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IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE

BEFORE

HON'BLE SHRI JUSTICE PAVAN KUMAR DWIVEDI

ON THE 20th OF JULY, 2026

ARBITRATION CASE No. 112 of 2025

*OYSTER BUILDING INDIA PRIVATE LIMITED THROUGH MR ARUN
AGRWAL*

Versus

*MR HARI NARAYAN PATIDAR(KULMI)S/O SHRI RAMKISHAN
PATIDAR (KULMI) DECEASED THROUGH LEGAL LRS MR. SU AND
OTHERS*

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Appearance:

*Shri Vishal Baheti, learned Senior Advocate with Shri Satyajeet Mane
- Advocate for the applicant.*

Shri Manu Maheshwari - Advocate for respondents No.1 and 2.

Shri Vaibhav Bhagwat - Advocate for respondents No. 3 and 4.
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Heard on : 15.04.2026

Pronounced on : 20.07.2026
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ORDER

This is an application filed under Section 11 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the 'Act of 1996') for appointment of Arbitrator.

2. The facts relevant for purposes of the present case are that the respondents No. 1 and 2 are the owners and title holders of the land situated in survey Nos. 82/2, 84 and 85 admeasuring total 21.258 hectares situated at village Bihadiya, Tehsil and District Indore. The applicant is a real estate



company engaged in the business of development of various real estate and infrastructure projects across India.

3. An agreement was executed on 22.01.2020 between the applicant and respondents No. 1 and 2. In terms of the said agreement, the applicant was to develop the aforesaid land of respondents No. 1 and 2. As per the terms of the agreement, the applicant was entitled to 73% of the total sale consideration of the developed plots while respondents No. 1 and 2 were to get the balance sale consideration of 27%. Significantly it was noted in Clause 2.10 of the agreement that subject land was the matter of dispute for which litigation is pending and the agreement will be operated upon completion of legal proceedings. Thus, the development was to commence only after settlement of dispute. The applicant asserts in its application that in terms of Clause 2.3, the development was to be carried out within 36 months from date of commencement of work after grant of development permission with a grace period 12 months. However, as there was dispute thus, in terms of Clause 2.10, the development could have been done only after resolution of the dispute. The applicant was always ready and willing to perform his part of the contract however, despite investment of significant amount in planning and other requisite expenses, the development could not be started due to pending disputes as mentioned in Clause 2.10 of the agreement. Ultimately, the said dispute was settled by the Court in First Appeal No. 498/2024 in terms of order dated 14.05.2024. After passing of the said order the dispute got resolved but as the respondents No. 1 and 2 did not comply with the terms of the agreement, the applicant was constrained to



send a legal notice on 13.09.2024 thereby reminding the respondents No. 1 and 2 to comply with the agreement and to transfer the possession of the subject land to the applicant so as to commence the development work. Despite receiving notice, the respondents No. 1 and 2 did not respond. Instead they intended to sale the subject land to third party. With this objective, a public notice was issued on 19.01.2025 in daily newspaper 'Bhaskar' by Advocate of the respondents No. 1 and 2 thereby intimating about the sale agreement in respect of the subject land with respondent No. 3. The applicant responded to this notice by publishing objection on 26.01.2025 in newspaper 'Agniban'. Some other person named Azhar Parvez Khan also raised objection. The respondents No. 3 and 4 though came to know about the fact that agreement Annexure A/1 was already executed for development of the subject work by the respondents No. 1 and 2 in favour of the applicant, they still went ahead and purchased the said land for a sale consideration of Rs. 32,02,00,000/- vide registered sale deed dated 24.04.2025. It has been stated in the application that this sale deed is a bogus transaction entered into by the respondents No.1 and 2 in conspiracy with respondents No.3 and 4 only with an objective to defeat the development agreement (Annexure A/1). In this backdrop of the facts, the applicant sent legal notice dated 19.07.2024 (Annexure A/7) thereby invoking arbitration clause of the agreement (Annexure A/1). The names of two persons were proposed to act as Arbitrators to resolve the dispute. However, the respondents neither consented nor proposed any other person for appointment as Arbitrator. Thus, the present application for appointment of



Arbitrator has been filed.

4. The respondents have filed their separate replies. The respondents No. 1 and 2 raised a preliminary objection that there does not exist any legally enforceable agreement between the parties. The land development agreement is a mere tactic to pressurize the respondents No. 1 and 2 and to evade the liability of repaying the sum of Rs. 20 lakhs which was obtained by the applicant from the answering respondents by playing fraud and misrepresentation. It has been stated in the reply that in the principal agreement no arbitration clause exists between the parties. It is stated in the reply that the development agreement was alleged to be executed on 22.01.2020. However, even after lapse of 6 years, no development work has been done. In fact, the amount of Rs. 20 lakhs was obtained by the Director of the applicant company namely Vineet Agrawal from respondents No. 1 and 2 for getting the dispute resolved with respect to the said property and while doing so he got some of the documents signed on blank papers. The contents of the same were not even in the knowledge of the signatories. It is further stated that a complaint in terms of Section 156(3) of the Code of Criminal Procedure has been filed against the Director of the applicant company by the respondents No. 1 and 2 before the learned JMFC as the police authorities were not ready to take any action against the applicant. It has further been stated that even for the sake of arguments, if the existence of agreement is admitted, then also in terms of Clause 2.10 it was burden upon the applicant to get the dispute resolved which was pending in Civil Suit No. RCS No. 1200054-A/2016. However, the suit was decreed against



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respondents No. 1 and 2 on 04.02.2024. The applicant is making a false assertion that due to his efforts in the first appeal, the dispute was amicably resolved. In fact, the dispute was resolved with the aid of third party i.e. respondent No. 3 which is evident from the compromise applications as well as the decree passed by a Coordinate Bench of this Court in First Appeal No. 498/2024 which are placed on record as Annexure R/2 with the return.

5. Apart from this, it has also been stated that there is no justification for sending notice after four years i.e. on 13.09.2024. It is stated that in fact notice was never served upon respondents No. 1 and 2. However, for the sake of arguments if it is taken to be issued and served then also there is no explanation that why it was issued after a long period of four years. He thus submits that in fact there is no principal agreement and no arbitration agreement consequently. Thus, the application deserves to be dismissed.

6. The respondents No. 3 and 4 have filed their separate return. It has been stated in the reply by respondents No. 3 and 4 that the respondents No. 1 and 2 have already executed the sale deed in their favour on 24.04.2025. Thus, they are no more *bhumi swami* of the said land. Thus, the agreement cannot be enforced now. In fact, it has been stated that, the agreement itself is denied and that the dispute regarding the subject land was pending in civil suit RCS No. 1200054-A/2016 which was decided against the respondents No. 1 and 2 and later on in First Appeal No. 498/2024, the dispute was resolved due to the efforts and mediation done by the respondent No. 3 resulting in compromise decree. It is further stated that the possession of the subject land was to be transferred for development at the time of



registration of the agreement. Since, the agreement was never registered therefore, question of handing over possession for development does not arise. It is submitted that the sale deed is not bogus transaction and finally it is stated that the respondents No. 3 and 4 are not party to the agreement. Thus, there is no privity of contract between the applicant and respondents No. 3 and 4 therefore, there is no existence of any arbitration agreement between the applicant and respondents No. 3 and 4. The land has now been alienated to respondents No. 3 and 4 thus, in any case the development agreement cannot be enforced against respondents No. 1 and 2 by way of arbitration clause.

Submissions of the counsel for the applicant

7. The learned Senior Counsel for the applicant submits that three questions are involved in the case :

(i) Whether the agreement dated 22.01.2020 subsists and is binding on respondents No. 1 and 2?

(ii) Whether the arbitration agreement is binding on respondents No. 3 and 4?

(iii) Whether the Court can refuse reference for arbitration on the ground that the dispute is not covered under Clause 2.14?

8. In respect of issue No. (i), the learned Senior Counsel submits that the existence of transaction has been admitted by the respondents No. 1 and 2 and the issue of alleged fraud and refusal is not to be gone into by this Court. As regards, the issue No. (ii), the learned Senior Counsel submits that respondents No. 3 and 4 are claiming through respondents No. 1 and 2 by



virtue of sale deed executed in their favour on 24.04.2025. Thus, they have stepped into the shoes of respondents No. 1 and 2. As the agreement subsists, the respondents No. 3 and 4 are bound by the terms of the agreement. As regards the issue of scope of arbitration agreement, the learned Senior Counsel submits that the referral Court under Section 11 of the Act of 1996 has a very limited scope of examination as to whether *prima facie* existence of arbitration agreement is there or not and not beyond that. He thus submits that present is a fit case for appointment of Arbitrator.

9. In support of his submission, he has placed reliance on the judgments of the Hon'ble Apex Court in case of *Indian Oil Corporation Ltd. vs. Tatpar Petroleum Centre*, 2022 SCC OnLine MP 124; *Interplay Between Arbitration Agreements under Arbitration, 1996 & Stamp Act, In Re* (2024) 6 SCC 1; *Visa International Limited vs. Continental Resources*, (2009) 2 SCC 55; *M/s Devtree Corp vs. M/s Bhumika North Gardenia*, 2024 SCC OnLine Kar 13040; *Ganga Infratech vs. Johari Land in AC No. 56/2023 decided on 10.01.2025*; *Managing Director vs. Sanjay Kumar*, 2025 SCC OnLine SC 1604; *Goqii Technologies Private Ltd. vs. Sokrati Technologies Private Limited*; (2025) 2 SCC 192; *Narayan Prasad Lohia vs. Nikunj Kumar Lohia*, (2022) 3 SCC 572 and; *Aerent Goldsouk vs. Samit Kavadia*, 2006 SCC OnLine Raj 101.

Submissions of the counsel for the respondents

10. Learned counsel for the respondents No. 3 and 4 on the other hand submits that a perusal of Clause 2.10 of the agreement would show that failure to resolve the dispute pending in the Court of law by the applicant



would entail cancellation of agreement. As the petitioner failed to get the dispute resolved since the suit was decided against respondents No. 1 and 2 thus, by virtue of Clause 2.10 of the agreement Annexure A/1, it got determined. Learned counsel further submits that a perusal of arbitration agreement in Clause 2.14 if seen then, in any case the present dispute is not covered under the scope of arbitration agreement as the dispute under arbitration can only be assailed if it relates to construction. Present is not a dispute relating to construction.

11. Learned counsel further submits that a perusal of Clause 2.2 of the agreement Annexure A/1 would show that possession of the subject land was to be handed over at the time of registration of the agreement. The applicant never cared to get the agreement registered. There is not even a mention regarding issue of registration in any notice or in the present application for appointment of Arbitrator. He thus submits that the agreement never culminated into an enforceable right in view of clear stipulations in Clause 2.2 and 2.10 and consequently, Clause 2.14 is not applicable on the present dispute.

12. As regards the privity of contract, the learned counsel for respondents submits that present is not a case where the respondents No. 3 and 4 can be termed as consenting party to the arbitration agreement. Thus, by no stretch of imagination they can be covered under the arbitration agreement and the same will not bind these respondents. He submits that the purchase of subject land by a registered sale would not entail that the respondents No. 3 and 4 have entered into the shoes of respondents No. 1



and 2. The development agreement is not the rights on the land but the rights between the parties. Learned counsel further submits that in fact the respondents No. 3 and 4 entered into the fray when the applicant failed to get the dispute resolved and it is respondent No. 3 who mediated because of which the dispute was resolved in First Appeal No. 498/2024. In support of his submission, he has placed reliance on the judgment in case of *Cox & Kings Ltd. vs. SAP India (P) Ltd., (2024) 4 SCC 1*.

13. The learned counsel for respondents No. 1 and 2 reiterates the submissions made by the learned counsel for respondents No. 3 and 4. He adds that the stage of construction has never arrived for the reason that the applicant miserably failed in getting the dispute regarding subject land resolved. He submits that even the application for compromise filed before this Court in First Appeal No. 498/2024 mentions the name of mediator who is respondent No.3. Thus, consequent to failure of the applicant to resolve the dispute, the agreement Annexure A/1 got cancelled. The dispute was settled on 27.09.2024 and sale deed was executed on 24.04.2025 whereas, the notice invoking arbitration was sent on 19.07.2025. However, there is no explanation why the applicant waited for period of about a year after resolution of dispute on 27.09.2024. Lastly, the learned counsel submits that in view of Clause 2.2 and 2.10 of the agreement Annexure A/1, on failure of applicant to get the dispute resolved the agreement had become impossible to be performed. Thus, provisions of Section 31 of the Indian Contract Act, 1872 would apply and the agreement has lost its application. Thus, the present application deserves to be dismissed.



Heard learned counsel for the parties. Perused the record.

14. The Clause 2.2 and 2.10 of the agreement Annexure A/1 provides as under :

"2. यह कि, प्रथमपक्ष के द्वारा सदर कृषि-भूमि का रिक्त आधिपत्य द्वितीयपक्ष को कॉलोनी विकास के लिये इस विकास अनुबंध लेख के पंजीयन के समय सौंप दिया जावेगा।

10. यह कि, यह अनुबंध शासकीय, अशासकीय कार्य से बाधाएं दूर होने के पश्चात ही लागू होगा। कानूनी अडचने द्वितीयपक्ष अपने विवेकानुसार निपटारा करवा देंगे। जिस पर प्रथमपक्ष को द्वितीयपक्ष पर अपना पूरा एवं अटूट विश्वास है। अनुबंधित की जा रही भूमि पर वर्तमान में जो न्यायालयीन वाद, अपील विचाराधीन है का प्रथमपक्ष के हित में निराकरण कराने का दायित्व द्वितीयपक्ष का रहेगा इस हेतु द्वितीयपक्ष न्यायालयीन कार्यवाही या विपक्षीयता से समझौता करावेंगे जिसका संपूर्ण दायित्व द्वितीयपक्ष का रहेगा विवादों का निराकरण नहीं करा पाने पर यह अनुबंध लेख स्वमेव निरस्तनीय माना जावेगा।"

15. It is thus clear that the work of development was to be initiated only after resolution of the dispute and registration of agreement. Clause 2.10 also fixes burden upon the applicant for resolution of the dispute in which it has miserably failed as the suit was decided against the respondents No. 1 and 2. Thus, the last line of Clause 2.10 came into effect and the agreement got cancelled the moment suit was decided against respondent No.1.

16. Apart from the above, the arbitration agreement in Clause 2.14 provides as under :

"14. यह कि, प्रथमपक्ष एवं द्वितीयपक्ष के मध्य निर्माण के संबंध में तय की गई शर्तों के संबंध में किसी भी प्रकार का कोई विवाद उत्पन्न होने पर उसका निराकरण प्रथमपक्ष एवं द्वितीयपक्ष आपस में बैठकर करेंगे फिर भी यदि विवाद का निराकरण नहीं होता है तो इसके निराकरण के लिये उभयपक्षों की सहमति से आर्बीट्रेशन एण्ड कॉंसिलिएशन एक्ट 1996 के अंतर्गत दो पंचों की नियुक्ति विवाद के निपटाने हेतु की जावेगी एवं इनके द्वारा दिया गया निर्णय उभयपक्षों को मान्य होकर उन पर समान रूप से बंधनकारक रहेगा।"

17. The disputes which were to be referred for arbitration were only those disputes which are related to construction however by no stretch of



imagination the present dispute can be said to be a dispute relating to construction. This Court cannot remain oblivious of the scope of arbitration agreement. Provisions of Section 7 are to be adhered to for determining an application filed under Section 11 of the Act of 1996. What has to be seen is that as per Section 7 of the Act of 1996, Arbitration Agreement means an agreement by the parties to submit to arbitration on all or certain disputes which has arisen or which may arise between them. As such arbitration agreement can be for all disputes or for certain disputes. In the present case, the arbitration agreement was for certain disputes only namely regarding construction. It is thus clear that the present dispute which is a dispute to the effect that the respondents No. 1 and 2 despite development agreement Annexure A/1 have executed registered sale deed for the subject land in favour of respondents No. 3 and 4. Thus, in the considered view of this Court, present is not a case where it can be said that the dispute is covered under the scope of arbitration agreement as contained in Clause 2.14.

18. As regards the contention of learned counsel for the applicant that the arbitration agreement binds respondents No. 3 and 4 for the reason that they have entered into the shoes of respondents No. 1 and 2, the test is to find out whether the stranger i.e. the third party is a veritable party and that can be found only by the conduct of the parties. In the present case, the arbitration agreement contained in principal agreement which pertains to development of residential area. The respondents No. 3 and 4 are not said to be connected in any way to respondents No. 1 and 2 and it is not the case of the applicant that since beginning respondents No. 3 and 4 were there.



However, it is only on execution of registered sale deed that they came into picture. Merely purchase of subject land from respondents No. 1 and 2 cannot be termed as an act which would suggest that the respondents No. 3 and 4 are veritable parties. A veritable party would be a party on whose instructions the party to the agreement was acting but this fact is completely absent in the present case. As such in the considered view of this case, the respondents No. 3 and 4 are not covered under the arbitration agreement.

19. The judgments as cited by the learned Senior Counsel for the applicant are completely distinguishable on facts. In fact the Hon'ble Apex Court in case of *Cox & Kings (supra)* and subsequently in case of *In Re (supra)* has clearly explained the circumstances in which a third party can be said to be a veritable party. The present case is not covered under the said ratio of the Hon'ble Apex Court judgments. As far as the case of *M/s Devtree (supra)* is concerned, the same is also not applicable for the reason that it repeats the ratio as laid by the Hon'ble Apex Court in case of *Cox & Kings (supra)*. As far as the case of *M/s Ganga Infratech (supra)* is concerned, in the said case the question of plea of fraud was considered. It was also considered that the rights of purchasers of plots emanates from the development agreement itself which is not the case in the present matter. In the present matter, development agreement has no concern at all with the sale deed which has been executed between the owner of the land and third party i.e. respondents No. 3 and 4. Thus, the same is also not applicable. As regards the case of *Sanjay Kumar (supra)* in the said case the Hon'ble Court considered the fact that even the issue regarding arbitrability has to be



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referred to the Arbitrator. Same is the ratio in the case of *Goquii Technologies (supra)* which states that frivolity in litigation too is an aspect which the referral court should have decided at the stage of Section 11. However, in the present case, the circumstances are different. In the considered view of this Court, arbitration agreement itself does not cover the present dispute and it is settled position of law that the Court not only can examine this issue but it is the duty of the Court to ascertain that, (i) arbitration agreement exists and (ii) the scope of agreement covers the dispute in hand. In the present case, in the considered view of this Court neither the dispute is covered under the arbitration agreement nor respondents No. 3 and 4 are bound by the said agreement.

20. As such, no case for appointment of Arbitrator is made out and accordingly, the application stands dismissed.

(PAVAN KUMAR DWIVEDI)
JUDGE

vidya