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O.S.A.Nos.21 & ---

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.06.2026

Coram:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN
and
THE HONOURABLE MRS. JUSTICE K.GOVINDARAJAN THILAKAVADI

O.S.A.Nos.21 & 22 of 2026 and
C.M.P.Nos.7918, 7922, 7932 & 7945 of 2026

1. S.Devaraj
S/o.Late Sri.D.Sabarinathan

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

...Appellants in both the Appeals

Vs.

M/s.Secular Trust,
Represented by its Sole Managing Trustee
and Administrator Mr.D.Indrajith,
also known as Mr.D.Ajith,
S/o.Mr.R.Devdas,
Door No.29/14, III Main Road,
R.A.Puram, Chennai – 600 028.

... Respondents in both the Appeals

Prayer: These Original Side Appeals has been filed under Clause 15 of Letters Patent and under Order XXXVI Rule 9 of Original Side Rules, to set aside the order dated 25.11.2025 in Application No.4080 of 2025 and the order in A.No.1309 of 2025 on the file of this Court, by directing the parties to arbitral mechanism as agreed in terms of MoU and to the effect “giving liberty to the respondent to take appropriate steps to sell the property to third parties in accordance with law, respectively.



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For Appellants : Mr.Srinath Sridevan, Senior Counsel for
Mr.M.Sriram – in both the Appeals

For Respondents : Mr.A.R.Ramanathan for Mr.A.B.Rajasekar
- in both the Appeals

COMMON JUDGMENT

(Judgment of the Court was made by P.VELMURUGAN, J.)

The appellants are the President and Vice President of Annai Veilankanni's Educational and Cultural Society, a Society registered under the Tamil Nadu Societies Registration Act, which is running educational institution for a nominal cost primarily to poor, deserving and downtrodden students. In order to avoid urban land ceiling acquisitions, the respondent-Trust, who is the owner of the larger extent of lands situated in Saidapet, Chennai, approached the appellant to commence educational institutions on their land. Therefore the petitioner took the vacant land from the respondent trust under lease and commenced educational institution to impart education to the downtrodden and deserving candidates.

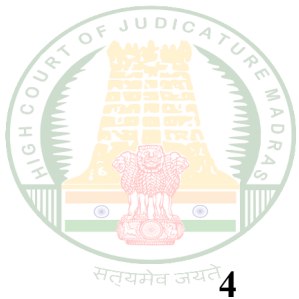
2 The respondents filed O.P.No.682 of 2016, seeking to sell the portion of lands held by the Trust, in which, the appellants filed objections before the Advocate Commissioner appointed by the Court. The appellants also filed impleading petition and the same was allowed. Thereafter to resolve the issues, the parties have entered into



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Memorandum of Understanding dated 15.06.2019, wherein it was mutually agreed that the appellant shall purchase the property described as Schedule “C” property in MoU for a total sale consideration of Rs.20.50 Crores and the appellants initially paid Rs.3.00 Crores and surrendered possession of Schedule “D” property as per the MoU and thereby the MoU had been partly acted upon. Thereafter O.P.No.682 of 2016 was disposed of on 08.8.2019 directing the parties to complete sale transaction within eleven months. The appellant has not paid the amount and purchased the property and citing the same, the respondents filed A.No.1309 of 2025 seeking to recall the earlier order dated 08.08.2019 to enable the respondent to sell the property to third party. This Court, vide order dated 25.11.2025, while refusing to recall the earlier order dated 08.08.2019, granted liberty to the respondents to take appropriate steps to sell the property to third parties in accordance with law. Further the appellants also filed an Application No.4080 of 2025 seeking to refer the matter to arbitral mechanism, which was dismissed by the learned Single Judge vide order dated 25.11.2025.

3 Aggrieved against the grant of liberty to the respondents to sell the property to third parties and dismissal of application filed by the appellants under Section 8 of the Act and to refer the matter to the arbitration, the appellants are before this Court.



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4 Mr.Srinath Sridevan, learned Senior Counsel for the appellants would contend that the respondent-Trust leased out the properties held by the Trust to the appellants. After various disputes and legal proceedings, the appellant and the respondent have entered into MoU dated 15.06.2019 to purchase the portion of properties held by the respondent-Trust and the appellant initially paid Rs.3.00 Crores as advance and subsequently surrendered possession of 'D' Schedule property to the respondent-Trust as per the MoU. Thereafter the respondent-Trust filed a petition in O.P.No.682 of 2016 seeking to sell the portion of properties held by the Trust, in which an Advocate Commissioner was appointed and the appellants submitted their objections and impleaded themselves as party in the said petition. Thereafter, this Court vide order dated 08.08.2019, directed the parties to complete the sale transaction within eleven months. Thereafter due to Covid-19 pandemic, the appellants could not complete payment of balance sale consideration and it is also an admitted fact that both parties engaged in continuous negotiations regarding extension of time.

4.1 While the facts being so, to the utter shock, the respondent-Trust filed A.No.1309 of 2025 curiously in the year 2025 seeking recall of the order dated 08.08.2019 passed in O.P.No.682 of 2016. The appellants, as its first instance of their



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pleading, had invoked Section 8 of Arbitration and Conciliation Act, 1996, (in short “the Act”) by filing application in A.No.4080 of 2025 and the learned Single Judge, by order dated 25.11.2025, disposed of the application by observing that main Original Petition has been disposed of and mere pendency of application to recall, cannot be a ground to invoke Section 8 of the Act.

4.2 The MoU dated 15.06.2019 entered into between the parties is a distinct and independent contract containing a valid arbitration clause, which survives after the disposal of O.P.No.682 of 2016 and the disputes arising under the said MoU are required to be resolved through arbitration in terms of Clause 9 thereof. It is to be noted that the respondent acknowledging the fact that the MoU was acted upon, sent a notice dated 10.07.2020 demanding payment of balance amount with simple interest, which itself clearly proves that time was not the essence of contract in order to deny the arbitration clause and that the MoU continued to subsist. Therefore as per the Clause 9 of MoU, disputes, if any, arising therefrom could only be adjudicated in arbitration.

4.3 The learned Single Judge failed to appreciate that once Section 8 application is filed, it is an obligation on the Court to mandatorily refer the parties to arbitration as held by the *Hon'ble Supreme Court* in the case of *Hindustan Petroleum*



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Corporation Vs. Pink City Midway Petroleum reported in 2003 (6) SCC 503. Further the main dispute is that is there any justifiable reason for non payment of balance sale consideration by the appellants. The Hon'ble Supreme Court in its decision rendered in the case of Hema Katar Vs. Shiv Kera reported in 2017 (7) SCC 716 held that if there is an arbitration clause, which is valid and agreed between the parties, the Court has no jurisdiction to continue the suit or other application and bound to refer the parties to arbitration under Section 8 of the Act. The respondents filed the application in A.No.1309 of 2025 seeking recall of the order dated 08.08.2019, raising various allegations against the appellants, which are all covered under the terms of MoU and there arose the disputes, which are all arbitrable.

4.4 The appellants, as per the MoU, paid Rs.3.00 Crores and surrendered valuable possession of the land in Schedule "D" and the respondent also subsequently sold the same and enjoyed the monetary benefits. Further after the order in O.P.No.682 of 2016 dated 08.08.2019, the respondent sent notice dated 10.07.2020 demanding the payment of balance amount, which facts are all proves that even after the order passed in the above Original Petition, the MoU continued to subsist. The learned Single Judge failed to appreciate above facts and dismissed the application filed by the appellants under Section 8 of the Act and also erred in granting liberty to the respondent-Trust to



sell the properties to the third parties, which needs serious interference of this Court. To support his contentions, the learned Senior Counsel relied on many of the judgments of Hon'ble Supreme Court and other High Courts contending that once there is valid arbitration clause, a judicial authority must refer the matter to arbitration.

5 Learned counsel for the respondent-Trust would contend that the respondent-Trust filed Original Petition in O.P.No.682 of 2016 seeking to sell the properties of the Trust, to which, the appellants raised objections and were impleaded as parties and subsequently there was an MoU between the appellant and the respondents-Trust to purchase the properties held by the respondent-Trust, in which the appellants were in possession under the capacity of lessee. The appellants paid Rs.3.00 Crores as advance and thereafter no payment was made, even after several demands to pay the amount as ordered by this Court. Therefore since the respondent-Trust could not sell the properties to third parties, filed Application No.1309 of 2025 seeking recall of order dated 08.08.2019 and pending this Application, the appellants also filed Application No.4080 of 2025 under Section 8 of the Act seeking to refer the matter to arbitration.

5.1 The learned Single Judge, refused to refer the matter to arbitration and dismissed the application filed by the appellant vide order dated 25.11.2025 and further



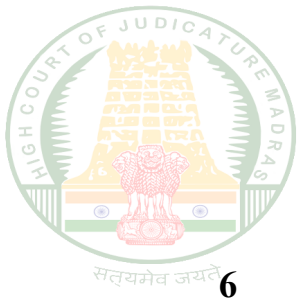
while refusing to recall the order dated 08.08.2019, granted liberty to the respondent-Trust to sell the properties to third parties in the manner known law.

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5.2 Once the Civil Court passed the judgment/order, the MoU, which is only an enabling agreement, cannot stand on its own leg and the same dies. Therefore after the Court passed the order dated 08.08.2019, the appellants cannot invoke Section 8 of the Act and seek reference to arbitration. Further, power of the Civil Court under Section 34 of the Indian Trusts Act, 1882, cannot be snatched away from the Civil Court and given to the Arbitration. To support his contention, the learned counsel for the respondent relied on the following judgments:

1. *Vimal Kishor Shah vs. Jayesh Dinesh Shah* (2016) 8 SCC 788
2. *Dr.Bina Modi vs. Lalit Kumar Modi* 2020 SCC Online Del 1678
3. *Emaar Mgf Land Ltd., vs. Aftab Singh* (2019) 12 SCC 751

5.3 Therefore even though the learned Single Judge refused to recall the order dated 08.08.2019 as sought by the respondent-Trust, rightly rejected the relief of referring the matter to Arbitration as sought for by the appellant. Therefore there is no reason to interfere with the orders of the learned Single Judge and the appeals are liable to be dismissed.



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6 We have heard the learned Senior Counsel appearing for the appellants and the learned counsel for the respondent and perused the materials on record.

7 It is the main contention of the learned Senior Counsel for the appellants that once there exists valid arbitration clause, the Judicial Authority must refer the matter to arbitration and in this case even though the Court passed the order on 08.08.2019, the same will not take away the rights of the appellants to seek reference for arbitration.

8 Per contra, it is contention of the learned counsel for the respondent-Trust that once the Civil Court passed the order, the MoU, which is basis for arbitration, goes out and the parties cannot invoke arbitration clause.

9 Admittedly there was an MoU between the parties to purchase the properties held by the respondent-Trust, which is containing arbitration clause. The learned Single Judge, in the order dated 08.08.2019, referred to the MoU. The first appellant herein was examined as R.W.1 before the learned Single Judge and after full contest by both the parties, the learned Single, vide order dated 08.08.2019 allowed the

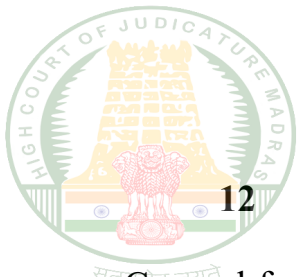


respondent-Trust to sell the 'C' Schedule property to the appellants for a sale consideration of Rs.20.5 Crores and granted time till 15.05.2020 to complete the sale.

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10 Thereafter, since the appellants have not paid the sale consideration as ordered by the learned Single Judge, the respondent-Trust filed Application No.1309 of 2025 seeking recall of the order dated 08.08.2019, even though the learned Single Judge refused to recall the said order, granted liberty to the respondent-Trust to sell the properties to third parties in accordance with law.

11 In our considered view once the Civil Court passed order based on the alleged MoU, arbitral proceedings, based on the same MoU cannot be invoked. If at all the appellants wants to agitate their dispute before the Arbitration, they should have filed an application at the initial stage of O.P.No.682 of 2016 pending before the learned Single Judge for passing orders. In the case on hand, the first appellant examined himself as R.W.1 and consciously allowed the Court to pass orders. Hence after five years, when the application filed by the respondent-Trust seeking recall of order dated 08.08.2019 was pending, the appellant cannot seek reference for arbitration by filing an application under Section 8 of Act.



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12 There is no quarrel with the decisions relied on by the learned Senior Counsel for the appellants. But once the Civil Court taken up the matter covered under the MoU and passed orders, that too after full contest by both the parties, then the dispute arose thereafter, should also be dealt with by the Civil Court, which passed the earlier order and the parties, cannot seek arbitration thereafter. The right to enforce an arbitration agreement is waived, once the appellants participated in civil proceedings and allows the Court to pass substantive orders and hence the appellants are considered to have accepted the civil court's jurisdiction and abandoned their right to arbitrate.

13 In the present case admittedly the appellants had actively participated in the civil proceedings in O.P.No.682 of 2016 and the first appellant also examined himself as R.W.1 and contested the matter on merits and thereafter, the learned Single Judge passed the orders by fixing time to complete the sale process of the properties held by the respondent-Trust.

14 Therefore we do not find any infirmity in the orders of the learned Single Judge warranting interference and the Original Side Appeals lack merits and substance and the accordingly the same are dismissed. No costs. However the appellants are at liberty to workout their remedy in the manner known to law.



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15 The impleading petitions in C.M.P.Nos.7918 & 7922 of 2026 are dismissed, since they are not party to the alleged MoU and hence they are neither necessary parties nor proper parties and even without their presence, effective decision could be arrived at by this Court in the appeals. The other connected miscellaneous petitions are closed.

[PVJ] [KGTJ]
08.06.2026

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