

2026:PHHC:066604



ARB-537-2025 (O&M)

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**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

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**ARB-537-2025 (O&M)
Date of Decision:29.04.2026**

M/s VCA Estate Private Limited through its authorized representative
Nakul Lohia

.....Petitioner

Versus

Pawan Kumar and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr. Ambanshu Sahni, Advocate for the petitioner.

Mr. Rohit Kumar, Advocate for the respondents.

JASGURPREET SINGH PURI J.(Oral)

1. The present is a petition filed under Section 11 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Act'), seeking appointment of a sole arbitrator in the present case.

2. Learned counsel for the petitioner submitted that there exists an agreement to sell between the parties vide Annexure P-1 pertaining to sale of certain land belonging to the respondents, regarding which some earnest money has also been paid to the respondents and the aforesaid agreement contains an arbitration clause, i.e., Clause No. 23, which provides that in the event of any disputes or differences arising out of the agreement, the same shall be referred to arbitration and the arbitration



proceedings shall be conducted by a sole arbitrator mutually appointed by the parties. He further submitted that, since a dispute arose between the parties, the petitioner served a notice dated 08.04.2025 upon the respondents vide Annexure P-4 for invoking the arbitration clause and also proposed the names of arbitrators, but no reply was received from the respondents. Therefore, he submitted that this Hon'ble Court may appoint a sole arbitrator for adjudicating the dispute. Learned counsel also contended that in a similar matter pertaining to the present petitioner and some other respondents, this Court had appointed an arbitrator in ARB No.536-2025 on the basis of the same arbitration clause and the present case is similar to the aforesaid case.

3. Reply filed on behalf of respondents is taken on record. Learned counsel appearing for the respondents submitted that there is no dispute with regard to the existence of the aforesaid agreement to sell containing the aforesaid arbitration clause and there is also no dispute with regard to invocation of the said arbitration clause by issuance of notice vide Annexure P-4. He, however, submitted that the objection of the respondents is that the signatures on the agreement were obtained from them under undue influence and coercion and therefore, the agreement itself was unenforceable. He further submitted that the second objection of the respondents is that although there exists an arbitration clause at Clause No.23, as referred to by learned counsel for the petitioner yet in addition



thereto, there exists another clause, being Clause No.20, which provides that in case the vendors fail to perform their part of the contract, in that event the vendee shall be entitled to get the agreement enforced against the vendors by filing a suit in the Civil Court and, therefore, no arbitrator can be appointed by this Court.

4. I have heard learned counsels for the parties.

5. So far as the agreement between the parties is concerned, the same has not been disputed by learned counsel for the respondents. The invocation of the arbitration clause by issuance of notice (Annexure P-4) is also not in dispute. However, two-fold objections have been raised by learned counsel for the respondents, which are required to be considered by this Court.

6. The first objection raised by learned counsel for the respondents is that the signatures on the original agreement were obtained by undue influence and coercion. The aforesaid objection is unsustainable and liable to be rejected in view of the fact that the issue as to whether the signatures of the respondents on the agreement were obtained by undue influence and coercion is not within the scope of this Court at the stage of reference and the same can always be raised by the respondents at an appropriate stage before the learned Arbitrator.

7. So far as the second objection raised by learned counsel for the respondents is concerned, both the provisions contained in the agreement,



i.e. Clauses No.20 and 23, are required to be considered and are reproduced as under:-

“20. *That in case the VENDORS fails to perform their part of the contract, in that event the VENDEE shall be entitled to get this agreement enforced against the VENDORS through specific performance through Civil Court as contemplated under this agreement, Yamuna Nagar Jurisdiction. All costs and expenses incurred by the VENDEE in instituting and prosecuting litigation shall be borne by the VENDORS.*

23. *That in the event of any disputes or differences arising out of this agreement between the Parties to this Agreement, the same shall be attempted to be resolved through good faith consultation mutually within a period of 15 (fifteen) days from the date of dispute, failing which either Party shall be entitled to refer such a dispute or differences to arbitration. The arbitration proceedings shall be conducted by a sole arbitrator as mutually appointed by the Parties and the arbitration proceedings shall be conducted in accordance with the provision of the Arbitration and Conciliation Act, 1996 and amendments made therein from time to time. The place of arbitration shall be at Yamuna Nagar and the*



language for arbitration shall be in English. The courts at Yamuna Nagar shall have supervisory jurisdiction over the said arbitration proceedings.”

8. The aforesaid agreement has not been disputed by learned counsel for the respondents except for the fact that the signatures of the respondents were obtained by way of undue influence and coercion. In so far as the second objection raised by learned counsel for the respondents regarding the existence of another clause providing for filing of a suit for specific performance is concerned, the same is also not tenable in view of the settled position of law that at the stage of reference under Section 11 of the Act, the referral Court is only required to examine the *prima facie* existence of an arbitration clause and its invocation thereof by issuance of notice. The Court at the reference stage under Section 11 of the Act is not required to conduct a mini trial and has only to see the existence of the aforesaid two conditions-nothing more, nothing less. The Hon’ble Supreme Court in “**SBI General Insurance Company Limited Vs. Krish Spinning**”, **2024 SCC Online SC 1754** and also another judgment of Hon’ble Supreme Court in “**Interplay between Arbitration Agreements under Arbitration and Conciliation Act, 1996 and Stamp Act, 1899, In Re**” (2024) 6 SCC 1 and therefore, the law is no longer *res integra*. *The relevant portion of the aforesaid judgment of Hon’ble Supreme Court passed in SBI General Insurance Company Limited’s case (Supra) is reproduced as under:-*



“110. The scope of examination under Section 11(6-A) is confined to the existence of an arbitration agreement on the basis of Section 7. The examination of validity of the arbitration agreement is also limited to the requirement of formal validity such as the requirement that the agreement should be in writing.

111. The use of the term ‘examination’ under Section 11(6-A) as distinguished from the use of the term ‘rule’ under Section 16 implies that the scope of enquiry under section 11(6-A) is limited to a prima facie scrutiny of the existence of the arbitration agreement, and does not include a contested or laborious enquiry, which is left for the arbitral tribunal to ‘rule’ under Section 16. The prima facie view on existence of the arbitration agreement taken by the referral court does not bind either the arbitral tribunal or the court enforcing the arbitral award.

112. The aforesaid approach serves a two-fold purpose – firstly, it allows the referral court to weed out nonexistent arbitration agreements, and secondly, it protects the jurisdictional competence of the arbitral tribunal to rule on the issue of existence of the arbitration agreement in depth.

113. Referring to the Statement of Objects and Reasons of the



Arbitration and Conciliation (Amendment) Act, 2015, it was observed in In Re: Interplay (supra) that the High Court and the Supreme Court at the stage of appointment of arbitrator shall examine the existence of a prima facie arbitration agreement and not any other issues. The relevant observations are extracted hereinbelow:

“209. The above extract indicates that the Supreme Court or High Court at the stage of the appointment of an arbitrator shall “examine the existence of a prima facie arbitration agreement and not other issues”. These other issues not only pertain to the validity of the arbitration agreement, but also include any other issues which are a consequence of unnecessary judicial interference in the arbitration proceedings. Accordingly, the “other issues” also include examination and impounding of an unstamped instrument by the referral court at the Section 8 or Section 11 stage. The process of examination, impounding, and dealing with an unstamped instrument under the Stamp Act is not a timebound process, and therefore does not align with the stated goal of the Arbitration Act to ensure expeditious and time-bound appointment of arbitrators.



[...]

(Emphasis supplied)

114. In view of the observations made by this Court in In Re: Interplay (supra), it is clear that the scope of enquiry at the stage of appointment of arbitrator is limited to the scrutiny of prima facie existence of the arbitration agreement, and nothing else. For this reason, we find it difficult to hold that the observations made in Vidya Drolia (supra) and adopted in NTPC v. SPML (supra) that the jurisdiction of the referral court when dealing with the issue of “accord and satisfaction” under Section 11 extends to weeding out ex-facie non-arbitrable and frivolous disputes would continue to apply despite the subsequent decision in In Re: Interplay (supra).

115. The dispute pertaining to the “accord and satisfaction” of claims is not one which attacks or questions the existence of the arbitration agreement in any way. As held by us in the preceding parts of this judgment, the arbitration agreement, being separate and independent from the underlying substantive contract in which it is contained, continues to remain in existence even after the original contract stands discharged by “accord and satisfaction”

116. The question of “accord and satisfaction”, being a mixed



question of law and fact, comes within the exclusive jurisdiction of the arbitral tribunal, if not otherwise agreed upon between the parties. Thus, the negative effect of competence-competence would require that the matter falling within the exclusive domain of the arbitral tribunal, should not be looked into by the referral court, even for a prima facie determination, before the arbitral tribunal first has had the opportunity of looking into it.”

9. The relevant paragraphs of the aforesaid judgment passed in ***Interplay between Arbitration Agreements under Arbitration and Conciliation Act, 1996 and Stamp Act, 1899, In Re Case (Supra)*** are also reproduced as under:-

“120. In view of the above discussion, we formulate our conclusions on this aspect. First, the separability presumption contained in Section 16 is applicable not only for the purpose of determining the jurisdiction of the Arbitral Tribunal. It encapsulates the general rule on the substantive independence of an arbitration agreement. Second, parties to an arbitration agreement mutually intend to confer jurisdiction on the arbitral tribunal to determine questions as to jurisdiction as well as substantive contractual disputes between them. The separability presumption gives effect to this by ensuring the



validity of an arbitration agreement contained in an underlying contract, notwithstanding the invalidity, illegality, or termination of such contract. Third, when the parties append their signatures to a contract containing an arbitration agreement, they are regarded in effect as independently appending their signatures to the arbitration agreement. The reason is that the parties intend to treat an arbitration agreement contained in an underlying contract as distinct from the other terms of the contract; and Fourth, the validity of an arbitration agreement, in the face of the invalidity of the underlying contract, allows the Arbitral Tribunal to assume jurisdiction and decide on its own jurisdiction by determining the existence and validity of the arbitration agreement. In the process, the separability presumption gives effect to the doctrine of competence-competence.

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165. The legislature confined the scope of reference under Section 11(6-A) to the examination of the existence of an arbitration agreement. The use of the term "examination" in itself connotes that the scope of the power is limited to a prima facie determination. Since the Arbitration Act is a



self-contained code, the requirement of "existence" of an arbitration agreement draws effect from section 7 of the Arbitration Act. In Duro Felguera (supra), this Court held that the referral courts only need to consider one aspect to determine the existence of an arbitration agreement - whether the underlying contract contains an arbitration agreement which provides for arbitration pertaining to the disputes which have arisen between the parties to the agreement. Therefore, the scope of examination under Section 11(6-A) should be confined to the existence of an arbitration agreement on the basis of Section 7. Similarly, the validity of an arbitration agreement, in view of Section 7, should be restricted to the requirement of formal validity such as the requirement that the agreement be in writing. This interpretation also gives true effect to the doctrine of competence-competence by leaving the issue of substantive existence and validity of an arbitration agreement to be decided by arbitral tribunal under Section 16. We accordingly clarify the position of law laid down in Vidya Drolia (supra) in the context of Section 8 and section 11 of the Arbitration Act.

166. The burden of proving the existence of arbitration agreement generally lies on the party seeking to rely on such



agreement. In jurisdictions such as India, which accept the doctrine of competence-competence, only prima facie proof of the existence of an arbitration agreement must be adduced before the referral court. The referral court is not the appropriate forum to conduct a minitrial by allowing the parties to adduce the evidence in regard to the existence or validity of an arbitration agreement. The determination of the existence and validity of an arbitration agreement on the basis of evidence ought to be left to the arbitral tribunal. This position of law can also be gauged from the plain language of the statute.”

10. Considering the aforesaid law laid down by the Hon’ble Supreme Court, even if Clause No.20 of the agreement exists, the same would not mean that the effect of the arbitration clause contained in Clause No.23 would get obliterated. Since there exists an arbitration clause between the parties and the same has been duly invoked by the petitioner by issuance of notice, both the conditions which are *sine qua non* for the purpose of appointment of an arbitrator under Section 11 of the Act stand satisfied.

11. Consequently, the present petition is allowed. Hon’ble Ms. Justice Sneha Prashar (retired), resident of House No. 482, Sector 2, Panchkula, Mobile No. 8558809939 is nominated as the Sole Arbitrator to



adjudicate the dispute between the parties, subject to compliance of statutory provisions including Section 12 of the Act.

12. As per learned counsel for petitioner, the claim in the present petition is not ascertained as of date but the same be ascertained at the time of filing claim statement. The relief sought for has to be quantified in terms of the facts of the dispute and the fee of the Arbitrator shall depend upon such amount. Therefore, in case no claim is ascertained in the claim statement, then the Arbitrator shall fix his fee in view of Section 31-A of the Act.

13. Parties are directed to appear before learned Arbitrator on date, time and place to be fixed and communicated by learned Arbitrator at her convenience.

14. Learned Arbitrator is also requested to complete the proceedings as per the time limit prescribed under Section 29-A of the Act.

15. A request letter alongwith a copy of the order be sent to Hon'ble Ms. Justice Sneh Prashar (retired).

29.04.2026

shweta

(JASGURPREET SINGH PURI)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No