Case Citation: (2026) ibclaw.in 5099 HC

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON	PRONOUNCED ON
05.08.2026	01.09.2026

CORAM

THE HON'BLE MR.JUSTICE K.KUMARESH BABU

Arb O.P.(Com.Div.)No.246 of 2026
& O.A.No.148 of 2026

M/s.DEC Infrastructure & Projects (India) Pvt Ltd.,
Rep., by its authorised signatory,
Karthik M
2-1-434/1, Nallakunta,
Hyderabad, Telangana – 500 044.

… Petitioner & Applicant
in both Arb.O.P. & O.A

Vs

1.V.Vijayakumar
2.M.Lavanya
3.Dr.R.Murali
4.A.Asha
5.K.Lakshmi
6.S.Kugananthan
7.R.Padmanabhan
8.Charulatha
9.Suganya
10.M.S.Gouri Shankar
11.K.R.Ranganathan
12.Ananthi
13.Aarthi
14.N.Murali
15.S.M.Anusha
16.M.Anand
17.R.Nagarajan
18.N.Aishwarya
19.Sachin Kaushik
20.G.V.Jayanthi
21.Helen George

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22.B.S.Radhakrishnan & Sons
presented by its Partner S.R.Rajkumar, Kamala &Anitha
Flat No.169/12, Jawahar Colony,
4th Avenue, Anna Nagar, Chennai – 600 040.

23.A.Chetan @ Chetan Kumar
Flat No.169/13 Jawahar Colony
4th Avenue, Anna Nagar, Chennai – 600 040.

24.K.Latha
25.S.Sugantha Lakshmi
26.S.V.Karthikeyan
27.A.Menaka
28.Balasubramani
29.V.Thanigaivel
30.M.Lakshmanan
31.R.Nagarajan
32.N.Aishwarya
33.N.Sachin Kaushik
34.Balasubramani
35.D.Rajalakshmi
36.K.Pradeep
37.R.Nandagopal
38.A.R.Kannammai
39.D.Rajammal
40.Dr.Tajudeen
41.Rajarajeswaran
42.Padmanabhan
43.Ruth Helena
44.K.N.Ravikanth
45.N.Ayyadurai
46.M.Kumari Bhagavathi
47.S.Arumugan
48.R.Rengarajan
49.R.Vishwanathan
50.S.Rajendran

51.Jawahar Colony Owners Association
A registered Societies under Societies Act of 1975
Having office at 169 Block, 4th Avenue, Anna Nagar,
Chennai – 600 040.

..Respondent(s)
in both Arb.O.P. & O.A

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PRAYER in Arb.O.P.No.246 of 2026:- This Petition had been filed under Section 11(6) of the Arbitration and Conciliation Act 1996 to appoint an Arbitrator to adjudicate the disputes between the petitioner and the respondents in terms of the Joint Development Agreement, dated 18.08.2021 and pass any other order.

PRAYER in O.A.No.148 of 2026:- This Application had been filed to grant an order of interim injunction restraining the respondents or their men from entertaining into any agreement or acting upon any agreement, if entered with third parties for the purpose of development/redevelopment or construction of the Schedule Mentioned Property.

For Petitioner(s):	Mr.R.Ramasubramaniam Raja in both cases
For Respondent(s):	Mr.K.V.Babu for RR1 to 6, 8 to 24, 26,27, 29, 31 to 33, 37 to 40, 42, 45, 46, 48, 49 & 51 No Appearance for RR7, 25, 28, 30, 34 to 36, 41, 43, 47 & 50

COMMON ORDER

The Arbitration Original Petition had been filed to appoint an Arbitrator to adjudicate upon the disputes that have arisen between the petitioner and the respondents in terms of the Joint Development Agreement, dated 18.08.2021 and the Original Application had been filed to grant an order of interim injunction restraining the respondents or their men from entertaining into any agreement or acting upon any agreement, if entered with third parties for the purpose of development/redevelopment or construction of the Schedule

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Mentioned Property.

2. Heard Mr.R.Ramasubramaniam Raja, learned counsel appearing for the petitioner as well as the applicant and Mr.K.V.Babu learned counsel appearing for the respondents 1 to 6, 8 to 24, 26, 27, 29, 31 to 33, 37 to 40, 42, 45, 46, 48, 49 & 51.

3. The learned counsel appearing for the petitioner would submit that a Joint Development Agreement had been entered into between the owners of various apartments, who have been arrayed as respondents wherein a clause for arbitration has also been appended for resolution of the dispute between the parties by appointment of a sole Arbitrator. As dispute had arisen, they had earlier approached this Court under Section 9 for interim relief which was negatived by this Court, as the petitioner had not invoked Section 21 of the arbitration clause, but was given liberty to move the Court after issuance of the trigger notice under section 21. Thereafter, the petitioner had issued a Section 21 notice on 13.10.2025 for which the respondents had also replied indicating that the Joint Development Agreement could not be performed for various reasons, apart from indicating that the clause of arbitration could not be worked out in view of the infirmity and had refused to nominate of an Arbitrator. He had also moved a Section 9 application seeking for interim measures and pending the same, he had also been taken out an application for appointment of an Arbitrator. He would also submit that if the interim measures as prayed for

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is not granted, the petitioner would also be put to irreparable loss, as he expended huge sums pursuant to the said Joint Development Agreement and hence, he prays this Court to pass appropriate orders by granting interim protection to the petitioner with pending disposal of the arbitral proceedings and also appoint an Arbitrator.

4. Mr.K.V.Babu, learned counsel appearing for the respondents at the out set would submit that the Joint Development Agreement is of the year 2021 and the initiation of arbitral proceedings by issuance of Section 21 notice was on 13.10.2025 and therefore, the initiation of arbitration proceedings is itself barred by law of limitation. That apart, he would submit that six of the flat owners have not agreed to the Joint Development Agreement and are not signatories to the same and in that regard, the said Joint Development Agreement cannot be enforced against the non-signatories. He would further submit that the clause of arbitration itself is unworkable, as the petitioner was entitled to appoint one Arbitrator and the respondent was also entitled to appoint an Arbitrator which could cause a split verdict and the clause also do not contain the Arbitrators to appoint an umpire in such an event. He had also relied upon the judgment of the Hon'ble Apex Court in the case of ***Elfit Arabia & Ors., vs. Concept Hotel Barons Limited & Ors.,*** reported in **(2024) 5 CTC 109**, ***B and T AG vs. Ministry of Defence & Ors.,*** reported in ***(2024) 5 SCC 358, Bharat Sanchar Nigam Limited & Anr., vs. Nortel Networks India Pvt., Ltd.,*** reported in ***(2021)***

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5 SCC 738 and on a decision of this Court rendered in *Arb.O.P(Com.Div) No.384 of 2024*, dated 19.12.2024, to contest that a deadwood, namely an Arbitration proceedings which is sought to be initiated after the period of limitation ought not to be entertained by the Court. Hence, he prays this Court to dismiss the Original Petition as well as the Original Application filed by the petitioner/applicant.

5. In reply, the learned counsel appearing for the petitioner placing reliance upon the judgment of the Hon'ble Apex Court in the case of ***SBI General Insurance Company Limited vs. Krish Spinning*** reported in ***(2024) 12 SCC 1***, would submit that the judgments relied upon by the learned counsel appearing for the respondents had also been clarified holding that Section 11 Court would have to only look at the limitation with regard to filing of Section 11 from the date of Section 21 notice and the limitation with regard to the claim would have to be left open to be adjudicated by the Arbitrator. In that regard, he would submit that Section 21 notice was issued on 13.10.2025 and therefore, Section 11 application as well as Section 9 are well within the time and therefore, prays this Court to allow the Arbitration Original Petition as well as the Original Application.

6. I have considered the submissions made by the learned counsels appearing on either side and perused the materials placed on record.

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7. The primordial objection of the respondents is on the arbitrability of the dispute that had been raised in the above caption cases and that apart, he had also raised an issue of limitation.

8. It had been time and again held that in a Section 11 petition, the Courts are not called upon to conduct a mini trial so as to decide the arbitrability of the issue. It had been further held that even if an issue of limitation is decided in Section 11 Application, it would only be a *prima facie* view and the Arbitrator or the Court dealing with Section 34 petition is not bound by the decision rendered on limitation while dealing with Section 11 petition.

9. It is true that the Hon'ble Apex Court as reflected in the judgments relied upon by the learned counsel appearing for the respondents, that a deadwood cannot be resurrected and the Court would have to take into consideration the breaking point for counting the period of limitation. Infact in the judgment of this Court which had been authored by me, this Court also following the judgment of the Hon'ble Apex Court as laid in the case of ***Arif Azim Company Limited vs. Aptech Limited*** reported in ***(2024) 5 SCC 313***, had dismissed a claim for appointment of an Arbitrator on the basis that the same had been filed much beyond the period of limitation. In rendering the judgment, I have not taken into consideration the subsequent judgment of the Hon'ble

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Apex Court, which had been relied upon by the learned counsel for the petitioner in the case of ***SBI General Insurance Company Limited vs. Krish Spinning*** reported in ***(2024) 12 SCC 1***. The Hon'ble Apex Court in the aforesaid judgment had clarified that while determining the issue of limitation, the enquiry should be limited to examine whether Section 11(6) application had been filed within the period of limitation as considered in ***Arif Azim Company Limited's*** (referred supra) case. The period of limitation with regard to other aspects would have to be left to the wisdom of the Arbitrator and the Court cannot conduct a mini trial on the same. For better appreciation, the relevant paragraph is extracted hereunder:-

> *136. Thus, we clarify that while determining the issue of limitation in exercise of the powers under Section 11(6) of the 1996 Act, the Referral Court should limit its enquiry to examining whether Section 11(6) application has been filed within the period of limitation of three years or not. The date of commencement of limitation period for this purpose shall have to be construed as per the decision in Arif Azim [Arif Azim Co. Ltd. v. Aptech Ltd., (2024) 5 SCC 313 : (2024) 3 SCC (Civ) 358 : 2024 INSC 155] . As a natural corollary, it is further clarified that the Referral Courts, at the stage of deciding an application for appointment of arbitrator, must not conduct an intricate evidentiary enquiry into the question whether the claims raised by the applicant are time-barred and should leave that question for determination by the arbitrator. Such an approach gives true meaning to the legislative intention underlying Section 11(6-A) of the Act, and also to the view taken in Interplay Between Arbitration Agreements under the Arbitration Act, 1996 & the Stamp Act, 1899, In re [Interplay Between Arbitration Agreements 1-11under the Arbitration Act,*

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1996 & the Stamp Act, 1899, In re, (2024) 6 SCC 1

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10. In such view of the above, even the judgment made by this Court as authored by me cannot be said to be a correct law. Further it could been deduced that the parties have decided to resolve their dispute through arbitration, which object is for speedy resolution of the dispute. However as pointed out by the learned counsel for the respondent the manner in which appointment is to be made, would not serve any purpose. Hence it would be appropriate to appoint a sole Arbitrator.

11. For the foregoing reasons, overruling the contentions raised by the learned counsel appearing for the respondents, this Court finds no impediment in appointing the Arbitrator and accordingly, appoints ***Hon'ble Mr.Justice K.Venkataraman,*** (Cell No.7708895435) former Judge, Madras High Court residing at No.125, L-Block, 17th Street, Anna Nagar East, Chennai – 600 102, as the Arbitrator. The Sole Arbitrator is requested to enter upon the reference and resolve the disputes between the parties. He is entitled to fix his own fees. The parties are also at liberty to move appropriate applications for interim relief including the relief that had been sought in the original application, which is also disposed without entering upon the merits of the case.

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12. In fine, Arb.O.P.No.246 of 2026 stands allowed as indicated above and O.A.No.148 of 2026 is closed with liberty as aforementioned. However, there shall be no order as to costs.

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Index: Yes/No
Speaking/Non-speaking order1-11
Neutral Citation: Yes/No
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K.KUMARESH BABU, J.

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A Pre-delivery Order made in
Arb O.P.(Com.Div.)No.246 of 2026
& O.A.No.148 of 2026

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