



Arbitration Original Petition (Com.Div) No.506 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.11.2025

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Arbitration Original Petition (Com.Div) No.506 of 2025

H.Sunil Kumar
S/o.Heera Chand

.... Petitioner

Vs.

1.M Deepak Kumar Samdariya
S/o.Mahaveer

2.B.Rasheetha
D/o.Bawa

.... Respondents

Arbitration Original Petition (Com.Div) filed under Section 34(2)(b) & 34(2A) of the Arbitration and Conciliation Act, 1996, praying to set aside the Arbitral Award dated 25.11.2024 bearing No.Arb.O.P.No.523 of 2023 passed by the learned Arbitrator to the extent of disallowing the relief of specific performance by directing the respondents to execute and register sale deed in respect of the property situated at Plot No.17, T.S.No.15 (Old S.No.182/1A1A), Lakshmi Nagar, 1st Street, Virugambakkam Village, Chennai District, the land measuring an extent of 2400 sq.ft. in favour of the claimant.

For Petitioner : Mr.H.Siddarth



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Arbitration Original Petition (Com.Div) No.506 of 2025

For Respondents : Mr.R.P.Vijayakrishnan

ORDER

This petition has been filed under Section 34 of the Arbitration and Conciliation Act, 1996 [for brevity 'the Act'] challenging the award dated 25.11.2024 passed by the Sole Arbitrator.

2. The petitioner is the claimant. He filed the claim petition before the Sole Arbitrator on the ground that the respondents are joint owners of the subject property, which is a vacant land measuring an extent of 2400 sq.ft. at Virugambakkam, Chennai. During June 2018, the respondents approached the petitioner for selling the subject property and the petitioner was also interested in purchasing the property. Hence, after negotiations, the petitioner and respondents entered into a sale agreement dated 18.06.2018 and this document was registered as document No.3559 of 2018 on the file of Sub-Registrar Office, Virugambakkam.

3. The total sale consideration was fixed at Rs.64,32,000/-. The petitioner initially paid an advance amount of Rs.25,00,000/- on the date on which the parties entered into a sale agreement. Thereafter, a further sum of Rs.25,00,000/- was paid within a week on 22.06.2018. Thus, out



of the sale consideration of Rs.64,32,000/- the petitioner paid a sum of Rs.50,00,000/-. As per the sale agreement, the balance sale consideration was agreed to be paid at the time of execution of the sale deed for which a period of 36 months was fixed in the agreement.

4. The petitioner claims that he was always ready and willing to pay the balance sale consideration and get the sale deed executed in his favour. However, the Covid-19 pandemic intervened and thereafter, the petitioner from the year 2021 onwards was making several requests to the respondents to receive the balance sale consideration and execute the sale deed. Since the respondents did not come forward to execute and register the sale deed, the petitioner invoked arbitration clause envisaged under Clause 11 of the sale agreement and issued a legal notice dated 19.09.2022 to the respondents.

5. A petition was filed under Section 11 of the Act in Arb.O.P.(Com.Div.) No.523 of 2023 before this Court for appointment of a Sole Arbitrator. This Court, by an order dated 03.01.2024, appointed a Sole Arbitrator to adjudicate the disputes between the petitioner and respondents.



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Arbitration Original Petition (Com.Div) No.506 of 2025

6. The petitioner sought for the following claim before the Sole

Arbitrator:

“Directing the respondents to execute and register sale deed in respect of the subject matter property described in the schedule in favour of the claimant and to hand over vacant possession of the suit schedule mentioned property (or) In the alternative, this Hon’ble Tribunal may be pleased to order refund of the entire sale advance amount together with interest at the rate of 24% per annum from the date of sale agreement till the date of realization.”

7. The respondents filed a statement of defence. They took a stand that the first respondent is the cousin of the petitioner/claimant and had known him for several years. The second respondent is a family friend of the first respondent. During April’2018, both the respondents were in need of money for their business and for honouring immediate commitments. Accordingly, they approached the petitioner and availed a hand loan of Rs.50,00,000/-. As a security, the petitioner wanted the respondents to execute an agreement of sale. However, the respondents never intended to sell the property in favour of the petitioner. There was a clear understanding between the parties to the effect that on the



repayment of loan advanced, the sale agreement will be cancelled.

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8. The respondents also took a stand that they made part payments in cash to the tune of Rs.42,00,000/-. They also continued to pay the remaining loan amount. Thus, they denied the fact that they had any intention to sell the property in favour of the petitioner and accordingly, sought for dismissal of the claim petition.

9. The Sole Arbitrator, on considering the pleadings, framed the following issues:

1. Whether the Exhibit C-1 dated 18.06.2018 is a sale agreement, or is it a security for loan transaction?
2. If the document dated 18.06.2018 is a sale agreement, has the claimant proved that he was always ready and willing to perform his obligations under the said agreement?
3. Whether the respondents have repaid an aggregate sum of Rs.42,00,000/- in cash towards past discharge of the alleged hand-loan taken by them?
4. Whether the claimant is entitled for registration of the sale deed and for vacant possession of the subject property? In the alternative, whether the claimant is entitled for refund of an amount of Rs.50,00,000/- with interest at 24% from 18.06.2018 till realization?



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5. To what other reliefs the claimant entitled?

10. The Sole Arbitrator, on considering the pleadings, evidence let in by the parties and the facts and circumstances of the case, passed the following award:

- “(a) The Respondents are hereby directed to repay a sum of Rs.50,00,000/- (Rupees Fifty Lakhs) only to the Claimant with simple interest at the rate of 12% per annum from 22.06.2018 till 19.02.2024, being the date of commencement of the arbitral proceedings and thereafter at 6% (simple) per annum till the date of realization; &
- (b) There shall be no order as to cost.”

11. Aggrieved by the above award passed by the Sole Arbitrator rejecting the claim for specific performance and allowing for repayment of the amount along with interest, the present petition has been filed by the petitioner/claimant.

12. Heard Mr.H.Siddarth, learned counsel for petitioner and Mr.R.P.Vijayakrishnan, learned counsel for respondents.

13. The main defence taken by the respondents is that they never intended to sell the property in favour of the petitioner and that the



sale agreement itself was executed only as a security for a loan transaction between the parties. This defence taken by the respondents has been accepted by the Sole Arbitrator and consequently, directed the respondents to repay the sum of Rs.50,00,000/- along with interest. This Court must look into the award and see if this finding rendered by the Sole Arbitrator suffers from any perversity or patent illegality.

14. It must be kept in mind that the petitioner/claimant was relying upon a written agreement between the parties, which carried the nomenclature of a sale agreement and this document was also registered as document No.3559 of 2018 on the file of Sub-Registrar Office, Virugambakkam.

15. Section 19 of the Act makes it clear that the Arbitral Tribunal is not bound by the provisions of the Evidence Act, 1872. However, this does not mean that the settled principles that governs the law pertaining to evidence cannot be applied while testing an award that has been put to challenge under Section 34 of the Act. In other words, the fundamental principles of the Evidence Act which provides the basis for dealing with the case must be satisfied failing which the Arbitral Award will infract the fundamental policy of Indian law. It can also lead to



perverse finding and suffer from patent illegality.

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16. As stated supra, the parties were governed by a registered sale agreement, whereas the respondents took a stand that they never intended to sell the property to the petitioner and they considered the transaction only as a loan transaction.

17. Two sets of basic principle which ought to be applied by the Arbitrator in a case of this nature are :

- (a) The burden of proof is upon the respondents to establish that the sale agreement was only executed as a security for a loan transaction; and
- (b) No evidence of any oral agreement or statement can be admitted between the parties to dislodge a written contract between the parties which deals with disposition of property unless the respondents are able to satisfy any of the exceptions as provided under Section 92 of the Evidence Act.

18. The above two requirements are not only traceable to the Evidence Act but also to the legal precedents of superior Courts (High



Courts and Supreme Court) which has a binding effect on the Sole Arbitrator.

19. When terms of a contract, a grant or any disposition of property have been reduced to the form of a document, no evidence of any oral agreement or statement will be admitted as between the parties to such document for the purpose of contradicting, varying, adding to or subtracting from its terms. For this settled law, exceptions will be where the document itself is invalid due to fraud, coercion *etc.* or there was a separate oral agreement as to any matter which document is silent and which is not inconsistent with the terms of the document or where there is a separate oral agreement constituting a condition precedent to the attaching of any obligation under the document or where there were any subsequent oral agreement to rescind or modify any terms of the document except when such contract is required to be in writing or has been registered. Apart from these exceptions, any usage or custom not expressly mentioned in any contract can also proved to be an exception.

20. Keeping the above fundamental principles of law in mind, this Court must look into the award passed by the Sole Arbitrator.



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21. At the outset, it must be kept in mind that the Sole Arbitrator was a former Vice Chairman of a Company Law Board and therefore, this Court will expect a person of such stature to know the fundamental principles of law and the award passed by the Arbitrator has to satisfy a higher degree of scrutiny expected of a legally trained mind.

22. A careful reading of the entire award shows that the Sole Arbitrator in many places in the award has attempted to rely upon several judgments and has tried to read the ratio in those judgments into the facts of the case. It should have been the other way round where the facts must be first analysed and to support the findings, a case law on similar facts or which brings out the principle of law can be relied upon. This process adopted by the Sole Arbitrator has virtually rendered many of the findings perverse since the Arbitrator was attempting to read the case laws into the facts of the present case.

23. The first issue that was dealt with by the Sole Arbitrator is to determine as to whether Ex.C1 is a sale agreement or it is a security for the loan transaction. Instead of focusing on the facts of the case, the



Sole Arbitrator starts with case laws and holds that in those cases, it was held that where very minimal sale consideration is kept pending for execution of the sale deed and the contract period is for a long time, it cannot be intended to be acted upon as an agreement of sale.

24. The Sole Arbitrator takes into consideration Ex.R3, which is a sale agreement that was entered into by the respondents with one Chetan Kumar on 23.07.2015 for the very same property where they fixed the consideration at Rs.96,00,000/-. The second respondent alone was examined on the side of the respondents and for some strange reasons, the first respondent did not examine himself. The Sole Arbitrator takes into consideration the earlier sale agreement entered with Chetan Kumar and the oral statement made by second respondent that the market value of the property may be Rs.3 to 4 crores, whereas, the sale consideration was fixed under Ex.C1 only to the tune of Rs.64,32,000/- and for the balance sale consideration of 22.26%, a long period was fixed and therefore, this document could not be a sale agreement and it can only be a security for the loan transaction. This finding rendered by the Sole Arbitrator is neither a possible view nor a plausible view. At the best, it can only be said to be a finding on mere presumption and



surmises. The Sole Arbitrator completely acts upon the *ipse dixit* of second respondent (RW-1) and takes it to be a gospel truth and renders a finding that the respondents had only borrowed the money since they were in need of money for their business and for developing the property and the earlier agreement was also subsequently cancelled and an entry was also made in the Encumbrance Certificate dated 18.04.2024. Therefore, the Sole Arbitrator comes to a conclusion that such agreements are entered into by respondents only as a security for loan transaction. Once again, the Sole Arbitrator was trying to fit in the judgment of the High Court into the facts of the present case.

25. The Sole Arbitrator also finds fault with the petitioner on the ground that the petitioner should have been aware of the earlier agreement entered into with Chetan Kumar and the Power of Attorney given in favour of Dinesh Kumar and that he did not object for the same and therefore, the sale agreement can be considered to be only as a security for the loan transaction between the parties.

26. The Sole Arbitrator, for some strange reasons, has also rendered a finding that the petitioner was not ready and willing to



perform his part of the contract and that can also be taken as a circumstance to conclude that there was only a loan transaction and the sale agreement was executed only as a security. Thus, in the name of circumstantial evidence, the Sole Arbitrator has taken into consideration irrelevant and immaterial statements made and has presumed that Ex.C1 is not a sale agreement and it is only a security given towards the loan transaction.

27. The Sole Arbitrator was made aware of the fact that the first respondent claimed to be the cousin of the petitioner, but, however, the first respondent did not choose to enter the witness box. If that is the case, the very basis of the defence taken by the respondents that the first respondent, being the cousin of the petitioner, asked for loan and for that purpose, executed, along with the second respondent, an agreement of sale as a security, falls to the ground.

28. It is even more curious that the Sole Arbitrator decides the second issue against the petitioner on the ground that the petitioner was not ready and willing to perform his part of the contract. Such a finding will be justified only if Ex.C1 is considered to be a sale agreement. After



having rendered a finding that Ex.C1 is not a sale agreement and it is only a security given towards the loan transaction, there is no need for the Sole Arbitrator to render a finding that the petitioner is not ready and willing to perform his part of the contract. These findings are mutually contradictory since the sale agreement and loan transaction cannot travel together and one has to exclude the other. In view of the same, the finding of the Sole Arbitrator must also be held to be unintelligible. Therefore, relying upon the judgment of the Apex Court in ***Dyna Technologies Private Limited v. Crompton Greaves Limited [2019 (20) SCC 1]***, it can be held that such award suffers from patent illegality.

29. The other finding rendered by the Sole Arbitrator touches upon the defence taken by the respondents that a sum of Rs.42,00,000/- has been repaid. The Sole Arbitrator finds that there was absolutely no proof for repayment of the amount and also finds that a sum of Rs.50,00,000/- has been received by respondents from the petitioner. However, since the Sole Arbitrator gave the previous finding that Ex.C1 is not a sale agreement and it is only a security to the loan transaction, directed the said amount of Rs.50,00,000/- to be paid by the respondents to the petitioner with simple interest at 12% p.a. from 22.06.2018 till



19.02.2024 and thereafter, at 6% p.a. till the date of realization.

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30. In the light of the above discussion, this Court holds that the award passed by the Sole Arbitrator suffers from perversity and patent illegality, which warrants interference of this Court under Section 34 of the Act.

31. In the light of the above findings, this Court must next venture into the issue as to whether the award passed by the Sole Arbitrator can be modified and the relief of specific performance can be granted in favour of the petitioner. For this purpose, this Court has to keep in mind the judgment of the Apex Court in ***Gayatri Balasamy v. ISG Novasoft Technologies Limited*** [2025 (7) SCC 1]. Such modification can be done only if the invalid portion of the award is severable from the valid portion. If that cannot be done, the award cannot be modified. In the case in hand that exercise is not possible.

32. In view of the decision of the Apex Court in ***McDermott International Inc v. Burn Standard Co. Ltd. & others*** [2006 (11) SCC 181], this Court must necessarily annul the award leaving it open to the



Arbitration Original Petition (Com.Div) No.506 of 2025

parties to resort to arbitration afresh, if so advised.

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Accordingly, this Arbitration Original Petition is allowed and the Arbitral Award dated 25.11.2024 bearing No.Arb.O.P.No.523 of 2023 is set aside. As this is a matter in the commercial division, the petitioner shall be entitled to cost of Rs.5,00,000/- [Rupees Five Lakhs only] payable by the respondents.

20.11.2025

Index:yes/no
Speaking order
NCC: yes
gm

N.ANAND VENKATESH, J.

gm



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Arbitration Original Petition (Com.Div) No.506 of 2025

Arbitration Original Petition (Com.Div) No.506 of 2025

20.11.2025