(2026:HHC:50849)

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

FAO (OS)No. 29 of 2025
Reserved on: 27.10.2026
Pronounced on: 25.11.2026
Uploaded on: 25.11.2026

Dile Ram Thakur and another ***…..Appellants***

Vs.

M/s B.T.C. Kullu Hospital and Others ***...Respondents***

Coram:

The Hon'ble Mr. Justice G.S. Sandhawalia, Chief Justice.
The Hon'ble Mr. Justice Bipin Chander Negi, Judge.

Whether approved for reporting?

For the appellants : Mr. Mohinder Verma and Mr. Digvijay Singh, Advocates.

For the respondents: Mr. Ajay Kumar Sood, Senior Advocate with Mr. Vinay Kumar Thakur, Advocate.

G.S. Sandhawalia, Chief Justice.

The present Appeal has been filed by the appellants/defendants in ***Civil Suit No.37 of 2024,*** titled as ***M/s B.T.C. Kullu Valley Hospital, LLP and Others Vs. Dile Ram Thakur and Others,*** challenging the order dated 09.07.2025, passed by the learned Single Judge in OMP No.879 of 2024 (in Civil Suit No. 37 of 2024). By the impugned order, the learned

Single Judge has dismissed the application filed under Section 8 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as ‘the Act’) and rejected the prayer to refer the matter to arbitration, and issued directions for filing a written statement.

2. The reasons that weighed with the learned Single Judge in dismissing the application were that the lease deed executed on 05.04.2021 on the basis of which the claim was made, did not constitute a valid arbitration agreement, as the language used therein was vague, highly cryptic, and unenforceable. Furthermore, clause 4 (g) of the lease deed did not, in any manner, indicate that the parties intended to enter into an arbitration agreement within the meaning of Section 7 of ‘the Act’. Additionally, the said lease deed was for a period of 20 years and remained unregistered; therefore, it could not be sustained under the prevalent law, and the requisite legal formalities were missing from the documents attached to the original record.

Arguments for the counsel of the appellants:-

3. Counsel for the appellants argued that once the parties had agreed to arbitration, the learned Single Judge was not justified in rejecting the application, as Section 7 of 'the Act' is very widely worded and contains no such bar. He also referred to the judgment of the Constitution Bench of the Apex Court in ***In Re:***

Interplay Between Arbitration Agreements under the Arbitration and Conciliation Act, 1996 and the Indian Stamp Act, 1899, (2024) 6 SCC 1, in this context.

Arguments for counsel of the respondents:-

4. Counsel for the respondents on the other hand, has opposed the appointment of the Arbitrator primarily on the ground that the dispute falls beyond the terms of the lease deed and, therefore, it has been decided independently. Relying upon the judgments of the Apex Court in ***Anthony Vs. K.C. ITTOOP & Sons and Others (2000) 6 SCC 394*** and **Sevoke Properties Private Ltd. Vs. West Bengal State Electricity Distribution Company Ltd.**, ***(2020) 11 SCC 782,*** he further argued that the dispute was not liable to be referred to arbitration and that the order passed by the learned Single Judge was justified.

Background of the dispute:-

5. A perusal of the record of the Civil Suit would go on to show that the plaintiffs had filed a Civil Suit seeking a decree for a mandatory injunction directing the defendants to hand over the machinery, equipments and other items (as per **Annexure PA** filed with the plaint) lying in the building situated on the land comprised in Khata Khatauni No. 122/148, Khasra Nos.2682 and 2683, measuring 0-14-37 hectares, located in Muhal Baragran, Phati

Baragran, Kothi Baragran, Tehsil Manali, District Kullu (earlier known as BTC Kullu Valley Hospital). Furthermore, the plaintiffs sought a decree for the recovery of Rs.1,87,50,839/- on account of damages and loss of business, along with a decree for a permanent prohibitory injunction restraining the defendants from damaging, removing, or shifting the said machinery, equipments, and furniture from the suit premises in any manner. In the alternative, the plaintiffs sought the recovery of Rs.60,00,000/- under Section 40 of the Specific Relief Act, 1963, in case the defendants failed to hand over the said items.

6. The said suit was based on an alleged document dated 05.04.2021, styled and titled as a “Lease Deed,” whereby a three-storeyed building constructed upon the land comprised in Khata Khatauni No.122/148, Khasra Nos.2682 and 2683, measuring 0-14-37 hectares, situated at Muhal Baragran, Phati Baragran, Kothi Baragran, Tehsil Manali, District Kullu, was purportedly given on rent to Plaintiff No.1 for a period of 20 years at a rent of Rs.25,50,000/- per annum. An amount of Rs.51,00,000/-, on account of rent for two years, was also paid in advance to Defendant No.1 by the plaintiffs, with the rental period scheduled to commence from 01.08.2021. It was averred that it is an admitted position that a lease for a period exceeding one year

is compulsorily registered under Section 107 of the Transfer of Property Act and Sections 17 and 49 of the Registration Act, and is also required to be stamped with the requisite stamp duty under the Himachal Pradesh Stamp Act. However, the said document was drawn only on a stamp paper of Rs. 100/- and is unregistered; therefore, the said writing was stated to be of no legal consequence, being contrary to the mandatory provisions of law, and could not be termed as a legal and valid lease deed. Thereafter, upon taking possession of the said building under the aforesaid writing dated 05.04.2021, Plaintiff No.1 allegdly spent a huge amount of money on civil works in the basement to construct a proper Operation Theatre (O.T.), casualty room, general ward, etc., and also provided other furnishings and fittings in the building as required for a hospital, spending a total amount of Rs.24,63,308/- on such civil works, furnishings, repairs, and renovations. As per the terms of the said deed, in the event the premises are rendered unusable due to floods, any other natural calamity, force majeure, or *vis major* (act of God), the plaintiffs would be entitled to terminate the said agreement.

7. A notice is stated to have been received from the Himachal Pradesh State Electricity Board Limited on 31.01.2022 threatening to cut off the electricity connection to the building, as

the said building required a change of land use certificate from the Department of Town and Country Planning, which was supposed to have been obtained by Defendant No.1, being the owner of the said building. Similarly, a notice dated 25.05.2022 was also received from the State Bank of India, Patlikuhal, District Kullu, informing them that the building in question was mortgaged with the said Bank and could not be leased out without the prior permission of the Bank, and that they would take over physical possession of the building at any time under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to known as 'SARFAESI Act, 2002') Thereafter, the plaintiffs received another notice dated 20.06.2023 from the State Bank of India, Patlikuhal, informing them that the loan account of Defendant No.1 with the State Bank of India had become an NPA, and that they had initiated action under Section 13 of the 'SARFAESI Act, 2002' against the said property.

8. A devastating flood is stated to have occurred during the nights of 08.07.2023 to 10.07.2023 in the Beas Valley between Manali and Kullu, as a result of which a large part of the highway was also washed away, and the floodwater entered the basement portion of the building housing the casualty ward, OT, general

ward, and other offices of the hospital, causing loss and damage to the extent of Rs.15,00,000/- to Rs.16,00,000/- to the plaintiffs. Water even started oozing out of the basement floor of the building, as the building was constructed on marshy land and was not fit for a hospital. Therefore, vide a legal notice dated 26.07.2023 issued by the plaintiffs through counsel, Defendant No.1 was informed that, in view of the said developments, the plaintiffs were not interested in continuing to retain the said building as tenants and had put an end to the said agreement purporting to be a lease deed. The same was replied to on 21.08.2023 by the defendants' counsel, objecting to the said notice as being baseless.

9. It is alleged that on 29.09.2023, the plaintiffs were in the process of shifting their medical equipment and furniture from the said building when Defendant No.2 illegally and forcibly trespassed into the building, locked the doors, took possession, and prevented the plaintiffs from vacating the building and removing their plant, equipment, and machinery, etc. Resultantly, a criminal complaint dated 06.10.2023 was filed with the S.H.O., Police Station Dhalpur, Kullu, informing him that Defendant No.2 had illegally trespassed into the building and forcibly stopped the plaintiffs from taking out the hospital equipment and machinery by

locking the main gates. Furthermore, three days after the initial incident, on 02.10.2023, the said Defendant No.2 also forcibly took the keys to rooms containing vital equipment, including the ultrasound machine, X-ray machine, and OT equipment, along with anaesthesia drugs. The police were also informed that the OT and X-ray equipment housed many hazardous materials that could be dangerous or misused without medical supervision. However, due to the political clout of the defendants in the area, the police had failed to take any legal action against them, and a reminder regarding their complaint was subsequently sent to the Superintendent of Police, Kullu, on 23.02.2024.

10. It was in such circumstances that the loss was suffered, as the building had been lying in an uncared-for condition since 29.09.2023, when it was forcibly locked by the defendants. Additionally, the decommissioning of the ultrasound machine was carried out on 08.11.2023 as per the orders passed by the Chief Medical Officer, Kullu, Himachal Pradesh.

11. The legal notice dated 19.04.2024 was served upon the defendants to shift the entire material, and the same was responded to on 17.05.2024, leading to the filing of the suit. After notice was issued in the suit on 21.06.2024, the defendants put in an appearance on 19.07.2024. They took time to file their written

statement as well as a reply to the application filed under Order 39 Rules 1, 2, and 7, read with Sections 94 and 151 of the CPC, along with a prayer under Order 26 Rule 9 of the CPC requesting for the appointment of a Local Commissioner or Receiver.

12. Thereafter, on 27.09.2024, OMP No.879 of 2024 was filed by the defendants under Section 8 of 'the Act', seeking to refer the dispute involved in Civil Suit No.37 of 2024 to arbitration. They submitted that the written statement had not been filed in view of the arbitration clause provided in the lease deed dated 05.04.2021. On 14.11.2024, the plaintiffs had filed a reply to OMP No.879 of 2024, taking the plea that the application was neither maintainable nor competent due to the non-registration of the lease deed, and that it could not be looked into even for collateral purposes. They further contended that the jurisdiction of this Court could not be excluded by any agreement, as under the law, all suits exceeding the pecuniary jurisdiction of Rupees One Crore can only be filed in this Court, and therefore, the matter was not liable to be referred to arbitration.

13. Resultantly, the impugned order was passed by the learned Single Judge, as noticed above, listing the application for 09.07.2025 for the reasons stated therein, noting that there was a cryptic clause regarding the intentions of the parties and that the

document was neither registered nor properly stamped. It is in these circumstances that the present appeal has been filed, which, in our considered opinion, is liable to be allowed.

Reasons for allowing the appeal:-

14. A perusal of Section 7 of 'the Act', which pertains to **'Arbitration Agreement'** would go on to show that it is very widely worded and the intention of the parties has to be kept into consideration, and an arbitration agreement may be formed through documents signed by the parties, an exchange of letters, telexes, telegrams, or other means of telecommunication (including electronic communications) that provide a record of the agreement or via an exchange of statements of claim and defense in which the existence of the agreement is alleged by one party and not denied by the other. Clause 4 (g) of the lease deed dated 05.04.2021 reads as under:-

> *"The validity, construction and performance of this lease deed shall be governed and interpreted in accordance with laws of India and all instances for which the (Indian) Arbitration and Conciliation Act, 1996 permits application to the Court for injunctive relief, the Courts of Manali shall have exclusive jurisdiction".*

15. Apparently, the intention of the parties in reading Clause 4 (g) of the lease deed dated 05.04.2021 was that a

procedure under 'the Act' would be used to seek injunctive relief, as is also provided in the statute.

16. It is not disputed that under Section 9 which relates to **'Interim measures, etc. by Court'** of 'the Act', interim measures can be issued by the Court before or during arbitral proceedings or at any time after the making of the arbitral award, the preservation, interim custody or sale of any goods which are the subject-matter of the arbitration agreement. Section 9 of 'the Act' reads as under:-

> *"**9. Interim measures, etc. by Court.-**[1][1] A party may, before or during arbitral proceedings or at any time after the making of the arbitral award but before it is enforced in accordance with section 36, apply to a court-*
>
> *(i) for the appointment of a guardian for a minor or a person of unsound mind for the purposes of arbitral proceedings; or*
> *(ii) for an interim measure of protection in respect of any of the following matters, namely:-*
> *(a) the preservation, interim custody or sale of any goods which are the subject-matter of the arbitration agreement:*
> *(b) securing the amount in dispute in the arbitration;*
> *(c) the detention, preservation or inspection of any property or thing which is the subject-matter of the dispute in arbitration, or as to which any question may arise therein and authorising for any of the aforesaid purposes any person to enter upon any land or building in the possession of any party, or authorising any samples to be taken or any observation to be made, or experiment to be tried, which may be necessary or expedient for the purpose of obtaining full information or evidence;*
> *(d) interim injunction or the appointment of a receiver;*

> *(e) such other interim measure of protection as may appear to the court to be just and convenient, and the Court shall have the same power for making orders as it has for the purpose of, and in relation to, any proceedings before it.*
> *[1][(2) Where, before the commencement of the arbitral proceedings, a Court passes an order for any interim measure of protection under sub-section (1), the arbitral proceedings shall be commenced within a period of ninety days from the date of such order or within such further time as the Court may determine.]*
> *[1][(3) Once the arbitral tribunal has been constituted, the Court shall not entertain an application under sub-section (1), unless the Court finds that circumstances exist which may not render the remedy provided under section 17 efficacious.]*

17. The reasoning of the learned Single Judge that the document is not duly stamped or registered, is squarely covered by the judgment of the seven-Judge Constitution Bench of the Apex Court in ***In Re: Interplay's case*** *(supra),* which addressed whether unstamped documents are non-existent, unenforceable, or invalid. Accordingly, the Apex Court kept in mind the principles of arbitral autonomy and minimal judicial interference, recognizing that 'the Act' is a self-contained code and that judicial interference under it, has to be limited. The Apex Court further held that 'the Act' is a special law, whereas the Indian Contract Act and the Indian Stamp Act are general laws, and resultanlty, expressly overruled its earlier view. It has also held that it is for the Arbitral Tribunal to examine whether the requirements of a valid contract

and a valid arbitration agreement under 'the Act' are met, and that the Tribunal possesses full jurisdiction to determine all questions and issues in dispute between the parties. Moreover, the Apex Court held that Courts are not required to adjudicate the issue of stamping at the stage of granting interim measures under Section 9 of 'the Act'. The relevant portion of the Constitution Bench's conclusion is summarized below:-

> *"224.*
> *(a) Agreements which are not stamped or are inadequately stamped are inadmissible in evidence under Section 35 of the Stamp Act. Such agreements are not rendered void or void ab initio or unenforceable;*
> *(b) Non-stamping or inadequate stamping is a curable defect;*
> *(c) An objection as to stamping does not fall for determination under Sections 8 or 11 of the Arbitration Act. The concerned court must examine whether the arbitration agreement prima facie exists;*
> *(d) Any objections in relation to the stamping of the agreement fall within the ambit of the arbitral tribunal; and*
> *(e) The decision in NN Global 2 (supra) and SMS Tea Estates (supra) are overruled. Paragraphs 22 and 29 of Garware Wall Ropes (supra) are overruled to that extent."*

18. Justice Sanjiv Khanna, as he was then, also delivered a separate judgment regarding the issue, referring to Sections 7 and 16 of 'the Act' and agreeing with the conclusion of the then Chief Justice of India, Justice D.Y. Chandrachud. He noted that Section 23 of the Indian Contract Act applies only if the object of

the agreement is forbidden by law, and thus an unstamped or insufficiently stamped agreement does not fall foul of public policy merely on the ground of insufficient consideration.

19. In ***Walter Bau AG Vs. Municipal Corporation of Greater Mumbai and Another (2015) 3 SCC 800,*** the issue was that the second Arbitrator was to be appointed by the Corporation, and the third Arbitrator was to be chosen as per the Agreement. Thereafter, the matter was referred to the International Centre for Alternative Dispute Resolution in India (for short, "ICADR") for the appointment of an Arbitrator on behalf of the party that failed to act, or for the appointment of the third Arbirtrator, as the case may be. The "ICADR" is governed by specific norms contained in Rules 5 and 35 of the "ICADR" Rules, 1996, which govern the procedure for appointing Arbitrators. However, the "ICADRS's" power to make an appointment from a panel of three names, does not include an independent right to appoint an outside arbitrator, which was nevertheless done. This procedure was objected to as being *non est* in law and contrary to the agreed procedure, since the appointment could only have been made from the panel. Resultantly, the appointment of the retired Judge was set aside, and a fresh appointment was made by the Apex Court. Thus, it is

apparent that sanctity has to be given to the Agreement *inter se* the parties.

20. The consistent view is that the primacy of the Agreement, along with the fact that the parties have resolved to submit their dispute under 'the Act,' renders it self-contained. Furthermore, it has been held that party autonomy in making an arbitration agreement is an essential feature of arbitration. Reliance can be placed upon the Constitution Bench judgment of the Apex Court in ***Central Organization for Railway Electrification vs. ECI SPIC SMO MCML (JV), (2025) 4 SCC 641,*** wherein it was held that party autonomy is the brooding and guiding spirit of arbitration, and therefore, there must be restraint on judicial intervention. The relevant paragraphs read as under:

> *"288.2. Party autonomy in making of an arbitration agreement is an essential feature of arbitration. It commences with choosing the members of the Arbitral Tribunal, extends to the procedure that would apply for its conduct, and concludes with the method by which an award could be challenged before a court. It is thus a brooding and guiding spirit of arbitration. Party autonomy is sufficiently incorporated in the Arbitration Act, along with a restraint on judicial intervention.*
>
> *288.3. to 288.5. x x x x x x x*
>
> *288.6. The power to ensure that the arbitration agreement is complaint of the public policy requirement of establishing an independent and impartial tribunal is always of the Court. This principle is recognised and statutorily incorporated in the Contract Act and the Arbitration Act. It is the duty*

> *of the Court to ensure that the arbitration agreement inspires confidence and it will enable establishment of an independent and impartial Arbitral Tribunal.*
>
> *288.7. Neither public policy considerations under the Contract Act or the Arbitration Act restrain the parties to the arbitration from maintaining a panel of arbitrators in any manner. However, arbitration agreements enabling one of the parties to unilaterally constitute Arbitral Tribunal do not inspire confidence of independence and may violate the public policy requirement of constituting an independent and impartial tribunal. The Court will, therefore, scrutinise the agreement and hold them to be invalid if it considers it appropriate."*

21. In such circumstances, we are of the considered opinion that the reliance placed by the counsel for the respondents on the Apex Court's judgment in ***Anthony's case*** *(supra)* would not be of much help, as that decision specifically concerned tenant protection under the Kerala Buildings (Lease and Rent Control) Act, 1965 (the 'Rent Act'). Resultanlty, it was held that once the 'Rent Act' came into force, the eviction of a statutory tenant could only be considered upon an application filed before the concerned Rent Control Court.

22. Similarly, regarding the judgment of the Apex Court relied upon in the ***Sevoke Properties Private Limited case*** *(supra),* as to whether an unregistered lease deed exceeding one year is inadmissible in evidence to determine the terms of the contract, or whether it can be looked into to assess the nature and

character of possession, the Apex Court allowed the appeal and directed that the landlord be put in possession, thereby restoring the judgment of the trial court (which had granted vacant and peaceful possession) and setting aside the interference of the Division Bench of the Calcutta High Court in allowing the tenant's appeal.

23. In sum and substance, as noticed, it is the plaintiff's own case that he was put in possession of the property based on a lease deed for a period of twenty years. Under this agreement, he was liable to pay a rent of Rs.25,50,000/- and had also given a sum of Rs.50,00,000/- in advance to the defendants. However, his possession was duly interfered with by the defendants, and his medical equipment is still lying inside the building in question, which the defendants have locked. Furthermore, securitization proceedings were initiated regarding the building, and even the change of land use for the building had not been processed or completed by the landlord, who had taken possession of the building along with medical equipment lying in it.

24. In such circumstances, the suit has been filed seeking not only a decree for a mandatory injunction directing the defendants to hand over the machinery, equipment, and furniture, but also the recovery of an amount on account of damages and, in

the alternative, a further set of damages, if the equipment and machinery are not handed over.

25. We are of the considered opinion that this kind of dispute could be easily resolved by referring the matter to an Arbitrator in terms of the agreement executed *inter se* the parties. Furthermore, interim directions could also be passed by the Arbitrator to resolve the issue at the earliest, rather than protracting the dispute through a long round of litigation by way of a Civil Suit. The lease deed was unfortunately drafted at a Tehsil level by the Notary Public at Manali and the relevant clause may not have been rightly worded but the intention of the parties is to be seen as there is a positive reference to the 1996 Act, in the same. Section 7 of 'the Act' also provides that a agreement can be a document signed by parties and exchange of telex/telegrams. The same reads as under:-

> *"**7. Arbitration agreement.**-(1) In this Part, "arbitration agreement" means an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not.*
> *(2) An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement.*
> *(3) An arbitration agreement shall be in writing.*
> *(4) An arbitration agreement is in writing if it is contained in-*
> *(a) a document signed by the parties;*

> *(b) an exchange of letters, telex, telegrams or other means of telecommunicatoin [1][including communication through electronic means] which provide a record of the agreement; or*
> *(c) an exchange of statements of claim and defence in which the existence of the agreement is alleged by one party and not denied by the other.*
> *(5) The reference in a contract to a document containing an arbitration clause constitutes an arbitration agreement if the contract is in writing and the reference as such as to make that arbitration clause part of the contract."*

26. An application for the appointment of a Local Commissioner or Receiver was also moved, which can easily be facilitated by the Arbitrator.

27. In such circumstances, we are of the considered opinion that the reasoning given by the learned Single Judge was not justified and lost sight of the fact that, in sum and substance, the autonomy of the arbitration agreement had to be upheld rather than subjecting the parties to protracted litigation by way of a Civil Suit.

28. Accordingly, we are of the considered opinion that the appeal is liable to be allowed, and the application under Section 8 of 'the Act' filed by the defendants was sustainable and liable to be allowed.

29. Resultantly, we set aside the order dated 09.07.2025 and, while exercising our appellate power, appoint Ms. Justice

Sabina, former Judge of this Court, R/o House No. 1842, Sector-34 D, Chandigarh (Mobile No. 9780008138), as the Arbitrator to adjudicate the dispute in order to shorten the litigation and avoid subjecting the parties to another round of proceedings by filing an application under Section 11(6) of 'the Act'.

30. After her disclosure in writing is obtained in terms of Section 11(8) of the Act and only after receipt thereof, his appointment, as an Arbitrator, shall come into force.

31. On her giving consent to arbitrate the dispute between the parties as an Arbitrator, Hon'ble Ms. Justice Sabina shall enter into reference, and shall pass an award in accordance with law.

32. Copy of this order be furnished to the learned counsel for the parties and also be furnished to the learned Arbitrator. The learned Arbitrator so appointed shall be entitled to fee as per stipulation contained in 4th Schedule appended to the Arbitration, and Conciliation Act, 1996.

33. It is further directed that the Arbitrator after the proceedings are concluded, shall send the record to the Registrar (Judicial) for keeping the same in safe custody, since the challenge is liable to be raised under the provisions of the Arbitration Act to the award in question and it would be in the

interest of justice to preserve the record, whereby the Arbitrator as such has been appointed by this Court.

34. Accordingly, the present appeal is disposed of along with pending miscellaneous application(s), if any.

(G.S. Sandhawalia)
Chief Justice

(Bipin Chander Negi)
Judge

25th November, 2026
(Munish Thakur)