2026 INSC 484

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOs. ..... OF 2026
(@ SLP (C) Nos. 38407-38411 of 2025)

Hirani Developers **… Appellant**

versus

Nehru Nagar Samruddhi CHS Ltd.
and another Etc. **… Respondents**

J U D G M E N T

SANJAY KUMAR, J

1. Leave granted.

2. Existence of an arbitration agreement is in dispute.

3. By common order dated 26.06.2025, the High Court of Judicature at Bombay held that there was no such arbitration agreement between the parties and dismissed the five applications filed under Section 11 of the Arbitration and Conciliation Act, 1996[1], by the appellant, Hirani Developers, seeking appointment of an arbitrator.

4. Hirani Developers, the appellant, a proprietary concern involved in real estate business, entered into a Development Agreement on 20.12.2011, registered as Document No. BDR13-05469-2012 on 04.07.2012, with Nehru Nagar Samruddhi Co-operative Housing Society

[1] For short, 'the Arbitration Act'

Limited, respondent No. 1, for redevelopment of its project which was in a dilapidated condition. The Development Agreement provided for a dispute resolution mechanism in Clause 36, which reads as under: -

> 'In case of any dispute or differences arose in respect of the terms and conditions of said agreement, both parties shall appoint sole Arbitrator and said Arbitration proceedings shall be conducted under the provisions of Arbitration and Conciliation Act, 1996.'

5. Long thereafter, the appellant entered into separate Permanent Alternate Accommodation Agreements with the society and its members. We are concerned with five such agreements that the appellant entered into with the society and its members, viz., Narayan Haldankar, Malan Valkunde, Ravindra Walanju, Pradeep Govekar and Suchita Pawar, the respondents herein. These agreements were executed on 02.09.2023 and 12.01.2024. All the agreements were on identical lines and each of them contained the very same Clause 14, which reads as under: -

> 'It is clarified that all the terms and conditions of the Development Agreement dated 04/07/2012 shall be construed to form a part of these presents and all the clauses of the same shall be binding on the parties hereto.'

6. It appears that the respondent members filed complaints against the appellant under the Consumer Protection Act, 2019. At that stage, the appellant got issued individual legal notices dated 28.02.2025 to the five respondent members under Section 21 of the Arbitration Act, invoking Clause 36 of the Development Agreement and calling upon them to

nominate/choose one of the arbitrators named therein. However, by reply dated 07.03.2025, the respondent members stated that they had approached the Consumer Disputes Redressal Commission at Bandra and refused to proceed with the proposed arbitration. Thereupon, the appellant filed the subject applications before the High Court under Section 11 of the Arbitration Act seeking appointment of an arbitrator.

7. By the impugned common order, the High Court negated the plea of the appellant on the ground that the arbitration clause was contained in the Development Agreement that the appellant had with the society but there was no such arbitration clause in the Permanent Alternate Accommodation Agreements that the appellant had executed with each of the respondent members. The High Court opined that, in terms of Section 7(5) of the Arbitration Act, mere reference to an earlier document in the later one would not be adequate to incorporate the arbitration clause from the former into the latter, as it would be necessary to demonstrate a firm commitment to go in for arbitration in the later document itself. According to the High Court, the members of the society were not privy to the arbitration clause in the Development Agreement in their individual capacity and, by a mere generic reference, the arbitration clause which was binding upon the appellant and the society could not bind the members of the society individually. It was concluded that, for arbitration to be firmly discerned, there needs to be a specific arbitration clause

binding the members also and that being absent, the High Court held that the appellant would have to take recourse to appropriate proceedings, as advised, but there was no room to go in for arbitration. On this reasoning, the High Court rejected the appellant's applications.

8. Section 7 of the Arbitration Act is titled 'Arbitration agreement'. Section 7(5) therein provides that the reference in a contract to a document containing an arbitration clause would constitute an arbitration agreement if the contract is in writing and the reference is such as to make that arbitration clause part of the contract. The High Court came to the conclusion that Section 7(5) of the Arbitration Act is not satisfied in the case on hand. We are persuaded to hold otherwise.

9. In ***M.R. Engineers and Contractors Private Limited vs. Som Datt Builders Limited***[2], this Court had occasion to consider incorporation of an arbitration clause from one document into another. It was noted that Section 7(5) requires a conscious acceptance of the arbitration clause from another document by the parties as a part of their contract, before such arbitration clause could be read to be a part of the contract between those parties. This Court observed that the Arbitration Act does not contain any indication or guidelines as to the conditions to be fulfilled before reference to a document in a contract can be construed as a reference incorporating an arbitration clause contained in such document into the

2 (2009) 7 SCC 696

contract and, therefore, in the absence of such statutory guidelines, the normal rules of construction of contract would have to be followed. Elaborating further, this Court observed as under: -

> **'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.
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> **17.** We will give a few instances of incorporation and mere reference to explain the position (illustrative and not exhaustive). If a contract refers to a document and provides that the said document shall form part and parcel of the contract, or that all terms and conditions of the said document shall be read or treated as a part of the contract, or that the contract will be governed by the provisions of the said document, or that the terms and conditions of the said document shall be incorporated into the contract, the terms and conditions of the document in entirety will get bodily lifted and incorporated into the contract. When there is such incorporation of the terms and conditions of a document, every term of such document (except to the extent it is inconsistent with any specific provision in the contract) will apply to the contract. If the document so incorporated contains a provision for settlement of disputes by arbitration, the said arbitration clause also will apply to the contract.
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> **18.** On the other hand, where there is only a reference to a document in a contract in a particular context, the document will not get incorporated in entirety into the contract. For example, if a contract provides that the specifications of the supplies will be as provided in an earlier contract or

> another purchase order, then it will be necessary to look to that document only for the limited purpose of ascertainment of specifications of the goods to be supplied. The referred document cannot be looked into for any other purpose, say price or payment of price. Similarly, if a contract between *X* and *Y* provides that the terms of payment to *Y* will be as in the contract between *X* and *Z*, then only the terms of payment from the contract between *X* and *Z*, will be read as part of the contract between *X* and *Y*. The other terms, say relating to quantity or delivery cannot be looked into.'

10. Again, in ***NBCC (India) Limited. vs. Zillion Infraprojects Private Limited***[3], this Court held that an arbitration clause in another document would get incorporated into the later contract by reference, if the contract contains a clear reference to the document containing the arbitration clause and such reference to the other document clearly indicates the intention to incorporate the arbitration clause into the contract and such arbitration clause is capable of application to the disputes under the contract and is not repugnant to any term of that contract. This Court clarified that a general reference to another contract would not have the effect of incorporating the arbitration clause from the referred document into the contract between the parties.

11. Applying the aforestated edict and, in particular, the illustration in paragraph 17 of ***M.R. Engineers and Contractors Private Limited***

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3 (2024) 7 SCC 174

(*supra*), we find that this was not a case of mere reference to an earlier document containing an arbitration clause. The later Permanent Alternate Accommodation Agreements entered into by the appellant with the respondent members unequivocally recorded in Clause 14 thereof that all the terms and conditions of the Development Agreement dated 04.07.2012 shall be construed to form part of the said agreements and all clauses of the same shall be binding on the parties to those later agreements. There could be no clearer indication of the intention of the parties to incorporate and assimilate the Development Agreement dated 04.07.2012 in its entirety into the later Permanent Alternate Accommodation Agreements. Not stopping short at asserting that all terms and conditions of the said Development Agreement should be construed to be part of the Permanent Alternate Accommodation Agreements, Clause 14 goes on to affirm that all clauses of the Development Agreement shall be binding on the parties to the Permanent Alternate Accommodation Agreements.

12. This was, thus, not a case of mere reference to an earlier agreement but a case where the parties to the later contract clearly intended to import the Development Agreement, body and soul, into the later agreements. Therefore, there can be no doubt as to the incorporation of Clause 36 of the Development Agreement, i.e., the arbitration clause, into the Permanent Alternate Accommodation Agreements.

13. Viewed thus, the High Court was in error in its understanding of the legal position obtaining under Section 7(5) of the Arbitration Act, as explained by this Court in the aforestated decisions. This was a fit case for the High Court to have accepted the plea of the appellant that there was an arbitration agreement between the parties by incorporation. The common order dated 26.06.2025 of the High Court holding to the contrary is, accordingly, set aside and the appeals are allowed. Mr. Vishal Kanade, Advocate, Bombay High Court, Room No. 103, 1st Floor, Gundecha Chambers, Nagindas Master Road, Fort, Mumbai – 400 001 (Mob. No. 9819668711), is appointed as the Sole Arbitrator to resolve the disputes and differences between the appellant and the respondent members. The learned Arbitrator shall make his declaration in terms of Section 12 of the Arbitration Act within a period of fifteen days from the date of receipt of a copy of this order. He shall be entitled to fees in terms of the Fourth Schedule to the Arbitration Act.

Pending applications, if any, shall stand disposed of.

....., J.
SANJAY KUMAR

....., J.
K. VINOD CHANDRAN

May 13, 2026
New Delhi.