IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE T.R.RAVI

THURSDAY, THE 30TH DAY OF JULY 2026 / 8TH SRAVANA, 1948

CRP NO. 329 OF 2025

AGAINST THE JUDGMENT DATED 14.07.2025 IN CMA NO.68 OF 2022 OF ADDITIONAL DISTRICT COURT - V, KOZHIKODE

REVISION PETITIONERS/RESPONDENTS:

1 **M/S SARADHI LINES [P] LTD**
REP. BY P.V. RAJEENA [DIRECTOR]
KTC BUILDING, YMCA ROAD,
KOZHIKODE, PIN - 673001

2 **M/S P V S HOSPITAL [P] LTD**
REP. BY T. K. JAIKISH MANAGING DIRECTOR,
RAILWAY STATION ROAD, KOZHIKODED,
PIN - 673001

3 **M/S KALPAKA RUBBER PLANTATION [P] LTD**
REP. BY P V CHANDRAN MANAGING DIRECTOR,
KTC BUILDING, YMCA ROAD,
KOZHIKODET, PIN - 673001

4 **M/S KALPAKA TRANSPORT CO. LTD.,**
REP. BY P V CHANDRAN. MANAGING DIRECTOR,
KTC BUILDING, YMCA ROAD,
KOZHIKODE, PIN - 673001

5 **M/S KERALA TRANSPORT CO**
REP. BY ITS P V CHANDRAN. MANAGING PARTNER,
K T C BUILDING, YMCA ROAD,
KOZHIKODE, PIN - 673001

6 **M/S KERALA ROADLINES**
REP. BY KTC BUILDING, YMCA ROAD,
KOZHIKODE, PIN - 673001

BY ADVS.
SMT.K.LATHA
SMT.LALITHA A.
SMT.GAYATHRI NARENDRANATH
SRI.B.G.BHASKAR

RESPONDENTS/APPELLANTS:

THE INDIAN HOTELS CO.LTD.
HAVING ITS OFFICE AT EXPRESS TOWERS,
BARRISTER RAJINI PATEL MARG,
NARIMAN POINT, MUMBAI,
RFP. BY I TS MANAGING DIRECTOR,
PIN - 400021

BY ADVS.
SHRI.SRINATH GIRISH (FOR CAVEATOR)
SRI.P.JERIL BABU
SMT.PRASUDHA.S

THIS CIVIL REVISION PETITION HAVING COME UP FOR ADMISSION ON 25.02.2026, THE COURT ON 30.07.2026 DELIVERED THE FOLLOWING:

“CR”

T.R.RAVI, J.

CRP No.329 of 2025

Dated this the 30th day of July, 2026

ORDER

The Civil Revision Petition has been filed challenging the order dated 14.07.2025 in C.M.A.No.68 of 2022 of the Additional District Court-V, Kozhikode, allowing the appeal filed by the respondent/defendant against the dismissal of an application filed under Section 8 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the 1996 Act'). The plaintiffs are the petitioners.

2. The admitted facts are as follows:

The KTC Group comprises several Private Limited Companies and partnership firms engaged in various businesses. The shareholders and partners are members of the family of the late P.V.Sami either by birth or by marriage. One of the group companies, M/s. KTC Hotels Pvt. Ltd., owned 2.43 Acres of land with a building thereon, for housing a luxury hotel (hereinafter referred to as 'hotel property'). Adjacent to the hotel property, there was an extent of 2.25 acres (hereinafter referred to as adjacent land) owned by the plaintiffs. Sri P.V. Gangadharan, Managing Director of M/s. KTC Hotels Pvt. Ltd., as well as the Managing Director and Managing Partner of some of the plaintiffs, was authorised to negotiate for the sale of the hotel property and the adjacent land to the respondent/defendant, which is a wing of the Tata Group of Companies. Ext.B1 is a letter dated 26.03.1990 from the defendant, which contains the terms of the proposed sale of the two items of property. The proposal was approved by late P.V.Gangadharan, representing the owners of the hotel property and the adjacent land, by affixing his signature. As per Ext.B1, the consideration for the hotel property was to be ₹95,00,000/- and for the adjacent land was to be ₹90,00,000/-. The proposal contained in Ext.B1 was valid up to 30.09.1990. The letter contains clauses relating to title scrutiny by the defendant’s lawyers, handing over the title deeds, etc. A reading of Ext.B1 would show that the parties intended the sale of both properties.

A sum of ₹18.5 lakhs was paid on 28.03.1990, and a sum of ₹50,00,000/- was paid subsequently during March 1991. Thereafter, the Ext.B2 agreement was entered into between the parties on 22.03.1991, which contains an arbitration clause. The arbitration clause in Ext.B2 reads thus;

> "9. It is agreed between the parties that if any dispute or difference shall arise between the parties hereto touching these presents or any claim or thing herein contained or the construction hereof or as to any matter in any way connected with or arising out of these present or the implementation thereof or the rights, duties or liabilities of either party thereof in connection with these presents, then and in every such case, unless the parties concur in the appointment of a single arbitrator, the matter in difference shall be referred to arbitrators to be appointed by the parties to the difference in accordance with and in all respects to conform to the provisions in that behalf contained in the Indian Arbitration Act, or any substituting statutory modification or re-enactment thereof for the time being in force and the award of such arbitrators shall be binding upon the parties hereto. The venue of such arbitration shall be at Bombay".

3. The proposed sale of the plaintiffs' properties did not come through. Several years later, in 2019, the petitioners invoked

the arbitration clause in Ext.B2 and approached the Arbitration Tribunal for return of the title deeds relating to the plaint schedule properties which were with the defendant. The parties had also submitted their statements as directed by the Tribunal. Pending the proceedings, the petitioners filed O.S.No.336 of 2020 before the Principal Munsiff's Court-I, Kozhikode, for similar reliefs. The petitioners also filed a petition before the Arbitration Tribunal for permission to withdraw from the arbitration with liberty to file a fresh application. The respondent entered appearance in the suit and filed an application under Section 8 of the 1996 Act, seeking reference, contending that the arbitration clause binds the parties and the suit cannot be maintained. The said application was dismissed by order dated 16.06.2022 by the Munsiff Court. C.M.A. No. 68 of 2022 filed by the respondent challenging the order of the Munsiff Court was allowed by the Additional District Court-V, Kozhikode by order dated 14.07.2025, and hence this revision petition.

4. The contentions of the counsel for the revision petitioners can be summarised as follows.

(a) The scope of enquiry under Section 8 and Section 11 of the 1996 Act is totally different. Section 8 of the Act, as it originally stood, envisaged the reference of the parties to arbitration if, in an action brought before a judicial authority, on a matter which was the subject matter of an arbitration agreement, a party applies for reference, not later than the date of submitting his first statement on the substance of the dispute. By the 2016 amendment, such a reference was to be made by the court "unless it finds that *prima facie* no valid arbitration agreement exists". It is contended that after the amendment, the court before which an application is filed for reference to arbitration under Section 8 must enquire into the existence of a valid arbitration agreement and render a *prima facie* finding regarding the above aspect. It is submitted that an enquiry under Section 11 does not contemplate an enquiry into the validity of the arbitration agreement and merely speaks of the existence of an arbitration agreement. Reference was made to the decision in **SBP & Co. v.**

Patel Engineering Ltd. and another 2005(8) SCC 618.

(b) The jurisdiction of the ordinary civil court to entertain all disputes of a civil nature available under Section 9 of the Code of Civil Procedure cannot be divested in any manner. Reference is made to the decisions in **Dhulabhai v. State of Madhya Pradesh & another AIR 1969 SC 78, Rajasthan State Road Transport Corporation and another v. Bal Mukund Bairwa 2009 KHC 4524 and TML Financial Services Ltd. v. Vinod Kumar 2010 (1) KHC 115**.

(c) Ext.B2 agreement cannot be treated as a valid agreement, since the dates on which the parties have signed vary considerably, and some of them can be seen to have signed Ext.B2 even before Ext.B1, which was not factually and legally possible. Contracts should be interpreted strictly. Reliance was placed on the judgments in **Rajasthan State Industrial Development and Investment Corporation and another v. Diamond and Gem Development**

Corporation Ltd. and another 2013 KHC 4116, National Agricultural Cooperative Marketing Federation India Ltd. v. Gains Trading Co. Ltd. 2007 KHC 3626, United India Insurance Co. Ltd. v. Hyundai Engineering and Construction Co.Ltd and others 2018 KHC 6618, Ghewarchand Rampuria v. Shiva Jute Bailing limited AIR 1950 Calcutta 568, U.P. State Electricity Board v. Ajay Ice and Cold Storage 1998(1) Arbi LR 241 and **M/s South India Surgical Co.Ltd v. State of Haryana and others 2013 (1) PLR 66**

(d) The prayer for mandatory injunction is not arbitrable. Reference is made to the judgments **in Sundaram Finance Ltd. v. Biju Scaria [2014 KHC 657]** and **Shriram Transport Finance Co.Ltd. v. Naduvacheri Balakrishnan and others [2017 KHC 644]**.

(e) Question of resultant trust is not arbitrable. Reliance is placed on the judgments in **Shine Varghese v. Station House Officer, Ekm & others** [**2018 KHC 182]** and **Shri Vimal Kishore Shah & Ors v. Jayesh**

Dinesh Shah & ors. [(2016) 8 SCC 788].

(f) A stale claim cannot be the subject matter of arbitration. The question to be considered is whether the claim of the person requesting arbitration is stale and not that of the plaintiff. Reference is made to the judgments in **Bharat Sanchar Nigam Ltd and another v. M/s Nortel Networks India Pvt.Ltd 2021 KHC 6156** and **Magic Eye Developers Pvt.Ltd v. Green Edge Infrastructure Pvt.Ltd 2023 KHC 6568**.

(g) Both parties had abandoned arbitration. Reference is made to the decisions in **Muhammed v. Canara Bank 1991 KHC 435, Food Corporation of India and Another v. Yadav Engineer and Contractor 1982 KHC 476**.

5. The counsel for the respondent contended as follows:

(a) Clause 9 of Ext.B2 is wide enough to encompass every possible dispute between the parties, including the question of return of title deeds. Reliance is placed on the judgment in **Yashid v. Apollo Shopping Mall,**

LLP and others (2025 KER 21212).

(b) The petitioners are not entitled to contend that Ext.B2 is invalid since the parties have partly acted on it.

(c) Having initiated arbitration earlier, it was not open to the petitioners to now contend that the issue is not arbitrable. The prayers before the arbitration panel and the prayers in the suit are materially the same since the reliefs prayed for are return of title deeds and compensation in case of default.

(d) Going by the judgment in **Sushma Shivkumar Daga v. Madhurkumar Ramakrishnaji Bajaj 2023 KHC Online 1039**, the judgment of the appellate court does not warrant interference.

(e) The trust which was stated to have been created as per Ext.B2 does not oust the jurisdiction of the Arbitrator.

(f) Going by the judgment in **Mangayarkarasi v. N.J. Sundaresan [2025 KHC 6482]**, the court has a positive obligation to refer the parties to arbitration by enforcing the terms of the contract, and there is no element of discretion left to obviate the legislative mandate of compelling the parties to seek recourse to arbitration.

(g) Since the claim of the plaintiff is not a stale claim, it is still arbitrable.

6. Heard Sri B.G.Bhaskar, Advocate, on behalf of the revision petitioners and Sri Srinath Girish, Advocate on behalf of the respondent and perused the materials placed on record. The issue that is to be considered is whether the parties must be referred to arbitration under Section 8 of the 1996 Act. Section 8(1) reads thus:

> "8. Power to refer parties to arbitration where there is an arbitration agreement.- (1) A judicial authority, before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party to the arbitration agreement or any person claiming through or under him, so applies not later than the date of submitting his first statement on the substance of the dispute, then, notwithstanding any judgment, decree or order of the Supreme Court or any Court, refer the parties to arbitration unless it finds that prima facie no valid arbitration agreement exists."

7. Section 7 of the 1996 Act defines an arbitration agreement as an agreement by the parties to submit to arbitration

all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not. Hence, what is being referred to arbitration is a dispute which has arisen or which may arise between the parties to the agreement.

Scope of enquiry before reference under S.8 of 1996 Act:

8. As far as the first proposition submitted by the counsel for the petitioners, there can be no dispute. It is now settled law that the scope of judicial scrutiny at the stage of Section 11(6) or Section 8 of the 1996 Act is very limited. The law only requires that, before referring a case for arbitration under Section 8 of the 1996 Act, the Court should *prima facie* see whether a valid arbitration agreement exists. [See **Sushma Shivkumar Daga (supra)**]

Ouster of Jurisdiction of civil court:

9. Coming to the argument that the civil court's jurisdiction is not ousted by the arbitration clause in Ext.B2, in **Dhulabai (supra)**, the Hon'ble Supreme Court held that the ouster of the civil court's jurisdiction cannot be readily inferred, and the civil court's jurisdiction will be available so long as there is no express or

implied bar to jurisdiction. A similar view was taken in **Bal Mukund Bairwa (supra)**. This Court had considered the question of ouster of jurisdiction of the civil court in **TML Financial Services (supra),** which was a case arising from a suit filed alleging illegal seizure of a vehicle and claiming compensation. This Court held that such actions were beyond the scope of the arbitration agreement and had to be decided by the civil court. This Court noted that there was a vast difference between inherent lack of jurisdiction on account of the bar under a statute, or in view of an agreement by the parties, binding themselves to have their disputes decided by arbitration. The above judgments must be considered along with Section 8 of the 1996 Act, for deciding whether there is a bar of jurisdiction.

10. In **Mangayarkarasi(supra),** the Hon'ble Supreme Court has considered the scope of Section 8 of the 1996 Act. After referring to the earlier judgments, the Apex Court held as follows:

> **"11.** In *Booz Allen & Hamilton Inc.* v. *SBI Home Finance Ltd.* (2011) 5 SCC 532, this Court in the context of Section 8 of the 1996 Act considered the question as to whether the subject-matter was "arbitrable" i.e. arbitrable by

private forum (Arbitral Tribunal). In this context, the Court discussed the term "arbitrability" by pointing out three facets thereof, namely:

(1) whether the disputes are capable of adjudication and settlement by arbitration?

(2) whether the disputes are covered by the arbitration agreement?

(3) whether the parties have referred the disputes to arbitration?

12. The Court held as under: (*Booz Allen & Hamilton Inc. case* (2011) 5 SCC 532)

> "*35*. The Arbitral Tribunals are private fora chosen voluntarily by the parties to the dispute, to adjudicate their disputes in place of courts and tribunals which are public fora constituted under the laws of the country. Every civil or commercial dispute, either contractual or non-contractual, which can be decided by a court, is in principle capable of being adjudicated and resolved by arbitration unless the jurisdiction of the Arbitral Tribunals is excluded either expressly or by necessary implication. Adjudication of certain categories of proceedings are reserved by the legislature exclusively for public fora as a matter of public policy. Certain other categories of cases, though not expressly reserved for adjudication by public fora (courts and tribunals), may by

necessary implication stand excluded from the purview of private fora. Consequently, where the cause/dispute is inarbitrable, the court where a suit is pending, will refuse to refer the parties to arbitration, under Section 8 of the Act, even if the parties might have agreed upon arbitration as the forum for settlement of such disputes.

36. The well-recognised examples of non-arbitrable disputes are:

(i) disputes relating to rights and liabilities which give rise to or arise out of criminal offences;

(ii) matrimonial disputes relating to divorce, judicial separation, restitution of conjugal rights, child custody;

(iii) guardianship matters;

(iv) insolvency and winding-up matters;

(v) testamentary matters (grant of probate, letters of administration and succession certificate); and

(vi) eviction or tenancy matters governed by special statutes where the tenant enjoys statutory protection against eviction and only the specified courts are conferred jurisdiction to grant eviction or decide the disputes.

37. It may be noticed that the cases referred to above relate to actions in rem. A right in rem is a

right exercisable against the world at large, as contrasted from a right in personam which is an interest protected solely against specific individuals. Actions in personam refer to actions determining the rights and interests of the parties themselves in the subject-matter of the case, whereas actions in rem refer to actions determining the title to property and the rights of the parties, not merely among themselves but also against all persons at any time claiming an interest in that property. Correspondingly, a judgment in personam refers to a judgment against a person as distinguished from a judgment against a thing, right or status and a judgment in rem refers to a judgment that determines the status or condition of property which operates directly on the property itself. (Vide *Black's Law Dictionary*.)

38. Generally and traditionally all disputes relating to rights in personam are considered to be amenable to arbitration; and all disputes relating to rights in rem are required to be adjudicated by courts and public tribunals, being unsuited for private arbitration. This is not however a rigid or inflexible rule. Disputes relating to subordinate rights in personam arising from rights in rem have always been considered to be arbitrable."

(emphasis supplied)

xxxxx xxxxx xxxxx

21. Once an application in due compliance with Section 8 of the 1996 Act is filed, the approach of the civil court should be not to see whether the court has jurisdiction. It should be to see whether its jurisdiction has been ousted. There is a lot of difference between the two approaches.

22. Once it is brought to the notice of the court that its jurisdiction has been taken away in terms of the procedure prescribed under a special statute, the civil court should first see whether there is ouster of jurisdiction in terms or compliance with the procedure under the special statute. The general law should yield to the special law — generalia specialibus non derogant. In such a situation, the approach shall not be to see whether there is still jurisdiction in the civil court under the general law. Such approaches would only delay the resolution of disputes and complicate the redressal of grievance and of course unnecessarily increase the pendency in the court. [See: A. Ayyasamy [A. Ayyasamy v. A. Paramasivam, (2016) 10 SCC 386 : (2017) 1 SCC (Civ) 79]]

23. Once there is an arbitration agreement between the parties, a judicial authority before whom an action is brought covering the subject-matter of the arbitration agreement is under a positive obligation to refer parties to arbitration by enforcing the terms of the contract. There is no element of discretion left in the court or judicial authority to obviate the legislative mandate of compelling parties to seek recourse to arbitration.

11. In view of the dictum laid down by the Apex Court, the question to be posed is not whether the suit is maintainable under Section 9 of the Code of Civil Procedure, but whether the jurisdiction of the civil court stood ousted.

Whether prima facie a valid arbitration agreement exists:

12. The question then is whether *prima facie*, there is a valid arbitration agreement between the parties, which is a primary requirement under a Section 8 application. The arbitration clause contained in Ext.B2 agreement has been extracted above. Ext.B2 bears the date 22.03.1991. It refers to a letter dated 26.03.1990 and the subsequent events that took place after Ext.B1 letter. Hence, for all purposes, Ext.B2 is a continuation from Ext.B1. It is contended by the counsel for the petitioners that signatures of the parties have been affixed on different dates, and some have signed even before 21.03.1991, which was not possible. I have gone through Ext.B2 to ascertain the above contention. The petitioners are either companies or firms and signatures are affixed by the parties not in their personal capacity but as representatives of the

said entities. A reading of Ext.B2 would show that the dates below the signatures on behalf of the petitioners relate to the date of resolution, in the case of companies and the date of the partnership deed, in the case of the firms. The said dates cannot be presumed to be the dates on which the signatures were affixed, as contended by the counsel for the petitioners. It cannot, hence, be concluded that prima facie, there is no valid arbitration agreement.

Whether the dispute involved is arbitrable:

13. The next question would be whether the dispute involved is arbitrable at all. The arbitration clause says that any dispute or difference that may arise between the parties "touching these presents or claim or any claim or thing herein contained or the construction hereof or as to any matter in any way connected with or arising out of these present or the implementation thereof or the rights, duties or liabilities of either party thereof in connection with these presents" are liable to be referred for arbitration. The clause takes in every possible dispute between the parties.

14. The question then is whether the return of the title deeds is a dispute between the parties which has arisen out of Ext.B2. As

per Clause 5 of the agreement, the landowners agreed to deposit the title deeds of the adjacent land owned by them with the defendant’s lawyers, who are to hold the same in trust for and on behalf of the defendant. Since the agreement does not contemplate the handing over of the documents to the Vice President of the defendant Sri Agnihotri, as can be seen from Ext.B3, and since, apart from clause 5, no clause in the agreement deals with entrusting the documents to the defendant, it is contended that the handing over of the title deeds to the defendant was not “pursuant to the agreement” but beyond its terms. It is argued that return of the title deeds by the Vice President of the defendant is therefore not pursuant to or in conformity with the agreement. The above argument is not sustainable in law. The only reason for handing over the title deeds is the sale that was proposed as per Ext.B2. It is the petitioners who had agreed to hand over the title deeds to the lawyers of the defendant, and it is specifically stated that the lawyers will hold the documents in trust “for and on behalf” of the defendant. The petitioners themselves chose to hand over the title deeds to the Vice President of the defendant. In effect, the petitioners handed over the title deeds to the principal, instead of their agent. The only consequence of the above action is that the agent need not hold the document in trust "for and on behalf" of the principal. That is essentially a matter between the principal and the agent, and the petitioners cannot draw any benefit from the same. As far as the petitioners are concerned, they handed over the documents to the principal, to whom it ought to be handed over. This Court is hence of the opinion that the return of such documents by the principal is necessarily a matter coming within the purview of Ext.B2 agreement. The words "any matter in any way connected with or arising out of these present or the implementation thereof or the rights, duties or liabilities of either party thereof in connection with these presents" are of widest amplitude and can even take in a dispute regarding the very existence of an arbitration agreement. It is hence futile to argue that the return of title deeds handed over pursuant to Ext.B2, do not come within the above clause.

Whether a prayer for mandatory injunction can be subject matter of arbitration:

15. The next contention is whether the relief of the mandatory injunction, which is a discretionary equitable relief, can

be the subject matter of arbitration. Section 39 of the Specific Relief Act reads thus:

> "**39. Mandatory injunctions**.—When, to prevent the breach of an obligation, it is necessary to compel the performance of certain acts which the court is capable of enforcing, the court may in its discretion grant an injunction to prevent the breach complained of, and also to compel performance of the requisite acts."

16. In **Biju Scaria (supra)**, a learned Single Judge of this Court held that a suit for injunction filed by one of the parties to an agreement which provides for arbitration, seeking to restrain the other party from committing any unlawful activity which would militate against equity, fair play or natural justice and be injurious to the preservation of the subject matter of the arbitration, is maintainable before the civil court. In **Shriram Transport (supra)**, a learned Single Judge of this Court held that prayers for mandatory injunction or perpetual injunction cannot be granted by the arbitral tribunal or arbitrator under the 1996 Act, and that a mandatory injunction can be granted only when there is a breach of an obligation or for compelling performance of certain acts which are enforceable. The facts of the two cases mentioned above are

not similar to the case at hand. This Court is not dealing with a prayer for mandatory injunction in connection with an unlawful activity which would militate against equity, fair play or natural justice and be injurious to the preservation of the subject matter of the arbitration or a case where the mandatory injunction sought for is not for a breach of an obligation or for compelling performance of certain acts which are enforceable. In the case at hand, though the relief is moulded as a mandatory injunction, what is prayed for is the return of title deeds which were handed over pursuant to Ext.B2 agreement.

17. In **Olympus Superstructures (P) Ltd. v. Meena Vijay Khetan, (1999) 5 SCC 651**, relied on by the counsel for the respondent, the Hon'ble Supreme Court considered the question whether the Arbitrator can grant the equitable relief of specific performance. The Apex Court held as follows:

> **"32.** One of the points raised in the grounds in this Court is that the grant of specific performance is discretionary and the discretion to grant or not to grant specific performance has been conferred by the Specific Relief Act, 1963 on the civil court and hence the arbitrator cannot be deemed to have been empowered to grant such a relief.

33. We may point out that the Punjab High Court in Lakshmi Narain v. Raghbir Singh [AIR 1956 Punj 249] , the Bombay High Court in Fertiliser Corpn. of India v. Chemical Construction Corpn. [ILR 1974 Bom 856, 858 (DB)] and the Calcutta High Court in Keventer Agro Ltd. v. Seegram Comp. Ltd. [Apo 498 of 1997 & Apo 449 of (401) dated 27-1-1998 (Cal)] have taken the view that an arbitrator can grant specific performance of a contract relating to immovable property under an award. No doubt, the Delhi High Court in Sulochana Uppal v. Surinder Sheel Bhakri [AIR 1991 Del 138] has however held that the arbitrator cannot grant specific performance. The question arises as to which view is correct.

34. In our opinion, the view taken by the Punjab, Bombay and Calcutta High Courts is the correct one and the view taken by the Delhi High Court is not correct. We are of the view that the right to specific performance of an agreement of sale deals with contractual rights and it is certainly open to the parties to agree — with a view to shorten litigation in regular courts — to refer the issues relating to specific performance to arbitration. There is no prohibition in the Specific Relief Act, 1963 that issues relating to specific performance of contract relating to immovable property cannot be referred to arbitration. Nor is there such a prohibition contained in the Arbitration and Conciliation Act, 1996 as contrasted with Section 15 of the English Arbitration Act, 1950 or Section 48(5)(b) of the English Arbitration Act, 1996 which contained a prohibition relating to specific performance of contracts concerning immovable property.

18. In **Deccan Paper Mills Co. Ltd. v. Regency Mahavir Properties, (2021) 4 SCC 786**, the Hon'ble Supreme Court held as follows:

> **"23.** Also, it must be remembered that the Delhi High Court's reasoning in Sulochana Uppal [Sulochana Uppal v. Surinder Sheel Bhakri, 1990 SCC OnLine Del 250 : AIR 1991 Del 138] that it is the court alone that can, under the Specific Relief Act, enforce specific performance of an agreement, is contra to the reasoning in Olympus [Olympus Superstructures (P) Ltd. v. Meena Vijay Khetan, (1999) 5 SCC 651] which overruled it, stating that "the dispute or difference which parties to an arbitration agreement agree to refer must consist of justiciable issues triable civilly". Since specific performance is a justiciable issue triable civilly, obviously, the expression "court" occurring throughout the Specific Relief Act will have to be substituted by "the arbitrator" or "the Arbitral Tribunal". This part of the reasoning in Aliens Developers [Aliens Developers (P) Ltd. v. Janardhan Reddy, 2015 SCC OnLine Hyd 370 : (2016) 1 ALT 194 (DB)], in following the same reasoning as an overruled Delhi High Court judgment [Sulochana Uppal v. Surinder Sheel Bhakri, 1990 SCC OnLine Del 250 : AIR 1991 Del 138] , would fly in the face of Olympus [Olympus Superstructures (P) Ltd. v. Meena

> Vijay Khetan, (1999) 5 SCC 651] and would, therefore, not be good law. We, therefore, overrule the same.

Thus, specific performance of an agreement can be subject matter of arbitration. In the case at hand, Ext.B2 is an agreement for sale. One of the requirements for taking the agreement forward to its logical end, was the handing over of documents, which the petitioners had complied with. If the main issue itself was capable of reference to arbitration, there is no logic in contending that a subsidiary aspect in the agreement cannot be subject matter of an arbitration. It is very much a dispute arising out of Ext.B2 agreement. The counsel for the petitioners submitted that **Olympus (supra)** related to the specific performance of a sale agreement which was a purely contractual one and does not deal with the exercise of the sovereign power as in the case of a mandatory injunction. I do not find any merit in the above contention, in the light of the law laid down in **Olympus (supra)** and **Deccan Paper Mills (supra)**. It is now settled law that reliefs granted under the Specific Relief Act are *in personam* and hence can be the subject matter of arbitration. Moreover, what is being referred for arbitration is the dispute between the parties, which in this case is whether the defendant is to be directed to return the title deeds of the petitioners. The Court is not concerned with how the plaintiff chooses to mould his prayer. What is to be looked into is the dispute that the plaintiff has raised in the action brought before the civil court and whether such a dispute is arising from an agreement which provides arbitration as a dispute resolution mechanism. On the facts of this case, I hold that the relief of mandatory injunction claimed in the suit is arbitrable.

Whether a dispute concerning a resultant trust is arbitrable:

19. The next argument put forward is that the resultant trust is not arbitrable. The counsel for the petitioner placed reliance on the decision in **Shine Varghese (supra)** and **Shri Vimal Kishor Shah (supra)** in support of the argument. In **Shine Varghese (supra),** a learned Single Judge of this Court referred to paragraph 501 Volume 48 of Halsbury's Laws of England 4th Edition, wherein it is stated that when a person has property or rights which he holds or is bound to exercise for or on behalf of another or others or for the accomplishment of some particular purpose or particular purposes, he is said to hold the property or rights in trust for that

other or those or for that purpose or those purposes, and he is called a trustee. On the facts of this case, it cannot be said that there is any resultant trust. Clause 5 of Ext.B2 only says about entrustment of the documents to the Advocates of the defendant and that the person who is entrusted with the documents will hold it in trust “for and on behalf of the defendant”. It is an admitted fact that the documents were never handed over to the Advocates of the defendant, so as to create any resultant trust as contended. **Shri Vimal Kishor Shah (supra)** was a case which involved a dispute concerning a trust deed. The Supreme Court only held that disputes relating to trust, trustees and beneficiaries arising out of the trust deed and the Trust Act are not capable of being decided by the arbitrator despite the existence of an arbitration agreement. The law laid down in the said judgment also will not in any manner apply to the facts of this case.

Whether a stale claim is capable of being referred to arbitration:

20. Another contention that is taken is that a stale claim is not arbitrable. The argument is based on the written statement

(Ext.B7) filed by defendant, wherein it was contended that the title deeds are not returnable because the defendant is entitled to specific performance of Ext.B2 sale agreement. It is hence contended that since specific performance of Ext.B2 sale agreement is a claim barred by limitation, there is no scope for any arbitration. It is contended that the stale claim doctrine applies to the claim of the person claiming arbitration and not to the claim of the plaintiff who has filed the suit. The contention is that only if the defendant is entitled to get specific performance of Ext.B2 sale agreement, the reference can be justified. The counsel for the defendant countered the said argument by contending that the claim of the plaintiff is not a stale claim and it is still arbitrable. I find justification in the argument of the counsel for the defendant. The dispute that came up for consideration before the judicial authority was one where the petitioners had prayed for a declaration that the defendant is bound to return the title deeds and for a consequential direction to return the title deeds (styled as a mandatory injunction to return the title deeds). As such, the dispute raised is only regarding the return of documents. The defence taken by the defendant is of no relevance when the court is considering reference under Section 8. In **Bharat Sanchar Nigam Ltd. (supra)** relied on by the counsel for the petitioners, the Hon'ble Supreme Court held that in rare and exceptional cases where claims are *ex facie* time barred and it is manifest that there is no subsisting dispute, the court may refuse to refer. Since I have already found that the Court is concerned with the dispute that is raised by the plaintiff, the principles laid down in the above judgment will not apply to the facts of this case. The decision in **Magic Eye Developers Pvt. Ltd. (supra)** also will not apply to the facts of this case for the aforesaid reason.

Whether both the parties had abandoned arbitration :

21. The next contention raised is that both the parties had abandoned the arbitration. To support the said contention, it is submitted that the petitioners had filed an application on 14.09.2020 before the arbitral Tribunal to withdraw the claim application with liberty. Before orders were passed in the withdrawal application, the suit was filed by the plaintiffs on 10.09.2020. It is contended that the bar under Order XXIII Rule 3 is hence avoided. It is further stated that the Arbitrators allowed the withdrawal

application and closed the claim petition by order dated 25.10.2023 without the liberty sought for. It is stated that the defendants wanted to prosecute their counter claim and the arbitration panel continued to function. The defendants filed an application on 17.07.2024, after the dismissal of the Section 8 application by the Munsiff Court on 16.06.2022, to withdraw the counter claim with liberty under Order XXIII. It is hence submitted that the request for withdrawal of the counter claim is in effect an abandonment of the arbitration process itself. The counsel for the petitioners submitted that none of these subsequent events were referred to by the Appellate Court in its order. It is submitted that once the parties have abandoned their claim for arbitration, it is not open to the defendant to again contend that the dispute is arbitrable. I do not find any merit in the above contention. The claim which was sought to be withdrawn by the defendant was the claim regarding the specific performance of the agreement for sale contained in Ext.B2. The claim that was given up by the petitioners for the purpose of pursuing with the suit, was the claim relating to return of title deeds. In the case on hand, the Court is concerned with the dispute regarding return of title deeds, which was a claim available to the petitioners. The said claim is not capable of being abandoned by the defendant. As such, it cannot be said that both parties had abandoned their claims, so as to refuse the reference to arbitration.

22. In view of above findings, the order dated 14.07.2025 in C.M.A.No.68 of 2022 on the file of the Additional District Court-V, Kozhikode, does not call for any interference.

The civil revision petition fails and is dismissed.

Sd/-

T.R.RAVI

JUDGE

dsn