



IN THE HIGH COURT OF KARNATAKA AT BENGALURU



DATED THIS THE 31ST DAY OF OCTOBER, 2025

BEFORE

THE HON'BLE MR. JUSTICE SURAJ GOVINDARAJ

CIVIL MISC. PETITION NO. 259 OF 2025

BETWEEN:

1. SRI SUBHASH MEHTA,
S/O SRI. PREM DATTA,
AGED ABOUT 87 YEARS,
PRESENTLY R/AT PRAKRUTHI CLUB RESORT,
PLOT NO.21 AND 22, HEGGANAHALLI VILLAGE,
KUNDANA HOBLI, DEVANAHLI TALUK,
BENGALURU RURAL DISTRICT 562 110.
2. SMT. USHA MOHAN,
W/O SRI SUBHASH MEHTA,
AGED ABOUT 80 YEARS,
PRESENTLY R/AT PRAKRUTHI CLUB RESORT,
PLOT NO.21 AND 22, HEGGANAHALLI VILLAGE,
KUNDANA HOBLI, DEVANAHLI TALUK,
BENGALURU RURAL DISTRICT - 562 110.

...PETITIONERS

(BY SRI ASHVINI PATIL, ADVOCATE)

AND:

M/S BABA DEVELOPERS PVT. LTD.,
A COMPANY INCORPORATED UNDER THE
PROVISIONS OF THE COMPANIES ACT, 1956,
REGISTERED OFFICE AT "PRAKRUTHI CLUB AND
RESORT LAYOUT", PLOT NO. 12A, HEGGANAHALLI
VILLAGE, KUNDANA HOBLI, DEVANAHLI TALUK,
BENGALURU RURAL DISTRICT - 562 110.
REP. BY ITS MANAGING DIRECTOR,
MR. P. SASHIBHUSHAN.

...RESPONDENT

(BY SRI UMESH M N, ADVOCATE FOR R-1)





THIS CIVIL MISC. PETITION IS FILED UNDER SEC.11(6) OF ARBITRATION AND CONCILIATION ACT 1996., PRAYING THAT THIS HON'BLE COURT BE PLEASED TO APPOINT A SOLE ARBITRATOR IN TERM OF CLAUSE 19 OF THE DEVELOPMENT AGREEMENT DATED 17.07.2004 AT ANNEXURE - C ON THE DISPUTES THAT HAVE ARISEN BETWEEN THE PETITIONERS AND THE RESPONDENT AND REFER THE DISPUTES FOR ARBITRATION BEFORE THE ARBITRATION AND CONCILIATION CENTRE, BANGALORE (DOMESTIC AND INTERNATIONAL).

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

CORAM: HON'BLE MR. JUSTICE SURAJ GOVINDARAJ

ORAL ORDER

1. The petitioner is before this Court seeking for the following reliefs;
 - a. *"Appoint a sole arbitrator in term of clause 19 of the Development Agreement dated 17.07.2004 Annexure C to adjudicate on the disputes that have arisen between the Petitioners and the Respondent and refer the disputes for arbitration before the Arbitration & Conciliation Centre, Bangalore (Domestic & International).*
 - b. *Pass any orders/directions as this Hon'ble Court may deem fit and proper in the facts and circumstances of this case."*

2. Petitioner and Respondent had entered into a Development Agreement dated 17.07.2004, which is governed by an Arbitration Clause 19, which is reproduced hereunder for easy reference;



19. In case of any dispute arising between the parties herein the same shall be referred to arbitration appointed with mutual consent and the decision/award of such arbitrator shall be binding upon the parties hereto.

3. The petitioner, contending that respondents were not providing water supply, had issued a notice on 30.07.2015, subsequently, on account of the same not having been complied with, the petitioner invoked the Arbitration Clause and issued a notice on 09.01.2025 appointing its nominee arbitrator.
4. The Respondent replies to the same on 20.01.2025 , denying all the contentions and further contending that the petitioner, having voluntarily filed O.S.No.620 of 2015 before the Additional Civil Judge and JMFC, Devanahalli, having voluntarily chosen the Civil Court Forum, the petitioner cannot now invoke the Arbitration Clause. Subsequent thereto, the petitioner approached this Court seeking the appointment of an arbitrator.



5. Notice having been issued, the Respondent had entered an appearance.
6. Ms.Ashwini Patil., learned counsel appearing for the petitioner, would submit that ;
 - 6.1. Admittedly, the Joint Development Agreement is governed by an arbitration Clause. The suit which had been filed earlier was as regards the cause of action that had arose at that point of time as regards non supply of water, a fresh cause of action is now arising on account of non-supply of water, which she submits is required to be referred to arbitration and as such filing of the earlier suit was on a different cause of action then the present cause of action and this Court ought to appoint an arbitrator.
7. Sri.Umesh., learned counsel for the Respondent submits that the agreement is governed by an arbitration Clause, though not in dispute. The petitioner, having chosen to approach the Civil Court



as well as the Consumer Forum, cannot now invoke the arbitration Clause after the said proceedings had been dismissed.

8. Heard Ms.Ashwini Patil., learned counsel appearing for the petitioner and Sri.Umesh., learned counsel for Respondent and perused papers.
9. The short question that would arise for consideration is

"Whether, once a party has chosen to approach the jurisdiction of Civil Court, could the same party invoke the jurisdiction of this Court under Section 11 of the Arbitration and Conciliation Act, 1996 for the appointment of an arbitrator , contending that the respondent has not agreed to appoint an arbitrator?"

10. The arbitration is an alternate dispute resolution mechanism which could be agreed upon between the parties. The jurisdiction of an arbitrator is conferred on account of consent between the parties , and as such, if the parties had agreed for their disputes to be adjudicated by way of arbitration, it would necessarily have to be referred to arbitration.



11. In the present case, the petitioner had chosen to file a Civil Suit as well as a Consumer Complaint regarding the very same issues that the petitioner is now invoking the arbitration Clause, and the said suit, which had been filed by the petitioner, came to be dismissed.
12. Though it is contended that the complaint before the Consumer Forum has been dismissed by counsel for the Respondent, counsel for the petitioner submits that the order of dismissal has been recalled and the Consumer Complaint is still pending.
13. Be that as it may, the fact remains that the petitioner who is before this Court has chosen to give a go by to the arbitration Clause and approached Civil Court for adjudication of its grievances.
14. In that view of the matter, I am of the considered opinion that the party was given a go by to an arbitration Clause, which cannot later on invoke the arbitration Clause seeking for an appointment of an



arbitrator. The matter would have been, however, different, if the other party had chosen to file a suit in those circumstances , the party adhering to the arbitration Clause could always file an application under Section 8 of the Arbitration and Conciliation Act, 1996 for reference of the matter to the arbitration.

15. In the present case, the petitioner having file a suit in OS No.620 of 2015 the Respondent not having filed an application Section 8 of the Arbitration and Conciliation Act, 1996, the suit has been dismissed the petitioner thereafter has invoked the arbitration Clause, the petitioner having given up the arbitration Clause, respondents have agreed to such giving up of the arbitration Clause,

16. Hence, I answer the point raised by holding that, once a party has chosen to approach the jurisdictional Civil Court, the same party cannot invoke the jurisdiction of this Court under



Section 11 of the Arbitration and Conciliation Act, 1996 for the appointment of an arbitrator , contending that the Respondent has not agreed to appoint an arbitrator.

17. I am of the opinion that powers under Section 11 cannot be exercised by this Court to appoint an arbitrator. The petition stands ***dismissed***, Reserving liberty to the petitioner to agitate all disputes before the pending consumer complaint.

**SD/-
(SURAJ GOVINDARAJ)
JUDGE**

SR
List No.: 1 Sl No.: 72