



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25-11-2025

CORAM

THE HONOURABLE MR.JUSTICE P. DHANABAL

**A No. 1309 of 2025
in O.P. No.682 of 2016**

1. M/s.Secular Trust,
rep.by its sole Managing Trustee and
Administrator Mr.D.Indrajith, also
Known as Mr.D.Ajith
S/o.Mr.R.Devadas, Door No.29/14,

Applicant(s)

Vs

1. DR.S.Devaraj
S/o.Late D.Sabarinanthan, Both are
residing at No.81/33, VGP Salai,
Saidapet, Chennai 600 015.

2.Mrs.M.Delphin
W/o.Dr.S.Devaraj.

Respondent(s)

PRAYER: This application has been filed under Order XIV Rule 8 of Original side Rules read with Section 8 of the Arbitration and Conciliation Act to Recall and set aside the order dated 08/08/2019 passed in O.P.No.682 of 2016.

For Applicant(s): M/s.A.B.RAJASEKARAN

For Respondent(s): Mr. M. Sriram



ORDER

This application has been filed by the applicant to recall and set aside the order dated 08.08.2019 passed by this Court in the main Original Petition in O.P. No.682 of 2016.

2. According to the applicant, he is the Managing Trustee and Administrator of the applicant Trust. This Court in the main Original Petition passed an order dated 08.08.2019 by granting permission to sell the 'C' schedule property to the respondents for a sum of Rs.20.50 crores. The respondents paid a sum of Rs.3 crores as advance and further directed to pay the balance amount of Rs.17.5 crores on or before 15.05.2020 and the Applicant Trust was directed to register the Sale Deed for the above property. Now the respondents after obtaining the above said final order by misrepresentation and deceit, have not paid the balance amount of Rs.17.5 crores till date. Hence the present application has been filed by the applicant to recall and set aside the order dated 08.08.2019. The respondents had produced a written letter agreeing to purchase the 'C' Schedule property for a total sale consideration of Rs.20.5 crores and further agreed to pay a sum of Rs.3 crores as advance. Believing the words and undertaking of the respondents, the applicant entered into a Memorandum of Understanding dated 15.06.2019. Under the said Memorandum of Understanding, the respondents paid a sum of Rs.3 crores as advance through a cheque dated 15.06.2019 to the applicant and the balance of



Rs.17.5 crores to be paid on or before 15.05.2020. Even out of the balance sale consideration, a minimum of 50% was to be paid on or before December 2019 and the balance amount within 15.05.2020. After recording the Memorandum of Understanding dated 15.06.2019, this Court was pleased to allow the Original main Petition in O.P. 682 of 2016 vide order dated 08.08.2019 by permitting the applicant to sell the 'C' Schedule property to the respondents for the agreed sale consideration. Further this Court directed the respondents to pay the balance sale consideration of Rs.17.5 crores on or before 15.05.2020 and on such payment, the applicant was directed to execute and register the Sale Deed.

2.1. The order of the Court dated 08.08.2019 has not been complied with by the respondents till date and they have not paid the balance amount of Rs. 17.5 crores. Therefore, the applicant sent a notice dated 10.07.2020 to the respondents calling upon them to pay the balance amount of Rs.17.5 crores without further delay and also demanded simple interest at the rate of 9% per annum from July 2019. The respondents, through a letter dated 27.07.2020, sent an evasive reply seeking further time to make payment. As per the Memorandum of Understanding, the respondents ought to have paid minimum 50% of the balance sale consideration on or before December 2019 and the remaining amount to be paid on or before 15.05.2020, but they have not paid a single pie till date. Again the applicant, sent a letter dated 05.10.2020 sought for payment of balance sale consideration of Rs.17.5 crores to complete the sale



3. The respondents strongly opposed the application and filed counter stating that the application itself is not maintainable. The dispute is arising out of a Memorandum of Understanding dated 15.-06.2019. Based on the said Memorandum of Understanding, the Original petition was disposed of through an order dated 08.08.2019. As per the Memorandum of Understanding dated 15.06.2019, there is an Arbitration Clause, whereby the parties herein have



agreed to refer the dispute to Arbitration in accordance with the Arbitration and Conciliation Act. Since the applicant had suppressed the said arbitration clause and filed this application, the respondents have filed an application under Section 8 of Arbitration and Conciliation Act in A. No.4080 of 2025. Therefore, the disputes have to be disposed of by the arbitration proceedings. Therefore, the application is not maintainable. The Memorandum of Understanding dated 15.06.2019 was acted upon by both the parties. The respondents also paid a sum of Rs.3 crores and handed over the 'D' schedule property to the applicant and the applicant, having sold the 'D' schedule property along with other properties, is not entitled to recall the said order. The applicant Trust and the respondents have entered into various registered lease deeds since the year 1995. The period of lease is around 55 years and 99 years respectively and the monthly rentals were being remitted to the applicant. The respondents have also constructed school and women college buildings in the said land after following the procedure.

3.1. The applicant suppressed the fact that pursuant to the Memorandum of Understanding dated 15.06.2019, the respondents have handed over the 'D' schedule property, wherein a clinic was functioning. The applicant has taken possession of the same and sold the 'B' schedule property which includes the 'D' schedule property in the Memorandum of Understanding which is the main entrance to the property sold to some third parties. The sale consideration was



arrived on mutual understanding and also taking into account of 'D' Schedule property which was under valid lease and other factors have also taken into consideration due to the low-lying area of inundation during the rainy seasons and the parties have also taken into consideration of the lease hold rights of the respondents of value of the unexpired period of lease and already other portion property also handed over to the applicant. The respondents could not complete the transaction by making the payment of the balance sale consideration due to unforeseen circumstances. The said surrendered property has been dealt with and sold by the applicant to third parties. This application to recall, has been filed after a period of 6 years and the same is barred by limitation, hence the entire averment deserve to be rejected. Therefore, the application is not maintainable and the same is liable to be dismissed with cost.

4. This Court heard both sides and perused the entire materials.

5. According to the applicant, this Court passed an order dated 08.08.2019 by permitting the applicant Trust to sell the 'C' schedule property for a sale consideration of Rs.20.50 crores and the respondents have paid a sum of Rs.3 crores as advance and they were directed to pay the balance sale consideration of Rs.17.5 crores on or before 15.05.2020 and upon such payment, the applicant Trust was directed to register the Sale Deed in favour of the respondents, but the respondents have not complied the said order and not



paid the balance amount. Therefore, the applicant has filed this application to recall the order. According to the respondents, based on the Memorandum of Understanding between the parties, the matter has been compromised between the parties and the respondents agreed to purchase the property for a sum of Rs. 20.5 crores and a sum of Rs.3 crores was already paid as advance and due to unavoidable circumstances, they were unable to pay the balance amount of sale consideration. Therefore, as per the Memorandum of Understanding, there is a Clause of Arbitration and the matter has to be referred for arbitration.

6. This Court heard both sides and perused the records. Based on the compromise reached between the parties, this Court passed an order dated 08.08.2019 by permitting the applicant Trust to sell the 'C' schedule property for a sale consideration of Rs.20.5 crores and the respondents have paid a sum of Rs.3 crores as advance on 15.06.2019 and the same was also recorded. This Court directed the respondents to pay the balance amount of Rs.17.5 crores on or before 15.05.2020. Upon such payment, the Trust was directed to execute and register the Sale Deed in favour of the respondents. Therefore, the said order was passed on compromise arrived at between the parties. Now, if the respondents are not able to purchase the property and comply with the order, it is for them to take appropriate steps for getting Sale Deed by paying balance sale consideration. Merely because the respondents have failed to comply the order and not ready to purchase the property, the earlier order passed by this



Court cannot be recalled and for recalling the order, there should be some valid grounds and non-compliance of the order is not a ground to recall the order passed by this Court. Since this Court fixed time for sale after payment of balance amount and so far, the said amount has not been paid by the respondents, the applicant is at liberty to take appropriate steps to sell the property to third parties in accordance with law, if so advised and there is no ground to recall the order.

7. As far as the applicability of Section 8 of Arbitration and Conciliation Act is concerned, since the agreement was already acted upon and in the main Original petition, by referring the said Memorandum of Understanding an order was passed and the main petition itself is not pending as on date, this Court need not go into the aspect of Arbitration Clause.

8. With the above observations, this application is *disposed of*.

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mjs
Index: Yes/No
Speaking/Non-speaking order
Internet: Yes
Neutral Citation: Yes/No



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P.DHANABAL J.
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