



IN THE HIGH COURT OF KARNATAKA, AT DHARWAD

DATED THIS THE 25TH DAY OF FEBRUARY, 2026

BEFORE

THE HON'BLE SMT. JUSTICE LALITHA KANNEGANTI

CIVIL MISC PETITION NO.100026 OF 2025

BETWEEN:

1. SSV DEVELOPERS,
A PARTNERSHIP FIRM, HAVING ITS REGISTERED
OFFICE AT SHOP NO.16-17, HUBBALLI
CENTRAL MALL UGF, ABOVE VISHAL
MEGA MART, VIDYANAGAR, HUBBALLI-580021.

REPRESENTED BY ITS MANAGING PARTNER,
VIJAYKUMAR KRISHNASA KABADI.

2. VIJAYKUMAR KRISHNASA KABADI,
AGE. 52 YEARS, OCC. BUSINESS,
R/O. H.NO.105, OLD BADAMI NAGAR,
KESHWAPUR, HUBBALLI, TQ. HUBBALLI,
DIST. DHARWAD-580023.

...PETITIONERS



(BY SRI. MAHANTESH R.PATIL, ADVOCATE)

AND:

1. SUNDER S/O. PREMRAJ JOTWANI,
AGE. 49 YEARS, OCC. BUSINESS,
R/O. KALYANI CLASSIC APARTMENTS,
T1, III FLOOR, OPP. SBI ZONAL OFFICE,
KUSUGAL ROAD, KESHWAPUR, HUBBALLI,
TQ. HUBBALLI, DIST. DHARWAD-580023.



2. A. P. MURARI,
ARBITRATOR / ARBITRAL TRIBUNAL,
NO.15A, MICHIGAN COMPOUND,
SAPTAPUR, DHARWAD,
TQ. AND DIST. DHARWAD-580001.
3. SHIVAPRAKASH SHANKARAPPA ROTTI,
AGE. 52 YEARS, OCC. BUSINESS,
R/O. R.K. BUILDERS, II FLOOR,
EUREKA JUNCTION, TB ROAD,
DESHPANDE NAGAR, HUBBALLI,
TQ. HUBBALLI, DIST. DHARWAD-580029.
4. SMITA RAMESH CHAVAN,
AGE. 54 YEARS, OCC. BUSINESS,
R/O. H.NO.7, EUREKA COLONY,
KESHWAPUR, HUBBALLI, TQ. HUBBALLI,
DIST. DHARWAD-580023.

...RESPONDENTS

(BY SRI. V.G. BHAT, ADVOCATE AND
SRI. SURAJ M.KATAGI, ADVOCATE)

THIS CIVIL MISCELLANEOUS PETITION IS FILED UNDER SECTION 11 (6) OF ARBITRATION AND CONCILIATION ACT 1996, PRAYING TO I) TO EXERCISE ITS JURISDICTION AND POWER UNDER SECTION 11 (6) OF THE ARBITRATION AND CONCILIATION ACT, 1996 AND APPOINT NEW ARBITRATOR AND CONSTITUTE ARBITRAL TRIBUNAL, IN ACCORDANCE WITH LAW, TO ADJUDICATE AND RESOLVE THE DISPUTES BETWEEN THE PETITIONERS AND THE RESPONDENT NO.1, 3 TO 4. II) GRANT SUCH OTHER RELIEF AS THIS HON'BLE COURT MAY CONSIDER DEEM FIT AND PROPER IN THE FACTS AND CIRCUMSTANCES OF THIS CASE.

THIS CIVIL MISCELLANEOUS PETITION HAVING BEEN HEARD AND RESERVED ON 19.01.2026, COMING ON FOR PRONOUNCEMENT OF ORDER THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

CORAM: THE HON'BLE SMT. JUSTICE LALITHA KANNEGANTI



CAV ORDER

The present Civil Miscellaneous Petition is filed to exercise jurisdiction and power under Section 11(6) of the Arbitration and Conciliation Act, 1996, (hereinafter referred to as 'Act') and to appoint new Arbitrator and constitute Arbitral Tribunal in accordance with law, to adjudicate and resolve the disputes between the petitioners and respondent Nos.1, 3 to 4.

2. The facts of the case are that the petitioner No.1 is a registered partnership firm. It is into the business of developing land, the formation of layouts and construction of apartments and complexes. The petitioner No.2 is the authorized representative of petitioner No.1. The respondent Nos.3 & 4 herein were also the partners of petitioner No.1 at the time of transaction as on the date of the alleged Agreement of Sale between petitioner No.1 and respondent No.1. Though the respondent No.4 herein was arrayed as an opponent before respondent No.2, she has since retired from the partnership firm and hence has been arrayed as respondent No.4 in the present petition as her presence is necessary for effective adjudication of the matter.



3. It is stated that the dispute arose between the petitioner and respondent No.1 herein and the respondent No.1 filed CMP.No.100028/2015 before the High Court seeking appointment of Arbitrator. On 06.07.2018, the Court appointed respondent No.2 as the Arbitrator. The disposal of the civil miscellaneous petition has come to the knowledge of the petitioner on 28.07.2018 and as per the Act, within 15 days the petitioners ought to have moved an application for recusal of the sole Arbitrator from adjudicating the dispute as the petitioners believed that there is every chance that respondent No.2 would move with the same rapport and with the same state of mind tilting towards respondent No.1 who happens to be the claimant in Arbitration Case No.1/2016 and Arbitration case No.2/2016 which were also adjudicated by the same Arbitrator.

4. The petitioners have filed an application seeking recusal of respondent No.2 from Arbitration Case No.3/2018. The said application came to be rejected by respondent No.2 on 22.09.2018. The petitioner being aggrieved by the said order have approached this Court by filing WP.No.107273/2018 and after contest, the High Court was pleased to set aside the order



and asked respondent No.2 to reconsider his decision on I.A.No.1. Despite the same, the Arbitrator rejected the application for recusal vide order dated 11.02.2019 and continued with the arbitration proceedings for the best reasons known to him. While passing the award, the respondent No.2 has not only favoured respondent No.1 without considering the validity of the alleged agreement of sale/Ex.P.1, but has also exceeded his jurisdiction in accepting the inflated claim of Rs.87,60,000/- raised by respondent No.1 claiming interest at 24% per annum compounded quarterly on Rs.30,00,000/- claim. In addition, the Arbitrator has awarded interest of 18% per annum till realization, which is arbitrary and not known to the prevailing law of interest to be awarded and also not agreed upon between the parties. Only with an intention to favour respondent No.1 such high rate of interest is awarded without there being any clause in the agreement. Holding the then partners of petitioner No.1 personally liable is also bad in law.

5. The petitioners being aggrieved by the said order by respondent No.2 filed a petition under Section 34 of the Arbitration and Conciliation Act before the Principal District and



Sessions Judge, Dharwad, in Arbitration Petition No.74/2020. In the said petition, the petitioners filed an interim application under Section 34 of the Arbitration and Conciliation Act, 1996 R/w Section 151 of CPC seeking for limited remand to the arbitral Tribunal for the purpose of cross examination of P.W.1 and permitting the petitioner to lead evidence. The respondent No.1 filed his objections to the said application. The trial Court by its order dated 13.10.2025 allowed the application and gave opportunity to the petitioner to cross examine PW.1 and to lead defense evidence. It is also directed by the trial Court that the Arbitrator is directed to send the award back to the Court by 15.12.2025 along with the file.

6. After remand by the District Court, the sole Arbitrator in spite of giving opportunity to the petitioners to cross examine and adduce evidence, by its order dated 21.11.2025 terminated the arbitral Tribunal proceedings and the entire file in A.P.No.74/2020 and additional order sheet in Arbitration Case No.3/2018, vakalath and application are resubmitted to the District Court, Dharwad. Hence, the petitioners have come before this Court for appointment of Arbitrator.



7. Learned counsel appearing for the petitioners submits that after remand to the Arbitrator, the petitioners have filed a memo stating that they will give fees of Rs.15,000/- in view of remand. But the respondent No.2 without receiving the said amount asked for lean amount and rejected the remand order. Hence, the appointment of new Arbitrator is very much necessary. It is submitted that while allowing the application by the trial Court, trial Court fixed the fees after remand, but there is no direction to the sole Arbitrator for collection of the lean fees. But the Arbitrator without looking into the memo produced by the petitioners asked for lean fees and terminated him from the case. Hence, the appointment of Arbitrator is very much essential in this case. It is also submitted that there is a provision for collection of the fees from the client if not paid. But in this case the move of Arbitrator is very strange after remand instead of taking remand fees, he asked for the main fees and terminated the arbitration proceedings. Hence, the appointment of new Arbitrator is very much necessary.

8. The statement of objections is filed by the learned counsel appearing for the respondent No.1. It is submitted that



in pursuant to the orders passed in WP.No.107273/2018 dated 13.12.2018, the Arbitral Tribunal after hearing both parties had passed a fresh order dated 11.02.2019 by dismissing I.A.No.1 and that order is not challenged till this date by the petitioners. It is submitted that while hearing the petition filed under Section 34 of the Act, the District Court on the basis of the application filed by the petitioner had passed an order remanding the matter to Arbitral Tribunal in order to give opportunity to cross-examine PW.1 to lead his further evidence with a condition that he should bear the cost of Arbitral Tribunal proceedings. After the remand, the petitioners herein have failed to pay the cost of the arbitration. Hence, as per the direction of the District Court entire file was re-submitted to the Principal District Judge, Dharwad.

9. It is stated that now the petitioners are seeking to appoint another Arbitrator which is not maintainable in the eye of law. In CMP.No.100028/2015, Arbitrator has been appointed with the consent of both the parties. Thereafter, an arbitral award was passed on 15.02.2020. The said order is challenged before the District Court and at this stage, the application under



Section 11(6) of the Act is not maintainable. It is submitted that the petitioners themselves have filed the application to remand the case for cross examination of PW.1 to lead defense evidence before the District Court. The District Court allowed the application with a condition to pay the cost of Arbitration proceedings. The fees of the Arbitrators have been fixed by the statute, the question of bargaining is not within the scope of the Arbitration and Conciliation Act, 1996. Hence the grounds made by the petitioners in this petition are untenable in the eye of law. It is submitted that this petition needs to be dismissed.

10. Having heard the learned counsels on either side, perused the material on record. The petitioner is seeking appointment of another Arbitrator after the award is passed and when the matter is remanded for a limited purpose of cross examination. In these circumstances, the issue that falls for consideration before this Court is whether a substituted Arbitrator can be appointed after an arbitral award as already order has been passed and the matter was remanded to the same Arbitrator for a limited purpose. It is also an admitted fact that the trial Court has directed the parties to pay the fees of the



Arbitrator and the fees of the Arbitrator is governed by the statute.

11. The contention of the petitioners is that the Arbitrator is demanding fees and there is a provision to recover the fees and as such, a new Arbitrator should be appointed. This Court is not able to appreciate the said submission. The power to appoint another Arbitrator ordinarily arises when the mandate of the existing Arbitrator terminates during the course of arbitral proceedings. However, the present case stands on a different footing. Appointment of another Arbitrator in the circumstances of this case would effectively amount to re-opening concluded arbitral proceedings and enlarging the scope of remand which is impermissible in law. A substitute Arbitrator cannot be expected to undertake the limited demand exercise which is connected with the appreciation of evidence and findings recorded by the original Arbitrator. Again, appointment of another Arbitrator would effect the finality attached to arbitral awards would run contrary to the legislative objective of expeditious dispute resolution.



12. In this case, the conduct of the parties is very much important. An Arbitrator was appointed in the year 2018, they have filed an application for recusal of the Arbitrator and the same was dismissed. Against that, they filed a writ petition and the matter was remanded. After remand, an order was passed and the petitioners have kept quiet. After that an award has been passed and it was challenged before the District Court, before the Court they only asked the Court to remand the matter for limited purpose of cross examination. On their request, the matter was remanded and the Court also observed about payment of fees of the Arbitrator. The petitioners had failed to pay the amount and the Arbitrator has recorded how many times the matter has come up and how the petitioner has failed to pay the fees to the Arbitrator. The petitioner having failed to pay the fees as per the order passed by the District Court cannot seek to circumvent the consequences of such default by requesting appointment of another Arbitrator. Exceeding to the request of the petitioner to appoint a new Arbitrator would encourage parties to frustrate arbitral proceedings and seek repeated reconstitution of tribunals which is not permissible and contrary to the very purport of the Arbitration and Conciliation Act.



13. In the considered opinion of this Court, appointment of another Arbitrator in the facts and circumstances is unsustainable. Accordingly, this court is passing the following order:

ORDER

- i. Accordingly, the Civil Miscellaneous Petition filed seeking appointment of an Arbitrator is ***dismissed.***
- ii. However, the parties are at liberty to avail appropriate remedies as may be available to them in law.
- iii. All I.As. in this Civil Miscellaneous Petition shall stand closed.

Sd/-
JUSTICE LALITHA KANNEGANTI

MEG
CT: UMD
List No.: 1 Sl No.: 4