2026:AHC:214251

Reserved on 24.09.2026
Delivered on 13.10.2026

HIGH COURT OF JUDICATURE AT ALLAHABAD

ARBITRATION AND CONCILI. APPL.U/S11(4) No. - 133 of 2023

Varun Gupta

…..Applicant(s)

Versus

Shiv Shanker Lal Gupta and another

…..Opposite Party(s)

Counsel for Applicant(s)	:	Anil Kumar, Indra Mani Tripathi, Minakshi Tripathi, Monarch Tripathi
Counsel for Opposite Party(s)	:	Prakhar Tandon

Court No. - 7

HON'BLE PIYUSH AGRAWAL, J.

1. Heard learned counsel for the applicant and learned counsel for the respondent.

2. The instant application has been preferred under Section 11(6) of the Arbitration & Conciliation Act, 1996 for appointment of Arbitrator.

3. Learned counsel for the applicant submits that an agreement dated 21.8.2013 was entered into between the parties to develop a land bearing plot no. 25/16, Karanchikhana, Kanpur Nagar belonging to the opposite party at its own cost at the rate of 40% & 60 % share, after the completion of the construction provided that the opposite parties shall handover the entire agreed plot / land in the vacant position and free from all encumbrances. He submits that the said agreement specially contemplates arbitration clause at Clause no. 21.

4. He further submits that Clause 26 of the agreement specially contemplates that the applicant has to pay Rs. 50 Lakhs to the opposite parties as a token money, in the account of the opposite party. He submits that in pursuance of the said agreement, the applicant has given Rs. 50 Lakhs through two cheque bearing no. 009981 dated 10.10.2013 and cheque no. 009982 dated 9.11.2013. He submits that the first cheque dated 10.10.2013 was en-cashed but the second cheque dated 9.11.2013 could not be en-cashed.

5. Learned counsel for the applicant further submits that the amount of Rs. 25 lakh was paid in cash to the opposite parties to which a receipt was also issued but after receiving the said amount the opposite parties did not comply with the condition of the agreement for handing over the plat in vacant position, therefore, the applicant invoked the arbitration clause and sent legal notices in this respect on 25.10.2017 and 15.11.2017 but no consented arbitrator could be appointed till date. Hence the present application.

6. Learned counsel for the opposite parties has vehemently opposed the said submission. He submits that the present application has been filed on behalf of one Director namely Mr. Varun Gupta being Director of Vishva Aanand Dhirendra Constructions Pvt. Ltd. and as per the records, the agreement was never executed with the person namely Mr. Varun Gupta, as Director of Vishva Anand Dhirendra Construction Pvt. Ltd. hence the present application is not maintainable.

7. He further submits that even assuming without admitting that there is a contract between the appellant and opposite parties then also in Clause 26 of the said agreement, it was specifically stated that in the event token money was not being credited in the account of the opposite parties, the agreement shall be deemed to be null and void and will become non-operative.

8. He further submits that it is admitted case of the applicant that only one cheque of Rs. 25 lakh, was en-cashed. He submits that the applicant in order to contest his case, has filed second supplementary

affidavit bringing on record the alleged receipt, copy of which has been annexed as Annexure no. SA- 5 and he is trying to justify that Rs. 25 lakh has been paid in cash.

9. He lastly submits that the said document (cash receipt) is forged and fabricated document and in reply thereto, the opposite parties have filed second counter affidavit and referred paragraph nos. 3,4, 6 and 7 to which neither any specific rebuttal or reply has been submitted by the applicant nor any supporting material has been brought on record in order to prove his claim, therefore, the present application is not maintainable.

10. In support of his claim, learned counsel for the opposite parties have relied upon the judgement of Apex Court in the case of **Rajia Begum and others Vs. Barnali Mukherjee, (2026) 7 SCC 631**.

11. Rebutting to the said submission of counsel for the opposite party, learned counsel for the applicant has relied upon paragraph nos. 6,7 and 11 of its second rejoinder affidavit.

12. After hearing learned counsel for the parties, the Court has perused the records.

13. The applicant in paragraph nos. 2 and 4 of its second supplementary affidavit has averred as under:

> *2. That is is relevant to mention here that in the respect of the agreement between the petitioner and respondents dated 21.8.2013, the petitioner paid the complete amount to the respondents of Rs. 50,00,000/- it is further to submitted here that the said amount was paid by two cheque no. as 009981 dated 09.09.2013 amount of Rs. 25,00,000/- which was deposited by the respondent in his account, but the second cheque no. 009982 dated 09.11.2013 of Rs. 25,00,000/- was dishonored, in this respect it is also relevant to state here that the petitioner paid the amount of Rs. 25,00,000/- to the respondents in the cash mode, by withdrawing several times from his account and the statement of the account of the petitioner was already annexed with the second supplementary affidavit, it is further to submit here that the said amount was given in cash mode to respondent on insurance of the respondent to give the receiving slip to the petitioner, that in companies of said insurance the respondent has sent a notary affidavit through his servant to the petitioner dated 19.3.2014.*

3. ...

4. That is is also relevant to mention here that the dates of the withdrawing amount clearly match to this affidavit their fore this affidavit may be read as part of the statement on account of the petitioner which is already annexed with the second supplementary affidavit.

14. From a bare perusal of the said paragraphs, it is evident that serious allegations have been leveled by the opposite parties. The opposite parties have alleged that the receipt annexed as Annexure No. SA-5 is forged and fabricated and Rs. 25 lakh said to have been paid in cash, was never received by them. Also, the agreement dated 21.8.2013 became null and void under Clause 26, on dishonor of the second cheque. The applicant disputes each of the said allegations and relies on his bank statement and on one notarized affidavit.

15. The record also shows that a sum of Rs. 9,90,000/- has been withdrawn from I.C.I.C.I. Bank on 28.03.2014 but in the affidavit, the same has been shown to be paid to the opposite parties on 25.02.2014, which creates some doubt regarding the payment of amount.

16. However, the case law relied upon by the counsel for the opposite party in the case of **Rajia Begum and others (supra)** is of no aid to him as the execution of agreement dated 21.8.2013 is not in dispute. It is also not in dispute between the parties that the cash amount said to have been paid to the opposite parties only after withdrawing the same from the bank. In a given situation the fact with regard to payment made on receipt of cash by the opposite parties can be looked into by the Arbitral Tribunal, as amount of Rs. 25 lakh paid through cheque no. 009982 dated 9.11.2013, is accepted by the opposite parties.

17. It is also not in dispute that there is an agreement dated 21.8.2013 between Mr. Varun Gupta (the applicant) and the respondent -opposite party and under clause 21 of the agreement, if any dispute arises between the parties, the matter shall be decided by Arbitral Tribunal consisting two members, nominated from each side. The notices dated 25.10.2017 and 15.11.2017 invoking the arbitration clause have not resulted in the

constitution of an arbitral tribunal. If a valid agreement dated 21.8.2013 is there, all the disputes must be decided by the arbitral tribunal.

18. Further, the scope of the present proceedings under Section 11 of the Act does not require any elaboration in view of that position in law having been made crystal clear by a recent three judge decision of the Supreme Court in the case of ***M/S Mayavati Trading Pvt. Ltd. Vs. Pradyuat Deb Burman***, Civil Appeal No. 7023 of 2019, decided on 05.09.2019 in which it has been held as below:

> *"This being the position, it is clear that the law prior to the 2015 Amendment that has been laid down by this Court, which would have included going into whether accord and satisfaction has taken place, has now been legislatively overruled. This being the position, it is difficult to agree with the reasoning contained in the aforesaid judgment as Section 11(6A) is confined to the examination of the existence of an arbitration agreement and is to be understood in the narrow sense as has been laid down in the judgment Duro Felguera, S.A. (supra) -- see paras 48 & 59."*

19. While laying down that law, the Supreme Court had itself referred to paragraph nos. 48 & 59 of its earlier decision in the case of ***Duro Felguera, S.A. Vs. Gangavaram Port Ltd.***, (2017) 9 SCC 729.

20. That position in law has been reiterated in a recent decision of the Supreme Court in ***GOQII Technologies Pvt. Ltd. Vs. Sokrati Technologies Pvt. Ltd.***, (2025) 2 SCC 192.

21. In the facts of the present case, on *prima facie* basis, it has to be accepted that there exists an arbitration clause, between the parties. Also, it is clear that the parties have not been able to appoint consented arbitrator and therefore, the appointing authority has to be assumed by this Court upon the present application.

22. At the same time, no final conclusion is being drawn as may affect the merits of the claim. That matter would remain to be considered by the appropriate forum at the appropriate stage, upon claim, objection,

challenge or appeal being filed. Thus, amongst others it would remain open to the opposite party to raise all objections as the Act permits.

23. Leaving that course completely open to the respective parties, at present, only a forum is being provided for adjudication of a claim proposed to be raised and resisted, in accordance with the law.

24. In view of above, this Court appoints **Mr. Justice Vivek Kumar Birla, (a Former Judge of this High Court), R/o 4/11, Drummond Road, (Opposite P.W.D. Inspection House), Prayagraj, (U.P) Mobile No. 9415253955,** to act as an Arbitrator for resolving the disputes between the parties.

25. The Arbitrator shall be entitled to his fees and expenses in accordance with the fourth Schedule to the Arbitration & Conciliation Act, 1996.

26. In view of the above, the present arbitration application stands **allowed**.

27. The Registry is directed to forward a copy of this order to the learned Arbitrator through all permissible modes, including the electronic modes within a week.

(Piyush Agrawal, J.)

October 13, 2026
Rahul Dwivedi/-