



WEB COPY

A No. 4576 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24-02-2026

CORAM

THE HON'BLE MR.JUSTICE P. DHANABAL

A No. 4576 of 2025

IN

CS No.28 of 2025

Inderchand Kochar

..Applicant(s)

Vs

1.Praveen Kumar G

2.Sangeetha P Jain

3.Sameep P Jain

4.Nishit Praveen Jain

(Plaintiffs 2 to 4 are Represented by their Power of Attorney Agent, Mr.Praveen Kumar.G.Vide

Registered Power of Attorney dated 26/12/2022).

..Respondent(s)

Prayer:- The application has been filed under Order XIV Rule 8 of the Original Side Rules read with Order VII Rule 11(d) of Civil Procedure Code, 1908, to reject the Complaint filed in C.S.No.28 of 2025 pending on the file of this Court as being devoid of any cause of action under Order VII Rule XI of the Civil Procedure Code.

For Applicant(s):

Mr.Nataraj for

M/s.Anirudh A Sriram

For Respondent(s):

Mr.M.L.Joseph for

M/s.Chennai Law Association.

ORDER

This application has been filed by the applicant to reject the complaint in C.S.No.28 of 2025 as the devoid of cause of action under Order VII Rule 11 of C.P.C.



2. According to the applicant he is the defendant in the main suit filed for the relief of declaration in respect of memorandum of understanding dated 22.10.2021 and for permanent injunction restraining the defendant proceeding with arbitration under the memorandum of understanding and also declaration that the defendant is in unlawful custody of the original title deeds pertaining to the schedule property belonging to the plaintiffs 2 to 4 and for mandatory injunction directing the defendants to return the original documents pertaining to the suit schedule property.

2.1. The present dispute is covered by the scope of nature of the agreement arising out of memorandum of understanding signed and agreed between the parties on 22.10.2021. The said agreement contains an arbitration clause. Therefore, the plaint is liable to be rejected in the light of the arbitration clause. Therefore, the relief sought for in the present suit seeking declaration to declare the memorandum of understanding is null and void and for other reliefs of the permanent injunction are not valid and unknown to law.

2.2. The defendant is engaging the business of real estate and got acquaintance with the first respondent / plaintiff and his family members. While so, the first respondent / plaintiff approached the petitioner for financial assistance and he also offered to lend money on security. On 13.06.2005, the petitioner paid a sum of Rs.30,00,000/- as loan to the first respondent and the



first respondent deposited his original title deeds in respect of the sale deed bearing Document No.957/1948 on the file of Sub Registrar, Sowcarpet and the memorandum of records on family arrangement dated 07.11.1994 and other original documents and the said documents are still under the custody of the petitioner. First respondent also executed a promissory note dated 13.06.2005 and a letter dated 13.06.2005 acknowledging the receipt of loan and the creation of equitable mortgages, by depositing original title deeds. Loans have been continuously paid from the year 2005 till 2016 by the petitioner to the first respondent in furtherance to the memorandum of understanding. The petitioner trusted and believed the words of the first respondent that he would honour these commitments and monies would be repaid to the petitioner.

2.3. The first respondent and the petitioner agreed that the equitable mortgage created on the house property shall stand as security for the continuous loan transactions and based on the collateral, the petitioner gave additional funds to the tune of Rs.1,31,44,460/- and the agreed interest is 18% per annum. The charge on the property has already been created and the respondent remain evasive and he did not get any response from the first respondent as about the plan and statutory approvals and no documents were handed over to the petitioner. The first respondent and the petitioner entered into memorandum of understanding dated 22.10.2021. As per the memorandum of understanding the first respondent had admitted acknowledgment of the title



outstanding due towards principle of sum of Rs.1,31,44,460/-and Rs.1,25,00,000/- towards interest and acknowledged the total payable amounts of Rs.2,56,00,000/- towards the loan mortgage of property.

2.4 Thereafter, the first respondent obtained certificate of non-traceable from the Karnataka Police after obtaining the certified copies of the documents which were handed over by the first respondent to the petitioner and thereafter the first respondent executed settlement deed in favour of the properties mortgaged with the first respondent in favour of 2 to 4 respondents on 17.02.2022. As per memorandum of understanding, clause A provides for dispute resolution through arbitration and already this Court passed order in O.A.No.810 of 2024 dated 21.12.2024, wherein this Court passed interim order from alienating properties in favour of parties. The prayer No.d sought for by the plaintiff for mandatory injunction directing the defendant to return the original document was already negated by the Court and the prayer No.b for permanent injunction from proceeding with arbitration relief restraining the defendant from exercising legal rights is barred by law. Arbitral proceedings under Section 11 of Arbitration and Conciliation are pending and the cause of action is not connected to the main relief and illusory cause of action. Therefore, this suit is liable to be rejected.



3. The respondents filed counter denying the averments made in the affidavit. In fact vide order in O.A.No.810 of 2024 the applicant relying upon an alleged memorandum of understanding dated 22.10.2021 sought for an order of interim injunction restraining the respondents from alienating the properties and *ex-parte* order was obtained and thereafter it was subsequently made absolute. The respondents / plaintiffs categorically denied the signatures found in the memorandum of understanding and they disputed the said memorandum of understanding as a forged document and the same to be tested before this Court. Since such a prayer was not granted to the respondents the present suit is filed on 10.01.2025 for comprehensive reliefs. Subsequent to the filing of the suit, the applicant filed the application under Section 11 of the Arbitration and Conciliation Act for appointment of Arbitrator based on the alleged memorandum of understanding dated 22.10.2021 and same was allowed on 03.09.2025. The scope of proceedings under Section 9 of Arbitration and Conciliation Acts are very limited, merely by presumption and the applicant's averments and assertions, the plaint cannot be rejected and suit cannot be held as not maintainable. The prayer for relief of mandatory injunction in respect of return of original title deeds and prayer 'D' they are not even parties to the forged memorandum of understanding. Even as per the memorandum of understanding the said debts are time barred. Therefore, the suit is maintainable. As per the plaint averments they disclose the cause of action. The settlement



deed dated 17.02.2022 is in between the first plaintiff and 2 to 4 plaintiffs. The respondents / plaintiffs have clearly and categorically questioned the sanctity and genuineness of memorandum of understanding which was never signed by at any point of time and the same also questioned at the earliest possible opportunity by filing the counter affidavit under Section 9 application. Therefore, the present suit is maintainable and the petition is liable to be dismissed.

4.This Court heard both sides and perused the records.

5.The learned counsel appearing for the petitioner would submit that the plaintiffs have filed a suit for the relief of declaration in respect of memorandum of understanding dated 22.10.2021 and for permanent injunction restraining the defendant proceeding with arbitration under the memorandum of understanding and also declaration that the defendant is in unlawful custody of the original title deeds pertaining to the schedule property belonging to the plaintiffs 2 to 4 and for mandatory injunction directing the defendants to return the original documents pertaining to the suit schedule property. In fact, already this Court in arbitration proceedings in O.P.No.45 of 2025 appointed the Arbitrator even after the objections made by the respondents. Once the Arbitrator is appointed Arbitrator has to decide the matter including the genuineness of the agreement. Without challenging the order passed by this



Court in Arbitration O.P.No.45 of 2025, this suit is not maintainable and the same is liable to be rejected. Moreover, the transaction is commercial transaction and thereby this Court has no jurisdiction and the commercial Division has to hear the matter. The learned counsel produced the following judgments:-

i)Hema Khattar Vs. Shiv Khera (Supreme Court-Civil Appeal No.8837 of 2016)

ii)Sundaram Finance Limited Vs. Thankam (2015 14 SCC 444)

iii)Kvaerner Cementation Vs. Bhajanlal (2013 5 SCC 214)

iv)K.Mangayarkarasi Vs. N.J.Sundaresan (2025 8 SCC 299)

v)Vidya Drolia Vs. Durga Trading (Relevant Portions) (2020 2 SCC 1)

vi)SBP & Co. Vs. Patel Engineering (2005 8 SCC 618)

vii)N.N.Global Mercantile Vs. Indo Unique Flame (2023 7 SCC 1)

viii)Shin-Etsu Chemical Vs. Aksh Optifibre (2005 7 SCC 234)

ix)A.Ayyasamy Vs. A.Paramasivam & ors

x)Ashwin Digambar Raikar Vs. Sardar Baig (Karnataka HC-Civil Misc.Petition No.21 of 2023)

xi)Ashwin Digambar Raikar Vs. Sardar Baig (SLP



(C)No.16829/2024)

xii)Alankrit Vallabh Arora Vs. M/s.American International

School & Others) (Madras HC – A.No.2562/2025 in

C.S.No.80/2025)

xiii)Inderchand Kochar Vs. Praveen Kumar (Arb.O.P.

(Com.Div.)No.45 of 2025)

6.On careful perusal of the above said judgments, it is clear that the Civil Courts should not look for the jurisdiction in general law where the jurisdiction is ousted by special law. When there is an Arbitration agreement between the parties and the bifurcation of the suit between civil Court and Arbitrary Tribunal would defeat very purpose of speedy justice and the allegations of fraud or criminal wrong doing or of statutory violation would not detract from the jurisdiction of the arbitral Tribunal to resolve a dispute arising out of a civil or contractual relationship on the basis of the jurisdiction conferred by the arbitration agreement. Once an application in due compliance with Section 8 is filed the approach of the civil Court should be not to see whether the Court has jurisdiction, it should be to see whether its jurisdiction has been ousted, where there is an arbitration agreement it is obligatory for the Court to refer the parties to arbitration and nothing remains to be decided in the original action after such an application is made except to refer the dispute to an arbitrator.



7. In the case on hand, the plaintiffs have filed the suit challenging the said memorandum of understanding by pleading the cause of action about the memorandum of understanding and thereafter during pendency of the suit the applicant / defendant approached this Court for appointment of Arbitrator based on the disputed agreement. Therefore, once this Court entertained the suit without contesting the suit and without filing any application under Section 8 of the Arbitration and Conciliation Act, the applicant has filed an application for appointment of Arbitrator and this Court also even after the pendency of the civil suit appointed the Arbitrator. The scope under Section 11 is very limited. The Court has to see under Section 11 whether any Arbitration clauses are available in the agreement or not. Therefore, with the limited scope this Court appointed the Arbitrator. When there is a civil Suit pending challenging the Arbitration agreement itself the appointment of arbitrator by this Court cannot take away the jurisdiction of the Civil Court and the suit has to be disposed on merits. Since, the plaintiffs are challenging the very existence of agreement the jurisdiction of this Court has not been ousted and while the suit is pending, the applicant has filed petition for appointment of Arbitrator and the court also appointed Arbitrator while pending suit which is for challenging the arbitration agreement, thereby itself the said suit cannot be barred by law. The suit is filed for comprehensive relief and scope of Arbitration is very limited whereas the civil rights of the parties have to be adjudicated by the civil court. The merits of the case can be decided through trial and not at this stage.



8. The learned counsel appearing for the respondents also relied on the judgment of Calcutta High Court in ***Lord Grih Nirman Private Limited Vs Merlin Projects limited*** wherein the Division Bench of High Court of Calcutta elaborately dealt with the maintainability of the suit when there is dispute in respect of existence of the agreement. Move over this petition is filed under Order VII Rule 11 (d) as barred by law. The courts while dealing the petitions under Order VII Rule 11 (d) only the averments made in the plaint to be looked into, when issues involves mixed question of fact of law, the determination of such matters requires examination of both the averments made in the plaint and the evidence and such questions cannot be determined at the threshold. Therefore, the matter requires elaborate trial and this petition has no merits and deserves to be dismissed. Accordingly, this petition is dismissed.

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Index: Yes/No

Speaking/Non-speaking order

Neutral Citation: Yes/No

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