



2026:DHC:4121



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI****Date of Decision : 11.05.2026**

+ O.M.P.(I) (COMM.) 198/2026 & I.A. 12713/2026 (EX.)

M/S SHANTI DEVELOPERS

.....Petitioner

Through: Mr. Anshul Mittal, Mr. Sameer Dawar, Mr. Sparsh Agarwal and Mr. Vaibhav Garg, Advocates.

versus

VIRENDER SINGH

.....Respondent

Through: Mr. Abhijat, Senior Advocate along with Mr. Sumit Chander, Mr. Gurdeep Chauhan, Ms. Barnali Basak, Ms. Selva Kumari and Mr. Adarsh Pratap Singh, Advocates.

CORAM:**HON'BLE MR. JUSTICE HARISH VAIDYANATHAN SHANKAR**

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JUDGEMENT (ORAL)

1. The present Petition, filed under Section 9 of the **Arbitration and Conciliation Act, 1996**¹, seeks certain *ad* interim measures against the Respondent. The reliefs sought for, by way of the present Petition, are as follows:

- “A. Restrain the Respondent and/or his Representatives, Attorneys, Assignees, etc. from creating, either directly or indirectly, any third party interest in respect of the Ground Floor of the property situate at E-96, Saket, New Delhi;
- B. Restrain the Respondent and/or his Representatives, Attorneys, Assignees, etc. from handing over the

¹ Act



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possession of the Ground Floor of the property situate at E-96, Saket, New Delhi to any third party;

- C. In case the property is already rented out, the Respondent be directed to provide the relevant details including the amount already received by him towards the rent so far for the Ground Floor of property bearing No. E-96, Saket, New Delhi;
- D. Direct the Respondent to deposit the amount already received as well as the future rent to be received in respect of Ground Floor of property bearing No. E-96, Saket, New Delhi before this Hon'ble Court;
- E. Pass ex-parte ad-interim orders in terms of the prayers mentioned above in favour of the petitioner; and
- F. Pass such other and further order (s) as may be deemed appropriate by this Hon'ble Court in the interest of justice.”

2. Learned counsel appearing on behalf of the Petitioner, at the outset, submits that the disputes *inter se* the parties arise out of the **Special Power of Attorney dated 09.11.2021²** executed between the parties in relation to the property bearing No. **E-96, Saket, New Delhi.**³

3. Learned counsel submits that the aforesaid SPA governed the rights and obligations of the parties in relation to the first floor of the Subject Property and, *inter alia*, Clause 11 thereof dealt with the receipt and disbursal of the sale consideration arising therefrom. It is further submitted that Clause 19 of the SPA contains an arbitration agreement between the parties, which reads as under:

“19. In case of any dispute/discrepancies will be sorted out by appointing an arbitrator with mutual consent.”

4. Learned counsel appearing on behalf of the Petitioner submits that disputes have arisen between the parties on account of the alleged non-payment and non-disbursal of the agreed sale consideration receivable by the Petitioner pursuant to the transaction contemplated

² SPA

³ Subject Property



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under the SPA.

5. Learned counsel contends that despite the Petitioner having rights in respect of the first floor of the Subject Property under the **Collaboration Agreement dated 20.10.2021⁴** between the parties, the Respondent proceeded to deal with and sell the same and thereafter failed to honour the financial obligations allegedly owed to the Petitioner.

6. Learned counsel submits that the subsequent **Memorandum of Understanding dated 05.03.2024⁵** executed between the parties was merely an arrangement intended to secure and regulate repayment and liability arising from the SPA. It was, in essence, an extension and continuation of the arrangement embodied in the SPA.

7. Learned counsel for the Petitioner, in the backdrop of the foregoing submission, submits that the MoU cannot be treated as extinguishing the arbitration agreement contained in the SPA and therefore the present disputes are arbitrable, warranting interim protection under Section 9 of the Act.

8. Issue notice.

9. Mr. Sumit Chander, learned counsel, enters appearance on advance service, accepts notice on behalf of the Respondent.

10. **Per contra**, learned senior counsel appearing on behalf of the Respondent, opposes the maintainability of the present Petition.

11. Learned senior counsel for the Respondent submits that the SPA stood exhausted and worked itself out upon the transfer and sale of the first floor of the Subject Property.

12. Learned senior counsel further submits that, pursuant to the sale

⁴ CA

⁵ MoU



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of the first floor of the Subject Property and certain financial settlements between the parties, they consciously entered into a fresh and independent arrangement by way of the MoU, which exclusively governs the rights and obligations of the parties in relation to the ground floor of the Subject Property as well as the loan amount of Rs. 55 lakhs allegedly advanced by the Respondent to the Petitioner.

13. Learned senior counsel submits that the said MoU constitutes an entirely separate commercial arrangement between the parties and significantly does not contain any arbitration clause.

14. Learned senior counsel, on the strength of the aforesaid submissions, contends that the disputes presently sought to be projected by the Petitioner arise exclusively from the MoU and not the SPA. Consequently, it is submitted that the arbitration clause contained in the SPA cannot be invoked in relation to the ground floor of the Subject Property and, therefore, cannot be invoked with respect to disputes arising under the subsequent MoU.

15. This Court has heard the learned counsel appearing on behalf of the parties and, with their able assistance, perused the material available on record.

16. At the outset, this Court deems it necessary to examine the nature and scope of the SPA as well as the subsequent MoU in order to determine whether the present Petition is maintainable under Section 9 of the Act.

17. A perusal of the SPA demonstrates that the same was executed in the context of the arrangement between the parties concerning the first floor of the Subject Property. The rights flowing under the SPA principally related to the authority of the Petitioner to deal with,

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market and facilitate transactions concerning the first floor of the Subject Property and to receive consideration arising therefrom.

18. Therefore, in the considered opinion of this Court, the arbitration clause contained in Clause 19 of the SPA must necessarily be construed in the context of the subject matter governed by the SPA itself, *namely*, the first floor of the Subject Property.

19. Admittedly, subsequent to the transfer of the aforesaid first floor of the Subject Property, the parties entered into the MoU.

20. A bare reading of the MoU manifestly indicates that the same constitutes a fresh and independent arrangement between the parties governing their *inter se* rights and obligations in relation to the ground floor of the Subject Property as well as the financial liabilities allegedly subsisting between them at that relevant time, independent of the rights and obligations flowing from the SPA.

21. A plain reading of the MoU reveals that the same neither contains any independent arbitration agreement nor incorporates, either expressly or by necessary implication, the dispute resolution mechanism embodied in the SPA. Significantly, there exists no clause within the MoU which either refers to or adopts the arbitration arrangement contemplated under the SPA.

22. The contention of the Petitioner that disputes under the MoU would nevertheless fall within the ambit of the arbitration clause contained in the SPA cannot, *prima facie*, be accepted.

23. Merely because the MoU may bear some factual nexus with the earlier arrangement, or may contain a general or incidental reference thereto, would not *ipso facto* result in both arrangements being construed as one composite transaction.



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24. At this juncture, this Court deems it apposite to advert to Section 7(5) of the Act. The same reads as follows:

“7. Arbitration agreement. —

(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 is such as to make that arbitration clause part of the contract.”

(Emphasis supplied)

25. A plain reading of Section 7(5) of the Act makes it abundantly clear that the mere existence of an arbitration clause in another document would not, by itself, result in incorporation thereof into a subsequent agreement. The statutory requirement is that the reference contained in the subsequent contract must be of such a nature as to clearly evince an intention to make the arbitration clause contained in the earlier document an integral part of the later contract itself. In the present case, the MoU neither contains any express reference to the arbitration clause embodied in the SPA nor discloses any intention, either explicit or implied, to adopt or incorporate the dispute resolution mechanism contained therein. Mere factual narration of the two arrangements or the existence of prior dealings between the parties cannot satisfy the requirement contemplated under Section 7(5) of the Act.

26. In this regard, reference may also be made to the decision of the Hon’ble Supreme Court in ***M.R. Engineers & Contractors Pvt. Ltd. v. Som Datt Builders Ltd.***, wherein it was authoritatively held that a mere reference to another contract does not *ipso facto* result in incorporation of the arbitration clause contained therein, unless there exists a conscious and specific intention to incorporate the arbitration



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agreement itself into the subsequent contract. The relevant paragraphs in this regard, being Paragraph Nos. 16, 20, 22 and 36, are reproduced herein under for ready reference:

“16. There is a difference between reference to another document in a contract and incorporation of another document in a contract, by reference. In the first case, the parties intend to adopt only specific portions or part of the referred document for the purposes of the contract. In the second case, the parties intend to incorporate the referred document in entirety, into the contract. Therefore when there is a reference to a document in a contract, the court has to consider whether the reference to the document is with the intention of incorporating the contents of that document in entirety into the contract, or with the intention of adopting or borrowing specific portions of the said document for application to the contract.

20. The following passages from *Russell on Arbitration* throw considerable light on the position while dealing with Section 6(2) of the (English) Arbitration Act, 1996 corresponding to Section 7(5) of the Indian Act. (See pp. 52-55, 23rd Edn.):

“*Reference to another document.*—The terms of a contract may have to be ascertained by reference to more than one document. Ascertaining which documents constitute the contractual documents and in what, if any, order of priority they should be read is a problem encountered in many commercial transactions, particularly those involving shipping and construction. This issue has to be determined by applying the usual principles of construction and attempting to infer the parties' intentions by means of an objective assessment of the evidence. This may make questions of incorporation irrelevant, if for example it is clear that the contractual documents in question are entirely separate and no intention to incorporate the terms of one in the other can be established. However, the contractual document defining and imposing the performance obligations may be found to incorporate another document which contains an arbitration agreement. If there is a dispute about the performance obligations, that dispute may need to be decided according to the arbitration provisions of that other document. This very commonly occurs when the principal contractual document refers to standard form terms containing an arbitration agreement. However the standard form wording may not be apt for the contract in which the parties seek to incorporate it, or the reference

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may be to another contract between parties at least one of whom is different. In these circumstances it may be possible to argue that the purported incorporation of the arbitration agreement is ineffective. The draftsmen of the Arbitration Act, 1996 were asked to provide specific guidance on the issue, but they preferred to leave it to the court to decide whether there had been a valid incorporation by reference. (Para 2.044)

Subject to drawing a distinction between incorporation of an arbitration agreement contained in a document setting out standard form terms and one contained in some other contract between different parties, judicial thinking seems to have favoured the approach of Sir John Megaw in Aughton, namely, that general words of incorporation are not sufficient. Rather, particular reference to the arbitration clause needs to be made to comply with Section 6 of the Arbitration Act, 1996, unless special circumstances exist. (Para 2.047)

Reference to standard form terms.—If the document sought to be incorporated is a standard form set of terms and conditions the courts are more likely to accept that general words of incorporation will suffice. This is because the parties can be expected to be more familiar with those standard terms including the arbitration clause.” (Para 2.048)

22. A general reference to another contract will not be sufficient to incorporate the arbitration clause from the referred contract into the contract under consideration. There should be a special reference indicating a mutual intention to incorporate the arbitration clause from another document into the contract. The exception to the requirement of special reference is where the referred document is not another contract, but a standard form of terms and conditions of trade associations or regulatory institutions which publish or circulate such standard terms and conditions for the benefit of the members or others who want to adopt the same.

36. Even assuming that the arbitration clause from the main contract had been incorporated into the sub-contract by reference, we are of the view that the appellant could not have claimed the benefit of the arbitration clause. This is in view of the principle that when the document to which a general reference is made, contains an arbitration clause whose provisions are clearly inapt or inapplicable with reference to the contract between the parties, it would be assumed or inferred that there was no intention to incorporate the arbitration clause from the referred document.”

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27. In the present case, no direct, explicit, or legally discernible nexus can be said to exist between the MoU and the arbitration clause contained in the SPA, more so when the two arrangements independently govern distinct portions of the Subject Property and operate within separate contractual frameworks, without any express correlation or interlinkage between them. In the considered opinion of this Court, such circumstances cannot be construed as resulting in incorporation of the arbitration clause contained in the SPA into the subsequent MoU, particularly in the absence of any express stipulation to that effect.

28. This Court is therefore unable to accept the submission of the Petitioner that the subsequent MoU merely constituted a continuation of the SPA. The MoU, on its plain terms, operates in a distinct contractual field, governs separate rights and obligations, and concerns a different portion of the Subject Property altogether. The absence of any incorporation clause or reference to arbitration therefore assumes considerable significance.

29. In view of the foregoing discussion, statutory provisions and settled principles of law, this Court is of the view that the subject matter of the present disputes falls outside the scope of the arbitration clause contained in the SPA.

30. Consequently, in the absence of any arbitration agreement governing the MoU, the jurisdiction of this Court under Section 9 of the Act cannot be invoked.

31. The mere existence of an arbitration clause in an earlier transaction concerning a different subject matter would not suffice to maintain a petition under Section 9 of the Act in relation to disputes

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arising from a subsequent and independent arrangement between the parties.

32. This Court is therefore of the considered view that the present Petition is not maintainable in its present form, and is accordingly dismissed in the aforesaid terms.

33. Needless to observe, dismissal of the present Petition shall not preclude the parties from availing such remedies as may otherwise be available to them in accordance with law.

34. Accordingly, the present Petition, along with pending Application(s), if any, stands disposed of in the above terms.

HARISH VAIDYANATHAN SHANKAR, J.
MAY 11, 2026/tk/DJ

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