A.No.2562 of 2025
in
C.S.No.80 of 2025

29.07.2025