



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22-10-2025

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THE HONOURABLE MR JUSTICE N. ANAND VENKATESH

Arb O.P No. 44 of 2025

1. S.S.Senthil,
S/o.R.Shanmugam Office at
S-3, 2nd Floor,No.45/32,
6th Street,A-Block Anna Nagar
East, Chennai-102. Presently
having office at 5-B,5th
Floor,Calve Chateau,
No.808,Poonamallee High Road,
Kilpauk,Chennai-600010.

Applicant(s)

Vs

1. Mr.K.Raju
S/o.Kannan No.D1 and D2
Shanthi Apartments, Plot
NO.2/3,Sri Krishnapuram
Royapettah, Chennai-600014.

Respondent(s)

PRAYER

To pass an order appointing an arbitrator to decide the disputes and claims emerged between the petitioner and the respondent as per the Sale Agreement dated 27.07.2023 in accordance with law on merits.

For Applicant(s): Mr.S. Nagarajan
For Mr.S.Sathya Ganesh
Respondent(s):

For Respondent Vakalat
D.No.34006/25



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ORDER

This petition has been filed under Section 11 of Arbitration and Conciliation Act, 1996 (for brevity hereinafter referred to as the “Act”) for appointment of an arbitrator.

2. When the application came up for hearing on 24.07.2025, this Court passed the following order:-

This petition has been filed under Section 11 of the Arbitration and Conciliation Act, seeking for appointment of an arbitrator by this Court.

2. There seems to be a dispute between the petitioner and the respondent, arising out of the sale agreement dated 27.07.2023. In the said agreement, there exists an arbitration clause, which is extracted hereunder:-



12.

Any disputes or difference between both the Parties arising out of or in connection with this agreement or its performance (a dispute) shall, so far as it is possible, be settled amicably through consultation between a senior representative of both Parties. In the event that such dispute is not settled within two weeks of the

date of notice of the dispute submitted by a Party, then either Party may submit the dispute to arbitration. Such Arbitration shall be in accordance with the rules of the governing Indian Law and shall be held in Chennai. All proceedings shall be in English and the Arbitrators shall be appointed in accordance with the rules.

3. The petitioner has invoked arbitration in accordance with the arbitration clause by issuing notice to the respondent on 11.06.2025 to comply with the requirements of Section 21 of the Arbitration and Conciliation Act, 1996. No reply has been received for the same.

4. Since there exists an arbitration clause in the contract, which is the subject matter of the dispute between the parties and



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since the petitioner has invoked arbitration in accordance with the arbitration clause by complying with the requirements of Section 21 of the Arbitration and Conciliation Act, 1996 and since there is no consensus between the parties with regard to the name of the arbitrator, this Court is issuing notice to the respondent, returnable by 14.08.2025. Private notice is also permitted.

3. The application was thereafter listed for hearing on 08.09.2025 and the following order came to be passed by this Court:-

The respondent has filed a counter affidavit. The main ground that was raised by the learned counsel for the respondent is that clause 12 of the agreement contemplates the parties to first amicably settle the dispute through consultation between a senior representative of both parties and if it fails, they can invoke the arbitration clause. It is contended that the petitioner did not resort to this process and straight away has invoked the arbitration clause.

2.Considering the fact that there was a sale agreement between the petitioner and the respondent and the petitioner has paid some advance amount and ultimately the property itself has been sold by the respondent to some third party and the petitioner is only seeking for refund of the advance amount with interest, this Court is inclined to refer this matter to mediation.



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3.The petitioner and the respondent shall be present before the Tamil Nadu Mediation and Conciliation Centre, High Court, Madras, on 15.09.2025 at 03.00 PM. The Mediation Centre is requested to appoint a Mediator having exposure to commercial litigation. The process of mediation shall be completed on or before 17.10.2025. The report shall be submitted before this Court on 22.10.2025. Based on the same, final orders will be passed in this petition.

4.Post this matter on 22.10.2025 under the caption 'for filing the report of the mediation'.

4. When the matter was taken up for hearing today, the mediation report was placed before this Court and it is seen that the parties were not able to reach a settlement.

5. Heard Mr.S. Nagarajan, learned counsel for the petitioner and Mr.S.Sathya Ganesh, learned counsel for respondent.

6. The learned counsel for respondent primarily raised three objections on the maintainability of this petition. The first objection is that clause 12 of the agreement contemplates that the parties must



first attempt to amicably settle the dispute through consultation and if it fails, they can invoke the arbitration clause. Such an exercise was not undertaken by the petitioner and he filed this petition straight away which is pre-matured.

7. The 2nd objection that was raised by the learned counsel for the respondent is that there is no subsisting claim and the petitioner is trying to revive a dead claim and therefore, the present petition is not maintainable.

8. The 3rd objection raised by the learned counsel for the respondent is that the agreement that is relied upon is not registered and insufficiently stamped and therefore, it cannot be relied upon by the petitioner.

9. Insofar as the first ground is concerned, this Court by an order dated 08.09.2025 referred the parties to Mediation and the Mediation attempts failed. Therefore, the parties have now reached a stage where the dispute has to be necessarily referred for arbitration. Insofar as the 2nd ground is concerned, I had an occasion to deal with the issue in detail in Arb OP No.319 of 2025 dated 16.09.2025 and



the relevant portions are extracted hereunder :-

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 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.



10. In view of the above, the preliminary objection that was raised by the learned counsel for the respondent stating that a dead claim is sought to be revived by the petitioner, has to be necessarily dealt with only by the Arbitrator and it cannot be gone into by this Court in this petition filed under Section 11 of the Act.

11. Insofar as the 3rd ground is concerned, the issue regarding the non-registration and insufficient stamping of the agreement is concerned, it is a matter to be dealt with only by the Arbitral Tribunal in the light of the judgement of the Apex Court in ***[Interplay Between Arbitration Agreements under Arbitration and Conciliation Act, 1996 & Stamp Act, 1899, In re]*** reported in **2024 6 SCC 1**.

12. In the light of the above discussion, the dispute has to be necessarily referred to the Arbitrator. Insofar as the preliminary issue that was raised by the learned counsel for the respondent, it can be raised before the learned Arbitrator who will deal the same on its own merits and in accordance with law.



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13. In view of the above, Mr.K.V.Babu, F-101, Subiksha Trinity, 4th Street, Bakthavatsalam Nagar, Adyar, Chennai 600 020 M No.98400 75917, is appointed as sole Arbitrator and the Arbitrator is requested to adjudicate the arbitral dispute that were arising between the parties by holding the sittings in any venue in Chennai to the convenience of all concerned and render an award. Fees of the sole Arbitrator shall be in accordance with the Madras High Court Arbitration Centre (MHCAC)(Administrative Cost and Arbitrator's Fees) Rules 2017.

14. This Arb. OP is disposed of in the above terms. There shall be no order as to costs.

22-10-2025

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Index:Yes/No

Speaking/Non-speaking order

Internet:Yes

Neutral Citation:Yes/No



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To

1.Mr.K.Raju
S/o.Kannan No.D1 and D2
Shanthi Apartments, Plot
NO.2/3,Sri Krishnapuram
Royapettah, Chennai-600014.



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N.ANAND VENKATESH J.
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