



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

ARBITRATION APPEAL NO.204 OF 2025

APPLICANT

(Org. Deft. No.4)
(On RA.)

:-

Aditya Anagha Multistate Credit Co
Operative Society Ltd,
through its Authorized Managing Director
Mr. Samir Suresh Saraf, Aged about 43
years, Off. At – 425, Azamshah Layout,
Anand Nagar, Nagpur – 440009.

..VERSUS..

**NON-
APPLICANTS**

(Org. Plaintiff)
ON RA

:-

(Org. Deft. No.1)
ON RA

(Org. Deft. No.2)
ON RA

(Org. Deft. No.3)
ON RA

- 1) Anil S/ Late Onkardas Rathi, Aged about 61 years, occupation C.A., R/o 201, Park Regency, Opp. Tilak Vidyalaya, Dhantoli, Nagpur-440012.
- 2) Shri Vishwas s/o Sudhakar Chaknalwar, aged about 61 years, occ. Business, Flat No.801, Royal Park, Near Nagpur – 440010.
- 3) M/s Pyramid Realtors, A Partnership Firm, having its office at 5, software Technology Park Line Road, Sadar, Nagpur, through Partner Mr. Prashant Babasaheb Wasade, Rio. G-2, Himalaya Paradise, GPO Square, Civil Lines, Nagpur.
- 4) The Central Registrar of Co-operative Societies, Ministry of Cooperation, Government of India, Atal Akshay Urja Bhawan, Lodhi Road, CGO complex New Delhi – 110003.

Mr. Prakash Naidu, Advocate for Appellant.

Mr. Y.J. Maheshwari, Advocate for respondent No.1.

Mr. M.P. Khajanchi, Advocate for Respondent No.2.

WITH
ARBITRATION APPEAL NO.279 OF 2025

APPELLANT :- Vishwas s/o Sudhakar Chaknalwar Aged
(Original Defendant No.1) about 61 years, occ. Business, Flat No.801, Royal Park, Near Dagdi Park, Ramdaspath, Nagpur – 440010.

..VERSUS..

RESPONDENTS :- 1) Anil S/ Late Onkardas Rathi, Aged 62 yrs,
(Respondent No.1 Original Plaintiff) occ. C.A., R/o 201, Park Regency, Opp. Tilak Vidyalaya, Dhantoli, Nagpur-440012.

(Respondent Nos.2 to 4 Original Defendant Nos.2 to 4) 2) M/s. Pyramid Realtors, A Partnership Firm, having its office at 5, Software Technology Park Line Road, Sadar, Nagpur, through Partner Mr. Prashant Babasaheb Wasade, R/o G-12, Himalaya Paradise, GPO Square, Civil Lines, Nagpur.

3) The Central Registrar of Co-operative Societies, Ministry of Cooperation, Government of India, Atal Akshay Urja Bhawan, Lodhi Road, CGO complex New Delhi – 110003.

4) Aditya Anagha Multistate Credit Co-operative Society Ltd. Through its Managing Director Mr. Samir Suresh Saraf, Aged about 43 Yrs. Off At 425, Azamshah Layout, Anand Nagar, Nagpur 440009.

Mr. M.P. Khajanchi, Advocate for Appellant.
Mr. Y.J. Maheshwari, Advocate for respondent No.1.
Mr. Prakash Naidu, Advocate for respondent No.4.

CORAM : ROHIT W. JOSHI, J.

DATE : 30/03/2026

JUDGMENT :

1. The present appeals are preferred under Section 37 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as “A & C Act, 1996”) in order to challenge order dated 13.10.2025 passed by the learned 4th Joint Civil Judge Senior Division, Nagpur, on applications at Exhibits 10 and 13 filed by the appellants in Arbitration Appeal No.279 of 2025 and Arbitration Appeal No.204 of 2025, respectively, under Section 8 of the A & C Act, 1996 for referring the subject matter of the said suit for arbitration. Both these appeals arise out of identical facts and give rise to the same question of law and therefore they are being decided together by a common judgment.

2. The respondent No.1 has filed a suit, being Special Civil Suit No.1069 of 2024, *inter alia* claiming declaration that Exchange Deed dated 11.11.2020 executed by the defendant No.1 (Appellant in Arbitration No.279 of 2025) in favour of defendant No.4 (Appellant in Arbitration No.204 of 2025) is an outcome of fraud and is illegal, null and void and for cancellation of the same. In this suit, the defendant Nos.1 and 4 had filed separate applications vide

Exhibits 10 and 13, respectively, for reference of the dispute to arbitration.

3. The parties will be referred as plaintiff and defendants. The plaintiff, defendant No.1 and four other individuals are partners in the defendant No.2-partnership firm. The partners had executed a Partnership Deed dated 01.04.2019. Clause 12(c) of the Partnership Deed provides that, the partners shall execute authorization in favour appellant/defendant No.1 (partner No.6 and respondent No.1/plaintiff (partner No.5), authorizing them to sell the properties enumerated in Schedule I and II of the Partnership Deed. The suit property bearing Khasra No.292 of village Chinchbhavan, Tah. and Dist. Nagpur, is included at Schedule II (ii) of the said Partnership Deed.

4. Thereafter, the partners, including plaintiff and defendant No.1 executed another Partnership Deed dated 30.06.2021. Clause 8(b) of the Partnership Deed dated 30.06.2021 records that partner No.6 i.e. defendant No.1, shall have exclusive rights to sell and deal with properties described in Schedule II and shall be entitled for entire profit from the sale of the said properties. The suit property is included at Schedule II (ii) of the said Partnership Deed dated 30.06.2021.

5. The defendant No.1 has executed a registered Exchange Deed with respect to the suit property in favour of the defendant No.4. The plaintiff has filed aforesaid suit challenging the said transaction. The defendant Nos.1 and 4 had filed two separate applications for reference of the dispute forming subject matter of the suit for arbitration, in view of the arbitration clauses incorporated in Paragraphs 13 and 14 of the Partnership Deeds dated 01.04.2019 and 30.06.2021, respectively.

6. These applications were opposed by the plaintiff on the ground that the defendant No.4 is not a party to the arbitration agreement which is contained in the Partnership Deeds between the plaintiff, defendant No.1 and four other partners.

7. The learned trial Court has rejected the applications on the ground that a separate arbitral proceeding with respect to the same firm is pending between all the partners of the partnership firm.

8. The reason recorded by the learned trial Court for making reference is clearly unsustainable. In fairness, the learned Advocate for the plaintiff does not seriously support the order for the reasons recorded. However, the learned Advocate for the plaintiff vociferously supports the conclusion arrived at by the

learned trial Court, albeit on a different ground, namely, that the defendant No.4 is not party to the arbitration appeal. The contention of Mr. Yash Maheshwari, learned Advocate for the plaintiff is that the defendant No.4 is in no way related to the partnership firm and merely because he has entered into a transaction with respect to the property of the firm, he cannot invoke arbitration clause incorporated in the Partnership Deed, which is for resolution of dispute only *inter se* between the partners. Mr. Maheshwari, also draws attention to the Exchange Deed and contends that the Exchange Deed is not executed by the defendant No.1/partner No.6 alone, but same is executed in the name of the partnership firm.

9. Mr. Khajanchi, learned Advocate for the respondent No.2/original defendant No.1, however, draws attention to Section 8 (1) of the A & C Act, 1996 and contends that reference of dispute is contemplated under the said provision, not only in cases where the suit is between parties to an arbitration agreement, but also in cases where the suit is between such parties and / or any person claiming through or under party to arbitration agreement. Mr. Khajanchi, draws attention to the aforesaid clauses 12(c) and 8(b) of the two partnership deeds which enable the defendant No.1 to deal

with the suit property and to retain consideration arising from the transaction with respect to the suit property has acquired the suit property in exchange from the defendant No.1 and as such the defendant No.4 claims right. He contends that the defendant No.4 is claiming through defendant No.1, who is admittedly party to the arbitration agreement. The Advocate for the defendant No.4 advances arguments on similar lines.

10. Pendency of arbitration proceedings between all six partners of the firm could not be a reason for rejecting the application for reference under Section 8 of the A & C Act, 1996. However, it needs to be seen as to whether the defendant No.4, who is admittedly not a partner in the firm can be a party to arbitration proceeding arising out of arbitration clause incorporated in the Partnership Deeds. In the considered opinion of this Court, the defendant No.4 will answer the description of a person claiming through or under a party to the arbitration agreement, namely the defendant No.1, since he has acquired one of the properties of the firm through its partner, the defendant No.1. Though the transaction was entered into in the name of the firm, provisions of Clauses 12(c) and 8(b) of the Partnership Deeds dated 01.04.2019 and 30.06.2021 cannot be ignored. Whether the Exchange Deeds

are legal or valid is a matter for the arbitral tribunal to decide.

11. The defendant No.4 claims title over the suit property through the defendant No.1. The dispute between partners is as to whether defendant No.1 was competent to transfer the suit property unilaterally as is done by him. The question to be answered relates to authority of the defendant No.1 to deal with suit property as per the terms of partnership deed. This is the basic dispute. The defendant No.4 who claims title over the suit property on the basis of exchange deed executed by defendant No.1 claims his right through the defendant No.1. The defendant No.4 is thus a person claiming through defendant No.1.

12. Mr. Khajanchi, is right in placing reliance on judgment of the Hon'ble Supreme Court in the case of *Rashtriya Ispat Nigam Ltd and another ..vs.. Verma Transport Co.*¹, which deals with distinction between the erstwhile Section 34 of the Arbitration Act, 1940 and Section 8 of the A & C Act, 1996 and holds that under the earlier Act, it was a matter of discretion of the Court to refer the parties to the arbitration, however, under the new regime, it is mandatory for the Court to make a reference if Section 8 is attracted. For the reasons recorded above, the arbitration appeals are allowed in the following terms :-

¹ (2006) 7 SCC 275

- i) Orders dated 13.10.2025 passed by the learned 4th Joint Civil Judge Senior Division, Nagpur, on applications at Exhibits 10 and 13, in Special Civil Suit No.1069 of 2024, are quashed and set aside and the said applications are **allowed**.
- ii) Parties to bear their own costs.

(ROHIT W. JOSHI, J.)

C.L. Dhakate