

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON
14.08.2026PRONOUNCED ON
28.09.2026

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THE HON'BLE MR.JUSTICE K.KUMARESH BABU

Arb O.P No. 57 of 2024
and A.No.5989 of 2024

The Royal Lands and Nest
Co-operative Housing Society Ltd.,
Rep by its Chairman,
Mr.K. Velusamy,
Having office at
Door No.1722/VI Avenue,
Anna Nagar, Chennai -600 040

..Applicant(s)

Vs

1. Sushil Lalwani
2. J Rajashekar
3. Mrs.Chitra Gowri
4. T Ramavelu
5. S.S. Kumar
6. Mrs.T.Mythili

..Respondent(s)

PRAYER:- Arbitration Petition filed under Section 34(2) of the Arbitration and Conciliation Act, 1996 to set aside the award dated 18.10.2024 passed by Sole Arbitrator and pass such further or other orders as this Court may deem fit and proper circumstances of the case and thus render justice.

For Applicant(s):

Mrs.A.L.Ganthimathi
Senior Counsel
for Mrs.S.Meenakshi

For Respondent(s):

Mr.Niranjan Rajagopalan
For Mr. Praveen Purohit
for RR1, 4 & 5



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Mrs.Sripriya for RR2 & 3

No appearance for R6

ORDER

The present Arbitration Petition has been made challenging the arbitral Award wherein the relief of specific performance claim by the petitioner was negatived. But, however, the alternative relief of return of advance amount together with interest had been made.

2. Heard Mrs.A.L.Ganthimathi, learned Senior Counsel appearing for Mrs.S.Meenakshi, learned counsel for the applicant, Mr.Niranjan Rajagopalan, learned counsel appearing for Mr. Praveen S. Purohit, learned counsel for the respondents 1, 4 & 5 and Mrs.Sripriya, learned counsel appearing on behalf of the respondents 2 & 3.

3. The learned Senior Counsel appearing for the petitioner would submit that the petitioner is a Housing Co-operative Society registered under the Multi State Co-operative Societies Act. In furtherance with the object of the formation of the Society after negotiations with the respondents it had entered into an agreement of sale under which a sum of Rs.20,00,000/- was paid as advance and obligations were cast upon by the respective parties. Part compliance of the agreement of sale was made and dispute arose between the parties in



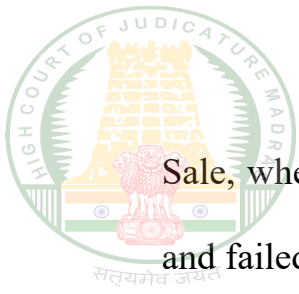
performance of the agreement of sale. Hence, the petitioner had sought for an appointment of an Arbitrator, wherein a sole Arbitrator had been appointed.

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4. A Claim Petition was filed before the learned Arbitrator seeking for a specific performance of the agreement of sale dated 20.08.2013, damages or in the alternative to permit the claimant to purchase the schedule mentioned property for the actual price paid by the respondents together with registration charges after deducting the advance paid. She would submit that the damages was calculated by including the advance amount paid plus the interest on the same apart from penal interest.

5. She would submit that the claim was contested by the respondents independently and an Award came to be passed by the sole Arbitrator rejecting the claim for specific performance. But, however, had allowed the prayer in respect of the refund of the advance sale consideration paid by the claimant together with interest at the rate of 18% on and from 20.08.2013 till the Award and also of the future interest at 18% from the date of the Award till the realisation of the payment.

6. She would submit that various issues were framed including the claim of the respondents that the claim is barred by limitation, as to whether the respondents had failed to discharge their obligations under the agreement of



Sale, whether the claimants have kept their promise as per the Sale Agreement and failed to perform its part of the agreement and what reliefs the parties would be entitled to.

7. She would submit that the Sole Arbitrator had held the issue of limitation in favour of the petitioner. As regards to the petitioners obligations positive finding had been rendered by the learned Arbitrator that the petitioner had performed his part of obligation and the respondents have not discharged their obligations. However, for the reliefs that the parties are entitled to, the learned Arbitrator had rendered a finding that the petitioner would not be entitled for a relief of specific performance but only a relief for return of the advance amount. Having given a finding that the petitioner had fulfilled its obligations under the agreement and that it was the respondents who had failed to perform their obligations, the learned Arbitrator had proceeded to hold that the petitioner was not ready and willing to perform the part of the contract as there was no averments with regard to the availability of funds, their readiness and willingness to pay the balance consideration or even an attempt to deposit the balance consideration.

8. In that regard, she would submit that the petitioner is a Multi State Co-operative Society which carries on its function for the benefit of its members and it is always ready and willing to perform its part of the contract. Only after



the respondents perform their part of obligations under the Sale Agreement, the petitioner would be necessitated to substantiate its readiness and willingness.

She would submit that the respondents had failed to perform their obligations which has also been found so by the learned Arbitrator. Hence, the learned Arbitrator ought not to have cast upon the *onus* on the petitioner to prove its readiness and willingness. He ought to have directed the respondents to specifically perform their part of obligations under the contract. This aspect had been completely overlooked by the learned Arbitrator and hence, she seeks interference with the Award passed by the learned Arbitrator and direct specific performance of the Sale Agreement dated 20.08.2013 within the time framed.

9. Countering his arguments, the learned counsel appearing on behalf of the respondents 1,4 & 5 would submit that the petitioner even though, is a Multi State Co-operative Society, it ought have shown that it had monies in its account for the purchase of the property atleast at the stage when it had issued notice calling upon the specific performance of the agreement. The petitioner had neither shown the amounts standing in their name nor even attempted to deposit the amount before the learned Arbitrator to substantiate its financial status which would also show that the petitioner was never ready and willing to perform its apart of contract.



10. In that regard, he would submit that the petitioner cannot seek specific performance of the agreement. He would vehemently contend that in exercise of power under Section 34, this Court does not have power to modify the Award.

That apart, he would submit that on the basis of the evidence that had been available before the learned Arbitrator, the learned Arbitrator had given a categorical finding that the petitioner had failed to satisfy its readiness and willingness to purchase the property and this Court cannot re-appreciate the evidence and come to a different conclusion to rattle the Award. Hence, he would pray this Court to dismiss the petition.

11. The learned counsel appearing for the respondents 2 & 3 would submit that the second respondent is ready and willing to comply with the Award for refunding the advance amount that has been arrived at by the learned Arbitrator and in that regard, there is no necessity to direct specific performance of the agreement. She would further submit that the agreement was entered into in the year 2013 and only after a period of four (4) years that to much beyond the period of limitation, notice had been issued and exchanged between the parties and only in the year 2021 a claim statement was filed before the learned Arbitrator, who was appointed by this Court. She would submit that in such view of the matter, taking into consideration the escalation of price of the Real Estates, specific performance as pleaded, even if granted would only cause severe prejudice to the respondent as admittedly only a sum of Rs.20,00,000/-



as against the sale consideration which runs to Crores has only been made.

Hence, she would submit that there is no necessity for this Court under Section 34 to interfere with the Award made by the learned Arbitrator. Hence, he seeks for dismissal of the application.

12. I have considered the submissions made by the learned counsels appearing on either side and perused the materials available on record.

13. The learned Arbitrator as regard to the claim for specific performance had returned a finding that the petitioner had not shown its readiness and willingness to perform its part of contract. A perusal of the Claim Petition made by the petitioner before the learned Arbitrator, as rightly pointed out by the learned Arbitrator do not indicate the source of funds, availability of funds with the petitioner. The learned Arbitrator had also relied upon the judgment of the Hon'ble Apex Court in that regard. The learned Arbitrator had also returned a finding that the petitioner being a Society registered under the Multi State Co-operative Societies Act is also bound by the principles governing Section 16C of the Specific Relief Act and in that regard, this Court do not find any infirmity or perversity which requires interference under Section 34 of the Act. The learned sole Arbitrator had rightly held that the petitioner would only be entitled for the advance amount paid together with interest which is the calculation that had been made towards payment of damages.



14. For the aforesaid reasons, I do not find any merits in the Original Petition and accordingly, the Original Petition stands dismissed. Consequently, connected application is also closed. However, there shall be no order as to costs.

28.09.2026

Index: Yes/No

Speaking/Non-speaking order

Neutral Citation: Yes/No

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Order QR

K.KUMARESH BABU, J.

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