HC-KAR

NC: 2026:KHC:55996
CRP No. 338 of 2026

CNR: KAHC010235272026

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 7TH DAY OF OCTOBER, 2026

BEFORE

THE HON'BLE SMT. JUSTICE LALITHA KANNEGANTI

CIVIL REVISION PETITION NO. 338 OF 2026 (IO)

BETWEEN:

SMT. N. KOMALA,
W/O. SRI. H.K. SURESH,
AGED ABOUT 48 YEARS,
R/AT. NO.1616, "LAKSHMI NILAYA",
1ST "B" CROSS, 3RD MAIN,
1ST PHASE, 2ND STAGE,
CHANDRA LAYOUT,
BANGALORE – 560 040

...PETITIONER

(BY SRI. P.K.SHRIKARA, ADVOCATE FOR
SRI.SHIVA KUMAR N., ADVOCATE AND
SRI.JEEVAN S.M., ADVOCATE)

AND:

1. M/S. SAMRUDDHI HOUSING,
A PROPRIETARY CONCERN,
OFFICE AT NO.40, GROUND FLOOR,
BETWEEN 3RD AND 4TH CROSS,
SIRUR PARK ROAD,
BANGALORE - 560 003,
REP. BY ITS PROPRIETOR,
MR. HANUMAN H.V.

2. MR. H.S. YASHAWANTH GOWDA,
S/O. SRI. H.K. SURESH,
R/AT NO.1616, LAKSHMI NILAYA,
1ST B CROSS, 3RD MAIN,
1ST PHASE, 2ND STAGE,
CHANDRA LAYOUT,

BANGALORE – 560 040

3. MR. H. S. PRASHANTH GOWDA,
S/O. SRI. H.K. SURESH,
R/AT NO.1616, LAKSHMI NILAYA,
1ST B CROSS, 3RD MAIN, 1ST PHASE
2ND STAGE, CHANDRA LAYOUT,
BANGALORE – 560 040

…RESPONDENTS

(BY SRI.R.HEMANTH RAJ, ADVOCATE FOR R1
NOTICE TO R2 AND R3 ARE DISPENSED WITH V/O/DATED: 07/10/2026)

THIS CRP FILED UNDER SEC.115 OF CPC., AGAINST THE ORDER DATED 12.01.2026 PASSED ON IA IN OS NO.1866/2023 ON THE FILE OF IV ADDITIONAL SENIOR CIVIL JUDGE BENGALURU RURAL DISTRICT., AT BENGALURU., DISMISSING THE IA FILED UNDER SEC.8 OF ARBITRATION AND CONCILIATION ACT., DATED 28.11.2024.

THIS PETITION, COMING ON FOR ADMISSION, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE SMT. JUSTICE LALITHA KANNEGANTI

ORAL ORDER

Aggrieved by the order dated 12.01.2026 passed in O.S.No.1866/2023 by IV Additional Senior Civil Judge, Bangalore Rural District, Bengaluru, the petitioner/defendant No.1 is before this Court.

2. The suit is filed for specific performance. In that, an application came to be filed under Section 8 of the Arbitration and Conciliation Act. It is the case of the defendant that, as per Clause 10 of the Registered Agreement of Sale dated 11.02.2020 executed by defendant No.1 in favour of the plaintiff, he can exhaust his remedies available by referring the matter to an arbitrator as per Clause 10 of the said agreement. But the plaintiff, instead of invoking the arbitration proceedings, has filed the present suit, which is not maintainable and the Court has no jurisdiction. That came to be dismissed by order impugned.

3. The trial Court, while rejecting the application, has observed that the application is filed by the defendant after lapse of 90 days. The trial Court has already taken the written statement as not filed. It is clear that Section 8 of the Arbitration and Conciliation Act states that the submission for referring to an arbitrator should be made not later than the date of submitting his statement on the substance of the disputes, i.e., 90 days from the date of appearance. In the present case, the application filed by the defendant after his

written statement is taken as not filed by the court. The defendant cannot invoke Section 8 of the Arbitration Act and accordingly dismissed the application.

4. Learned counsel appearing for the petitioner submits that there is no inordinate delay in filing the application. Within a reasonable time the application is filed. When there is an arbitration clause in the agreement, the trial court lacks jurisdiction and the court cannot entertain the suit.

5. Learned counsel appearing for the respondent has drawn the attention of the Court to the agreement, particularly Clause-10 of the agreement wherein it says if there is any dispute, the parties may refer to arbitration. It is submitted that as the word used is 'may,' it cannot be said that unless the same is exhausted, the suit is not maintainable.

6. He relied on the judgment of the Division Bench of this Court in the case of ***M/s Bhagyalakshmi Homes LLP Vs. Smt. Sulekha Verma and others***, arising out of ***Commercial Appeal No.618/2025 dated 12.01.2026***. He relied on paragraph 17 which reads as follows:

> ***"17. It is clear from the plain language of Sub-section (1) of Section 8 of the A&C Act that an application under Section 8 can be made not later than the date of submitting his first statement on the substance of the dispute. In the present case, the right to furnish the written statement was closed on 18.12.2024. Therefore, the right of defendant No.1 to file an application under Section 8 stood extinguished as well."***

7. He relied on another judgment in case of ***P. Tarachand Vs. Seshamal M. Jain and Others***[1]. He relied on paragraph Nos.36 and 47, which read as follows:

> ***"36. In this context, it is relevant to state that Section 8 of the Act of 1996 enables a party to a suit to seek reference of the matter to arbitration by taking necessary steps in that regard as contemplated under the said provisions contained in Section 8. It is well settled that unless a party to an arbitration agreement seeks reference to arbitration in a pending suit governed by Act of 1996 by filing necessary application in accordance with the provisions contained in Section 8, the jurisdiction of the Civil Court is not ousted and the party who does not take recourse to the procedure provided under Section 8 is deemed to have waived his right not only to seek reference to arbitration but also his contention that the Civil Court's jurisdiction stood ousted because of the arbitration clause. It is interesting to note that under the Act of 1940, there was no provision similar to Section 8 of the Act of 1996 and consequently, in the absence of a***

[1] 2019 SCC Online KAR 2768

similar provision in the Act of 1940, jurisdiction of the Civil Court cannot be said to have been ousted simply/merely on account of the arbitration clause.

47. It is not in dispute that in the instant case, the petitioner not only chose not to contest the matter prior to passing of the preliminary decree, but he also did not file an application under section 8 of the Act of 1996. Consequently, the right of the petitioner, if any, to seek reference to arbitration and consequent ousting of the jurisdiction of the Court stood waived and the petitioner is stopped from contending that the preliminary decree passed by the court in O.S.No.2018/1995 was without jurisdiction."

8. He relied on another judgment of this Court in the case of ***Prasanna V Ghotage Vs. Bharat Earth Movers Limited,*** arising out of ***W.P.No.1187/2020 C/w W.P.No.1133/2020*** dated ***10.07.2024***. He relied on paragraph Nos.9 and 10, which read hereinunder:

"9. The law on the maintainability of the suit when there is an arbitration clause and what is the scope of Section 8 of the Arbitration and Conciliation Act there is not dispute on that. But the defendant in this case has abused the process of the court. The Judgments which the learned Senior Counsel has relied on pertaining to Section 8 of the Arbitration and Conciliation Act,1996 and application of those judgments to the facts of the case is not required for the reason that much water has flown. He has been contesting the matter right from the

beginning and the whole purport of the Arbitration and Conciliation Act is a consensual and effective method of resolving the commercial disputes between the parties. It is settled law that if the written statement includes an objection to the maintainability of the suit, it is not necessary the file a separate application making such an objection or requesting the court to refer the parties to arbitration without requiring a separate application. Arbitration is preferred as one of the most preferred modes of dispute resolution primarily with the expectation of speedy resolution of disputes. A party cannot contest the matter before the court and after contesting for 10 years suddenly he cannot realize and come up with an application and also relying on the judgments which applies at the threshold. If this court relying on those judgments and at this stage relegate the parties to Arbitration, it is a clear injustice to the parties and that is not the purport of the Arbitration and the Conciliation Act. When it comes to the amendment, the amendment that is sought is about the facts which are very much in the knowledge of the defendant and when the matter is coming up for defendant's evidence, when the plaintiffs evidence is already closed. At this point of time, they cannot come up with these kind of applications stating that those facts are not the new facts. It is not alone about introducing a new case, it is about what was the reason why these facts could not be brought to the notice of the court at the earliest point of time. The due diligence is absent from the pleading or the conduct of the parties. The grounds that are raised cannot be the ground for allowing an application under Order VI Rule 17 of CPC, after the trial has commenced and almost at the fag end of the trial.

> ***10. The conduct of the defendant is reflecting from the impugned proceedings. It is also settled law that no party can be permitted to abuse the process of court by indulging in the delaying tactics with the sole intention to deprive the party from having the relief from the court. If the intention of the defendant is clear and bonafide he would have stick to the stand that the dispute is a arbitrable dispute and civil court has no jurisdiction. But he keeps quiet from 2013 to 2018 and even when the order is passed dismissing the application, defendant still keeps quiet and files further application under order 6 Rule 17 and to recall PW1. The plaintiff is a central government company and the suit is recovery of an amount of Rs.46 crores and odd. Successfully the suit is dragged from 2013 to 2024. The applications that are filed runs contrary to the other. Both the writ petitions are liable to be dismissed."***

Relying on these, it is submitted that the Civil Court has jurisdiction to entertain the suit.

9. Having heard the learned counsel on either side, perused the material on record. In light of the judgments referred supra, no further consideration is required by this Court on two aspects. First, a perusal of the arbitration agreement clearly reveals that there is no force in the said agreement, whereby parties are compelled to go for arbitration, because the word 'may' is used. Second, the application under Section 8 of the Arbitration and Conciliation Act was filed

beyond 90 days. Even on that count, the trial court was justified in dismissing the application. Hence, on these two grounds, the writ petition has to be dismissed. Accordingly, this Court is passing the following:

ORDER

i. Accordingly, Civil Revision Petition is ***dismissed***.

ii. Pending IAs., if any, shall stand closed.

SD/-
(LALITHA KANNEGANTI)
JUDGE

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List No.: 1 Sl No.: 22
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