

**IN THE HIGH COURT FOR THE STATE OF
TELANGANA AT HYDERABAD**

ARBITRATION APPLICATION NO.177 of 2022

Between:

Poolla Ananta Arun rep.by his GPA Holder Sri P. Shiva
Kumar.

...Applicant.

AND

1. Tasleem Abdullah Chougale and others

...Respondents

JUDGMENT PRONOUNCED ON: 23.02.2024

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE K.SARATH

1. Whether Reporters of Local newspapers may be allowed to see the Judgment ? : Yes/No
2. Whether the copies of judgment may be marked to Law Reports/Journals : Yes/No
3. Whether Their Lordship/Ladyship wish to see the fair copy of judgment : Yes/No

JUSTICE K.SARATH

THE HON'BLE SRI JUSTICE K.SARATH**+ARBITRATION APPLICATION NO.177 of 2022**

%Dated 23.02.2024

Poolla Ananta Arun rep.by his GPA Holder Sri P. Shiva Kumar.

...Applicant.

AND

\$ 1. Tasleem Abdullah Chougale and others

...Respondents

! Counsel for Applicant : Ms. D. Shalini Shravanthi
representing Sri D. Srinivas Prasad.

^ Counsel for Respondents : Sri Abhinav Krishna
Uppaluri, representing Sri S. Jasbeer Singh.

< GIST :

> HEAD NOTE :

? Cases referred :

- 1 (2021) 5 SCC 738
- 2 2023 SCC OnLine SC 657
- 3 2023 (7) SCC 1
- 4 2023 SCC Online SC 1666
- 5 (2022) 3 SCC 117

THE HONOURABLE SRI JUSTICE K.SARATH**Arbitration Application No.177 of 2022****ORDER:**

Heard Ms. D. Shalini Shrivanthi representing Sri D. Srinivas Prasad, Learned Counsel for the applicant and Sri Abhinav Krishna Uppaluri, representing Sri S. Jasbeer Singh, Learned Counsel for the respondents.

2. This application is filed to appoint a sole arbitrator to decide the claims and disputes between the applicant and the respondents in terms of the arbitration clause in the agreement dated 27.01.2013 and to grant costs of the application to be paid by the respondents to the applicant.

3. Learned Counsel for the applicant submits that the respondents through their GPA holder has agreed to sell the flat admeasuring 3500 sq. feet in the ground floor in Block A in Tower No.A11 in the apartment known as 'Grand Luxus' with

proportionate undivided share in the land out of the total land admeasuring 8,830.73 sq. yards with three car parking areas in the 5 cellars and a servant quarter forming part of the premises, by way of agreement of sale dated 27.01.2013 for a total sale consideration of Rs.73,50,000/-. The said complex has to be constructed within a period of 24 months with a grace period of 6 months from the date of agreement. If there is delay beyond 30 months inclusive the grace period of 6 months, the respondents agreed to pay a sum of Rs.20/- per sq. feet for the total extent of flat till the date of delivery of possession of the said property completing with all aspects.

4. Learned Counsel for the applicant further submits that initially, when the agreement was entered into, the respondents have agreed to sell the flat admeasuring 3078 sq. feet in the ground floor bearing No.G of Block A in Tower No.9, later the respondents after obtaining the revised permissions

from the appropriate authorities have requested the applicant to take the flat in Tower No.A11 in the ground floor instead of Tower No.9 in the ground floor and the area of flat is increased to 3500 sq. feet from 3078 sq. feet and the sale consideration was also increased by Rs.8,86,200/- and all the changes were incorporated under a supplementary agreement dated 29.09.2015. In the meantime, the applicant has paid installments regularly in phase manner as per the agreement and finally he has paid a sum of Rs.21,00,000/- on 26.09.2019 and paid total amount of Rs.31,84,800/- to the respondents and the same was not specifically denied by the respondents in their counter affidavit. The balance consideration has to be paid at the time of registration of the sale deed subject to actual measurements as specified in the supplementary agreement. The respondents have to complete the construction of the entire complex in all aspects within 30 months including the grace period of 6 months. However, as there is huge delay in

completion of the flat and handing over the same in all aspects as agreed, the respondents are liable to pay a sum of Rs.56,70,000/- to the applicant.

5. Learned Counsel further submits that the respondents have failed to complete the construction of the entire complex including the said property as per the terms agreed. It has come to the notice of the applicant that the GPA holder of respondents had sold some of the flats which have fallen to the share of the respondents and disputes arose in respect of the same. The applicant also came to know that the GPA holder was trying to alienate the said property which was agreed to sell to the applicant. Though the GPA holder has executed a sale deed in favour of the applicant and gave assurance to perform the part of contract and to complete the said property in all aspects on or before 31.05.2020, he failed to perform the same.

6. Learned Counsel for the applicant submits that though the applicant has paid the total amount of

Rs.31,84,800/-, there was no delivery of possession of the flat under the agreement of sale even after the period expired. He submits that though the applicant is ready and willing to perform his part of the contract, the respondents gave evasive answers and failed to deliver on its promises and they are trying to alienate the said property agreed to be sold to the applicant in spite of receiving substantial amount from the applicant. Hence, the applicant had invoked the arbitration clause seeking appointment of a sole arbitrator to adjudicate the disputes between the parties as per the arbitration clause in the agreement of sale dated 27.01.2013 and sent a notice dated 18.06.2022 to the Respondents and GPA holder of the respondents and the same was replied by the respondent Nos.1 to 7 denying appointment of Arbitrator through their counsel dated 04.07.2022 and the said notice was returned unclaimed by the GPA holder and in view of the same, the applicant has filed instant application and requested to allow the same.

7. Learned counsel for the applicant has relied on the following judgment:

1. Bharat Sanchar Nigam Limited and another vs. Nortel Networks India Private Limited¹.

8. Learned Counsel for the respondents based on the counter averments submits that as per the agreement of sale dated 27.01.2013, the sale consideration has to be paid in phase manner, however the applicant has grossly failed to do so. Originally, the GPA holder has obtained building permit order from the GHMC for construction of the residential apartment comprising 3 cellar+Ground+Five Upper Floors vide permit dated 20.10.2009 and thereafter, the respondent No.1 obtained revised building permit order from the GHMC, which was sanctioned with Permit dated 14.02.2017 and the name of the residential apartment was renamed as “Grand Luxus” in place of ‘FIMA hill top’. The applicant has failed to pay the

¹ (2021) 5 SCC 738

complete sale consideration and paid meager amount. Though the agreement of sale was executed in the year 2013, the applicant has approached this Court in the year 2022 i.e, after a period of 9 years. The documents relied on by the applicant i.e., Memorandum of Understanding dated 27.01.2013, agreement of sale dated 27.01.2013 and the supplementary agreement dated 29.09.2015 are insufficiently stamped in accordance with Section 16 of the Arbitration and Conciliation Act, 1996 (for short 'the Act') and as such the same shall not be admitted as evidence without impounding the same under the Stamp Act and the application is liable to be rejected.

9. Learned Counsel for the respondents further submits that the arbitrator cannot be appointed basing on insufficiently stamped instrument and even if the said instrument is impounded, the same has to be dismissed on the ground of limitation as the time limit for finishing the construction of flats

as per the agreement of sale dated 27.01.2013 is 24 months or 2 years with a grace period of 6 months. In terms of the revised building permit order, the respondents have already commenced the construction and sold several individual flats to various individuals and the said apartment has been approved by the Bankers for grant of home loans to the flat purchasers. The residential apartment of the respondent has all legal requirements and no portion of the said apartment suffers with any legal lacuna. The agreement of sale was executed in the year 2013, but the applicant has approached this Court in the year 2022 and hence, the application is liable to be dismissed.

10. Learned Counsel for the respondents further submits that the claim and the time within which the arbitrator shall be appointed is barred by limitation as the limitation period for proceeding to appoint arbitrator ends on 26.07.2018 and the notice for initiating arbitration was issued on

18.06.2022 i.e., after four years of limitation being ended for seeking appointment of arbitrator. Learned Counsel further submits that the notice under Section 11 of the Act was not served upon the GPA holder of respondents and requested to dismiss the arbitration application.

11. Learned Counsel for the respondents has relied on the following judgment:

1. M/s.B and T AG vs. Ministry of Defence²

12. After hearing both sides and perusal of the record, this Court is of the considered view that the applicant herein had agreed to purchase the flat admeasuring 3500 sq. feet in the ground floor of Block-A in Tower No.A11 in the apartment known as “Grand Luxus” with proportionate undivided share in the common areas and amenities along with 3 car parking, each slot in the 5 cellars +G+5 floors together with proportionate undivided share in the

² 2023 SCC OnLine SC 657

land respectively, out of the total land admeasuring 8830.73 sq. yards equivalent to 7383.55 sq.metres, situated at Shaikpet Village and Mandal at Syed Nagar, First Lancer, Road No.12, Banjara Hills, Hyderabad.

13. The respondents through their GPA holder M/s.Fima Properties Private Limited had initially entered into agreement of sale with the applicant on 27.01.2013 for the Flat in A block, Tower No.9 in the Ground floor bearing No.G admeasuring 3078 square feet in the apartment known as "Fima Hill Top". Subsequently, both parties had entered into a supplementary agreement on 29.09.2015 changing the schedule property as Flat admeasuring 3500 square feet in Block-A, Ground Floor in Tower No.A11, the apartment known as "Grand Luxus". Subsequently, the name of the said apartment was changed as "The Valencia". As per the agreement, the respondents have to complete the work and handover the possession to the applicant within 24

months or 2 years with effect from the date of agreement with a grace period of 6 months from the date of expiry of 24 months and if the respondents failed to complete the entire project within time, the applicant shall be entitled to be paid rent over the schedule property by the respondents on monthly basis @ of INR Rs.20/- per square feet of total square feet formed under the schedule property. If the rental payments exceed 12 months, the applicant along with like minded applicant reserves the right for alternative means of having the project completed.

14. In the supplementary agreement dated 29.09.2015, it clearly mentioned that the conditions mentioned in the agreement of sale dated 27.01.2013 shall remain in force and shall be binding on both the parties. As per the agreement, the respondents have not completed the construction within time and the applicant also without asking any rent from the respondents paid

the amounts as per the progress in the work till 03.04.2019. In the agreement dated 27.01.2013, it clearly mentioned that any dispute arising out of or in connection with this indenture, including any question regarding its existence, validity or termination shall be referred to and finally resolved by arbitration. The number of arbitrators shall be one. The seat or legal place of arbitration shall be Hyderabad. The indenture shall be subjected to the law of the land, for time being in force and to the Indian Contract Act, 1872. Accordingly, the Transfer of Property and the Specific Relief Act shall also be applicable. In view of the same, it clearly shows that for resolving any dispute between the parties, arbitration clause exists.

15. The applicant has issued a legal notice to the respondents on 18.06.2022 invoking arbitration clause to refer the disputes between them to the Arbitrator. However, the respondent Nos.1 to 7 have given their reply on 04.07.2022 and denied to

appoint arbitrator and the GPA holder of the respondents has unclaimed the said notice. In view of the same, the applicant is constrained to file instant arbitration application under Section 11(5) and (6) of the Arbitration and Conciliation Act, 1996 (for short 'the Act').

16. The contention of the respondents is that this Court cannot appoint Arbitrator based on the arbitration agreement which is unstamped as per the judgment of the Hon'ble Supreme Court in **M/s.N.N.Global Mercantile Private Limited vs. M/s.Indo Unique Flame Ltd and others**³. But the same was overruled by the Constitutional Bench consisting of 7 Judges of the Hon'ble Supreme Court in **Re-Interplay between Arbitration Agreements under the Arbitration and Conciliation Act, 1996 and the Indian Stamp Act, 1899**⁴, wherein it was held as under:

³ 2023 (7) SCC 1

⁴ 2023 SCC Online SC 1666

234 (c) An objection as to stamping does not fall for determination under Sections 8 or 11 of the Arbitration Act. The concerned Court must examine whether the arbitration agreement prima facie exists.

17. The main contention of the learned counsel for the respondents is that the claim and the time within which the arbitrator shall be appointed is barred by limitation as per the agreement dated 27.01.2013. The 30 months period of construction was ended on 26.07.2018 and the cause of action for not finishing construction within time prescribed in the agreement of sale ended up on 26.07.2015, the limitation period for appointment of arbitrator ends on 26.07.2018. The notice for initiating arbitration was issued by the applicant on 18.06.2022 and the same is barred by limitation and the application cannot be maintainable.

18. The respondents have relied on the Judgment relied of the Hon'ble Supreme Court in **B and TG's case** (cited 2 supra), wherein it was held as under:

“54. This Court observed that the Act 1996 has been framed for expeditious resolution of disputes and

various provisions have been incorporated in the Act 1996 to ensure that the arbitral proceedings are conducted in a time bound manner. [The Act](#) 1996 does not prescribe any time period for filing an application under [Section 11\(6\)](#). Since there is no provision in the Act 1996 specifying the period of limitation for filing an application under [Section 11](#), one would have to take recourse to the Act 1963, as per [Section 43](#) of the Act 1996 which provides that the [Limitation Act](#) shall apply to arbitrators, as it applies to proceedings in Court.

55. Since none of the articles in [Schedule to the Limitation Act](#) provide a time period for filing an application for appointment of arbitrator under [Section 11](#), it would be covered by the residual provision under [Article 137](#) of the [Limitation Act](#) which provides that the period of limitation is three years for any other application for which no period of limitation is provided elsewhere in the division. The time limit starts from the period when the right to apply accrues.

56. This Court relied on its various other decisions including few High Court decisions. This Court held that an application under [Section 11](#) is to be filed in a Court of Law, and since no specific Article of the Act 1963 applies, the residual Article would become applicable. The effect being that the period of limitation to file an application under [Section 11](#) is three years from the date of refusal to appoint the arbitrator or on expiry of 30 days whichever is earlier.

68. Cause of action becomes important for the purposes of calculating the limitation period for bringing an action. It is imperative that a party realises when a cause of action arises. If a party simply delays sending a notice seeking reference under the Act 1996 because they are unclear of when the cause of action arose, the claim can become time-barred even before the party realises the same.”

The above finding clearly shows that the application for appointment of arbitrator under Section 11 would be covered by the residual provision under Article 137 of the Limitation Act which provides that the period of limitation is three years for any other application for

which no period of limitation is provided elsewhere in the division. The time limit starts from the period when the right to apply accrues.

19. In the instant case, the last payment was made on 03.04.2019 and the applicant has issued notice on 18.06.2022 calling upon them to appoint arbitrator and the applicant, after the mandatory period of 30 days, filed the present application on 01.08.2022. In view of the same, the Judgment relied on by the learned counsel for the respondents is not apply to the instant case.

20. In fact, both the parties in view of the agreement dated 26.01.2013 and the supplementary agreement dated 29.09.2015 agreed to pay the amounts and the respondents have received the amounts till 26.09.2019 and the same was not denied by the respondents. It clearly shows the agreement of sale is in subsistence and continuation till 26.09.2019 as the respondents have taken payments from the applicant. The applicant admittedly issued notice to the respondents on

18.06.2022 for initiation of arbitration proceedings. Limitation starts from the last payment i.e., 26.09.2019. For counting of limitation period for proceeding to appoint arbitrator ends three years from 26.09.2019. But due to Covid 19 pandemic, the Hon'ble Supreme Court in **Cognizance For Extension of Limitation, in Re**⁵ has suspended the limitation period in all proceedings including Arbitration Proceedings from 15.03.2020 to 28.02.2022. In view of the same, the applicant has initiated arbitration proceedings within three years.

21. Further, in the Judgment relied on by the Learned Counsel for the applicant in **Bharat Sanchar Nigam Limited's** case (cited 1 supra), the Hon'ble Supreme Court held as under:

"14. Since none of the [Articles in the Schedule to the Limitation Act, 1963](#) provide a time period for filing an application for appointment of an arbitrator under [Section 11](#), it would be covered by the residual provision [Article 137](#) of the [Limitation Act, 1963](#).

[Article 137](#) of the [Limitation Act, 1963](#) provides :

	THIRD	DIVISION-	
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⁵ (2022) 3 SCC 117

APPLICATIONS			
	Description of application	Period of limitation	Time from which period begins to run
137.	Any other application for which no period of limitation is provided elsewhere in this Division.	Three years	When the right to apply accrues.

38. Limitation is normally a mixed question of fact and law, and would lie within the domain of the arbitral tribunal. There is, however, a distinction between jurisdictional and admissibility issues. An issue of 'jurisdiction' pertains to the power and authority of the arbitrators to hear and decide a case. Jurisdictional issues include objections to the competence of the arbitrator or tribunal to hear a dispute, such as lack of consent, or a dispute falling outside the scope of the arbitration agreement. Issues with respect to the existence, scope and validity of the arbitration agreement are invariably regarded as jurisdictional issues, since these issues pertain to the jurisdiction of the tribunal.

The above judgment squarely applies to the instant case and the application is within time.

22. Moreover, Section 43 of the Arbitration and Conciliation Act, 1996 deals with the limitation.

Section 43(1)(2) of the Act reads as under:

43. Limitation. - (1) The Limitation Act, 1963 (36 of 1963), shall apply to arbitrations as it applies to proceedings in Court.

(2) For the purposes of this section and the Limitation Act, 1963 (36 of 1963) an arbitration shall be deemed to have commenced on the date referred in section 21.

Section 21 of the Act reads as under:

Commencement of arbitral proceedings.

Unless otherwise agreed by the parties, the arbitral proceedings in respect of a particular dispute commence

on the date on which a request for that dispute to be referred to arbitration is received by the respondent.

In the instant case, the commencement of arbitral proceedings start from 18.06.2022 and the same was unclaimed by the GPA holder of the respondents who has filed counter on their behalf. The notices served to the respondents and the respondent Nos.1 to 7 have given their reply through their counsel on 04.07.2022 and the service of notice by the applicant is deemed service as the GPA holder, who has received the amounts from the applicant, was unclaimed the notice. In view of the same, the Arbitration Application as per Section 11 of the Act is liable to be allowed as all the requirements were fulfilled by the applicant before filing of the Arbitration Application.

23. In view of the above findings, the Arbitration Application is allowed by appointing Sri Justice Challa Kodanda Ram, Former Judge, High Court for the State of Telangana, Hyderabad, as sole arbitrator to adjudicate the dispute between the applicant and

the respondents in terms of the arbitration clause in the agreement of sale dated 27.01.2013 and dispose of the same within a reasonable period of time.

24. The learned Arbitrator is entitled to fees as per the rates specified in the Schedule – IV to Arbitration Act, inserted by Act 3 of 2016, which shall be borne by both parties in equal shares.

25. Miscellaneous applications, if any pending in the Arbitration Application, shall stand closed. There shall be no order as to costs.

JUSTICE K.SARATH

Date: 23.02.2024.

sj

Note:

The Registry is directed to communicate a copy of this order to Sri Justice Challa Kodanda Ram, Former Judge, High Court for the State of Telangana, Hyderabad, Plot No.68, Road No.71, Phase III, Jubilee Hills, Hyderabad 500 034

LR copy to be marked.