HC-KAR

NC: 2026:KHC:60098
CMP No. 396 of 2026

CNR: KAHC010503602026

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 29TH DAY OF OCTOBER, 2026

BEFORE

THE HON'BLE MR. JUSTICE H.T. NARENDRA PRASAD

CIVIL MISC. PETITION NO. 396 OF 2026

BETWEEN:

1. M/S. THE VARANDAH
A REGISTERED PARTNERSHIP
HAVING ITS PRINCIPAL
PLACE OF BUSINESS AT
VAISHYA EDUCATION SOCIETY
M. G. ROAD, KODIALBAIL
MANGALORE 003.
REP. BY ITS PARTNERS

A). MRS. POORNIMA VINOD MALLYA
W/O ULLAL VINOD KUMAR MALLYA
AGED ABOUT 63 YEARS
R/AT D. NO. 3-31-2668/3
SHREYAS PINTOS LANE
NEAR VINAYA CLINIC, KARANGALPADY
MANGALORE-575003.

B). MRS. NITA V. SHERLEKAR
W/O VINOD
M. SHERLEKAR
AGED ABOUT 57 YEARS
R/AT DOOR NO.3-33-2889
SHILPA BEJAI CHURCH ROAD
OPPOSITE PINTO BAKERY, BEJAI
MANGALORE-575004.

...PETITIONERS

(BY SRI. RAGHAVENDRA SHENOY M., ADVOCATE)

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AND:

M/S VAISHYA EDUCATION SOCIETY
THE SOCIETY REGISTERED UNDER THE RELEVANT LAWS
HAVING ITS REGISTERED OFFICE AT
THE VAISHYA EDUCATION SOCIETY
MG ROAD, KODIALBAIL, MANGALORE-575003
REPRESENTED BY ITS PRESIDENT.

…RESPONDENT

(BY SRI. M. VISHWAJITH RAI., ADVOCATE)

THIS CMP IS FILED UNDER SECTION 11(5) AND (6) OF ARBITRATION AND CONCILIATION ACT 1996, PRAYING TO APPOINTMENT OF A SOLE ARBITRATOR TO DECIDE AND ADJUDICATE UPON THE DISPUTES BETWEEN THE PETITIONER AND THE RESPONDENT AS PER THE ARBITRATION AGREEMENT IN CLAUSE NO. 11 OF THE MOU 27.04.2025 PRODUCED AT ANNEXURE - A.

THIS PETITION, COMING ON FOR ADMISSION, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE H.T. NARENDRA PRASAD

ORAL ORDER

1. This petition is filed under Sections 11(5) and 11(6) of the Arbitration and Conciliation Act, 1996 (for short, "the Act"), seeking appointment of a sole Arbitrator for adjudication of the disputes that have arisen between the

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parties under the Memorandum of Understanding (hereinafter referred to as 'MOU' for short) dated 27.04.2025, particularly in terms of Clause 11 thereof, produced at Annexure-A.

2. The brief facts of the case are that the petitioner, a registered partnership firm, intended to take the respondent society's premises bearing Door Nos.4-7-719 and 4-7-719/1, measuring approximately 3,500 sq. ft., situated at M.G. Road, Kodialbail, Mangaluru, on lease for commercial purposes for a period of 10 years. However, since the respondent did not possess the requisite E-Khata for registration of the lease deed, the parties entered into a MOU dated 27.04.2025, recording the mutually agreed terms for the proposed 10-year lease. Thereafter, as an interim arrangement, the parties entered into a lease agreement dated 17.06.2025 for a period of 11 months and the petitioner was put in possession of the premises. The petitioner claims to have undertaken renovation works in the premises on the assurance of the proposed 10-year

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lease. Subsequently, following a change in the office bearers of the respondent society, the newly appointed office bearers, disputing the binding nature of the MOU and the lease agreement executed by the erstwhile office bearers, issued a letter dated 27.01.2026 and legal notice dated 28.01.2026 calling upon the petitioner to vacate and surrender the premises, which resulted in a dispute between the parties. Subsequently, disputes arose between the parties in relation to the said MOU.

3. As the disputes arose between the parties, the petitioner, invoking the arbitration clause contained in the MOU, issued a notice dated 10.06.2026, vide Annexure-K, to the respondent under Section 21 of the Act. The said arbitration clause 11 reads as under:

> *"11. Arbitration and Dispute Resolution*
>
> *11.1. Any dispute or difference arising out of or in connection with this MOU shall be resolved through Arbitration in accordance with the provisions of the Arbitration and Conciliation Act, 1996, as amended from time to time.*

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11.2. The Arbitration shall be conducted by a sole arbitrator, mutually appointed by the parties.

11.3. The seat and venue of Arbitration shall be Mangaluru, and the Arbitration proceedings shall be conducted in English."

4. The respondent sent a reply dated 26.06.2026 vide Annexure-L to the said notice. Being dissatisfied with the reply, the present petition is filed seeking appointment of a sole Arbitrator.

5. Learned counsel appearing for the respondent contended that the President, Sri. Avinash Gokul Rao, who executed the MOU on behalf of the respondent-Society, was not an authorised person and had no authority to enter into such an agreement or undertake to execute a lease deed in favour of the petitioner. It is further contended that no resolution has been passed by the respondent-Society authorising him either to execute the MOU or to execute the registered lease deed in favour of any person. He further contended that the MOU is an

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unregistered document and, therefore, the same cannot be enforced in law. It is also contended that the petitioner has already instituted a suit for injunction against the respondent-Society in O.S.No.218/2026 before the Civil Judge, Mangaluru. In support of his contentions, he relied upon the judgment of Hon'ble Apex Court in the case of ***Suraj Lamp & Industries Pvt. Ltd. vs. State of Haryana & Anr.*** in ***Special Leave Petition (C) No.13917 of 2009*** and also judgment of this Court in ***MFA No.1242/2025 disposed of on 21.04.2025.*** On these grounds, learned counsel sought for dismissal of the petition.

6. Heard the learned counsel for the parties. Perused the petition papers.

7. It is not in dispute that Sri. Avinash Gokul Rao, claiming to be the President of Vaishya Education Society, entered into a MOU with the petitioner on 27.04.2025, undertaking to execute a registered lease deed in respect of the schedule premises for a period of ten years on or

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before 30.06.2025. Since the registered lease deed was not executed in favour of the petitioner, the petitioner invoked the arbitration clause contained in the said MOU and has filed the present petition seeking appointment of a sole arbitrator.

8. The contentions raised by the respondent that the MOU is not registered as required under Section 17 of the Registration Act, 1908, and that the same cannot be enforced in law, as well as the contention that Sri. Avinash Gokul Rao had no authority to execute the MOU or undertake to execute the registered lease deed in favour of the petitioner in the absence of any resolution passed by the respondent-Society, are all matters which can be urged before the learned Arbitrator. This Court, while exercising jurisdiction under Section 11(5) and (6) of the Arbitration and Conciliation Act, 1996, cannot undertake an adjudication of those disputed contentions at this stage.

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9. Having regard to the existence of the arbitration clause contained in the MOU, which provides for resolution of disputes arising between the parties, and the fact that the petitioner has duly invoked the said arbitration clause by issuing notice under Section 21 of the Act, this Court is of the opinion that a Sole Arbitrator is required to be appointed for adjudication of the disputes between the parties.

10. Accordingly, the following:

ORDER

a) Civil Miscellaneous Petition is **allowed**.

b) Mr.Moosa Kunhi Nayarmoole, retired District Judge is appointed as the Sole Arbitrator in the present case to arbitrate the disputes between the parties at Mangaluru.

c) All the claims and contentions of the parties are left open.

d) Registry is directed to communicate this order via e-mail to the learned Sole Arbitrator.

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e) Registry is directed to return all the original documents produced by any of the parties after obtaining Photostat copies of the same.

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(H.T. NARENDRA PRASAD)
JUDGE

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LIST NO.: 1 SL NO.: 22