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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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**Judgment pronounced on: 13.05.2025**

+ **ARB.P. 827/2024**

IIFL HOME FINANCE LTD ..... Petitioner  
Through: Mr. Niraj Kumar and Ms. Kirti Raj,  
Advs.  
versus

PUNKAJ BHAGCHAND CHHALLANI & ORS ..... Respondents  
Through: None.

+ **ARB.P. 828/2024**

IIFL HOME FINANCE LTD ..... Petitioner  
Through: Mr. Niraj Kumar and Ms. Kirti Raj,  
Advs.  
versus

PUNKAJ BHAGCHAND CHHALLANI & ORS ..... Respondents  
Through: None.

**CORAM:  
HON'BLE MR. JUSTICE SACHIN DATTA**

**JUDGMENT**

1. The present petitions have been filed under Section 11(5) of the Arbitration and Conciliation Act, 1996 (hereinafter referred as '*the A&C Act*') seeking appointment of a sole arbitrator to adjudicate the disputes between the parties.

2. At the outset, it is noticed that the factual matrix is identical in these petitions and the petitioner (in each of the petitions) raises similar grounds of challenge against the common respondents. In the above circumstances, it



is considered apposite to dispose of the petitions by way of a common order.

3. The present petitions have been filed in the backdrop of two Home Loan Agreements dated 31.03.2018, executed between the petitioner and respondents. In terms of the aforesaid agreements, the petitioner *vide* Loan Account Nos. 833321 (in Arb. P. 827/2024) and 830976 (in Arb. P. 828/2024) sanctioned Rs.1,24,00,000/- and Rs.2,76,00,000/- respectively, in favour of the respondents.

4. The said home loans were disbursed in favour of the respondents against mortgaged property bearing no.Flat No. 702, Area Admeasuring 272.31 sq. Mtrs., 7th Floor, Survey No. To 86/1/112, Cts No. 2024 Part, Bldg No. D, Montecito, Parvati, Pune, Maharashtra, 411009.

5. The Standard Terms and Conditions that govern the agreements executed between the parties contains an arbitration clause which reads as under:

*“The Borrower and IIFL HFC agrees that agreement shall be construed in accordance with the laws in force in India and in the event that any dispute or difference should arise between the parties in performance, interpretation and/or application with respect to the present agreement including but not limited as to any amount outstanding and/or on any matter relating to or arising out of the present agreement the same shall be referred to the Sole Arbitration of an Arbitrator to be appointed by IIFL HFC whose decision shall be final and binding upon the Parties.”*

6. Disputes arose between the parties on account of alleged default on the part of the respondents in paying the requisite instalments. The respondents failed to make the payment despite being granted opportunities to clear the outstanding dues.

7. It is submitted that despite repeated reminders, since respondents continued defaulting the EMI, the petitioner issued notice/s under Section



13(2) of the SARFAESI Act, 2002 for repayment of the outstanding amount. Subsequently, the mortgaged property was auctioned for realising the outstanding loan amount. It is stated that upon adjusting the amount recovered by way of auctioning the mortgaged property, a sum of Rs. 1,16,13,945.79/- (in ARB. P. 827/2024) and Rs.33,72,850.11/- (in ARB. P. 828/2024) remains to be paid by the respondents to the petitioner on account of 'loss in the loan accounts'.

8. Since the disputes between the parties persisted, the petitioner issued demand notices dated 09.03.2023 followed by notices on 04.07.2023 for invocation of arbitration. However, since the respondents failed to respond, the petitioner *vide* letter dated 20.07.2024 proceeded to appoint Mr. Mithilesh Jha [District Judge (Retd.)] as the Sole Arbitrator to adjudicate the disputes between the parties. Consequently, the learned Sole Arbitrator entered into reference.

9. It is submitted that although the respondents entered appearance, an application was preferred by the respondents before the learned Sole Arbitrator *inter-alia* raising objection as regards to his jurisdiction to adjudicate the disputes between the parties.

10. Subsequently, the petitioner filed an application before the learned Sole Arbitrator for withdrawal of the arbitration proceedings pending before him. *Vide* order dated 20.04.2024, the said application was accepted by the learned Sole Arbitrator, with a liberty to the petitioner to approach High Court for adjudication of dispute/s. The aforesaid order reads as under:

*"Today, the counsel for the Claimant has filed an Application for withdrawal of the Claim Petition with the liberty to approach the Hon'ble High Court for preferring Petition U/s 11 of the Arbitration &*



*Conciliation Act, 1996 (as amended upto date). Since the relief sought in the application does not cause any prejudice to the Respondent hence without affording an opportunity to the Respondent, may the Ld. Counsel for the claimant be heard.*

*Heard at length.*

*Upon reviewing the application filed by the Claimant, seeking permission to withdraw the claim petition filed before this Arbitral Tribunal, and considering the Claimant's intention to approach the High Court for the matters pertaining to the claim herein;*

*It is hereby ordered that:*

- 1. The Claimant is allowed to withdraw the claim petition filed before this Arbitral Tribunal without prejudice to their rights.*
- 2. The Claimant shall have the liberty to approach the High Court regarding the subject matter of the present suit.*
- 3. This order does not preclude the Claimant from pursuing any other remedies that may be available under the law.*
- 4. No order as to costs.*

*Arbitration proceedings stands terminated.”*

11. In the above circumstances, the petitioner has approached this Court, through the present petition, seeking the appointment of a sole arbitrator to adjudicate the dispute/s.

12. In the present proceedings, notice was issued by the Court on 30.05.2024. However, since none appeared on behalf of the respondents, the Court *vide* order dated 20.08.2024 granted petitioner with a liberty to take fresh steps to serve the respondents. An affidavit of service dated 17.10.2024 has been filed by the petitioner wherein it has been brought out that the petitioner has taken requisite steps to serve the respondents at its known address/es *via* speedpost/s, however, the speed post/s were returned



with notations “*Item returned, Addressee left without instructions*”.

13. Section 3 of the A&C Act contemplates that a written communication is deemed to have been received if it is sent to the addressee’s last known place of business or mailing address by any means which provides a record of the attempt to deliver it. In the present case, the petitioner has made numerous attempts to effect service on the respondents and has thereby discharged its onus to effect service on the respondents.

14. In the circumstances, the present petition is taken up for hearing and disposal, despite no appearance on behalf of the respondents.

15. It is noticed by this Court that the arbitration clause contained in the Standard Terms and Conditions which govern the agreements executed between the parties is silent on the “seat and venue of arbitration”. The Supreme Court in ***Ravi Ranjan Developers (P) Ltd. vs Aditya Kumar Chatterjee***, 2022 SCC OnLine SC 568 has taken a view that the intent of Section 11(6) of the A&C Act can never be construed in a way which empowers a High Court which is devoid of territorial jurisdiction to also entertain an application preferred for appointment of an arbitrator. The relevant portion of the said judgment reads as under:

*“27. At the same time, an application under Section 11(6) of the A&C Act for appointment of an Arbitrator/Arbitral Tribunal cannot be moved in any High Court in India, irrespective of its territorial jurisdiction. Section 11(6) of the A&C Act has to be harmoniously read with Section 2(1)(e) of the A&C Act and construed to mean, a High Court which exercises superintendence/supervisory jurisdiction over a Court within the meaning of Section 2(1)(e) of the A&C Act.*

*28. It could never have been the intention of Section 11(6) of the A&C Act that arbitration proceedings should be initiated in any High Court in India, irrespective of whether the Respondent resided or carried on business within the jurisdiction of that High Court, and irrespective of*



whether any part of the cause of action arose within the jurisdiction of that Court, to put an opponent at a disadvantage and steal a march over the opponent.”

16. Further, a coordinate Bench of this Court has also taken a similar view in ***Aarka Sports Management Pvt. Ltd vs Kalsi Buildcon Pvt. Ltd***, 2020 SCC OnLine Del 2077. The same reads as under:

*“Summary of Principles*

24. Section 20 (1) of the Arbitration and Conciliation Act empowers the parties to determine the seat of arbitration. The parties are at liberty to choose a neutral seat of arbitration where neither the cause of action arose nor the parties reside or work and Sections 16 to 20 of the Code of Civil Procedure would not be attracted.

25. *Once the seat is determined, the Court of that place shall have exclusive jurisdiction to deal with all matters relating to arbitration agreement between the parties.*

26. *If the parties have not determined the seat of arbitration, the seat of arbitration shall be determined by the Arbitral Tribunal under Section 20(2) of the Arbitration and Conciliation Act.*

27. If the parties have not agreed on the seat of the arbitration, the Court competent to entertain an application under Section 11 of the Arbitration and Conciliation Act would be the “Court” as defined in Section 2(1) (e) of the Act read with Sections 16 to 20 of the Code of Civil Procedure.”

17. Reference is also apposite to a similar view taken by a coordinate Bench of this Court in ***Faith Constructions vs N.W.G.E.L Church***, 2025 SCC OnLine Del 1746 while placing reliance on judgment rendered by the Supreme Court in ***Ravi Ranjan Developers (P) Ltd*** (supra). The same reads as under :

“8. A perusal of the aforementioned legal position makes it amply clear that at the stage of determining the jurisdiction of the Court to entertain a petition under Section 11 A&C Act, in case of lack of consent between the parties as to the seat/venue of arbitration, which is reflected from the arbitration clause of the subject agreement, the Court must determine jurisdiction by taking the aid of Sections 16 to 20 of the CPC. In such a



case, two factors are of relevance- (i) where the respondent actually or voluntarily resides or carries on their business, and (ii) where the cause of action, wholly or in part, arises. As regards the first factor, it is undisputed that the respondent resides and carries on its business in the state of Odisha. Therefore, the discussion becomes predominantly centred around examining the second factor, i.e., where the cause of action arises.

9. A catena of Supreme Court decisions have clarified that while determining territorial jurisdiction of a Court, what is decisive is the accrual of cause of action. In other words, cause of action is a bundle of facts which create rights and obligations and gives rise to the right to sue to a party. Moreover, cause of action is made up of material and integral facts. This implies that not every insignificant or inconsequential fact becomes a part of cause of action. In fact, for a fact to be considered material enough to lead to the conclusion as to accrual of cause of action, it must be proved that the said fact has a nexus with lis between the parties and that it is integral to the dispute at hand. Reference may be made to the decision of the Apex Court in Alchemist Ltd. v. State Bank of Sikkim, (2007) 11 SCC 335. Relevant part of it is reproduced herein:

*“25. The learned counsel for the respondents referred to several decisions of this Court and submitted that whether a particular fact constitutes a cause of action or not must be decided on the basis of the facts and circumstances of each case. In our judgment, the test is whether a particular fact(s) is (are) of substance and can be said to be material, integral or essential part of the lis between the parties. If it is, it forms a part of cause of action. If it is not, it does not form a part of cause of action. It is also well settled that in determining the question, the substance of the matter and not the form thereof has to be considered.”*

*(Emphasis supplied)*

10. Territorial jurisdiction of a Court is ascertained having regard to the place of accrual of cause of action. Some of the relevant principles that have developed in this area of jurisprudence are, including but not limited to, that making and signing of a contract constitutes cause of action; that facts which are necessary to decide the lis between the parties must have wholly or at least in part, arisen within the territorial jurisdiction of the Court; that each fact pleaded in the petition would not ipso facto be considered relevant while determining cause of action and that they must have a nexus with the issues involved in the matter; and importantly, that an insignificant or trivial part of cause of action would not be sufficient to confer territorial jurisdiction, even if incidentally



*forming a part of cause of action.”*

18. The aforesaid view has also been reiterated by the coordinate Bench of this Court in ***Prashant Kumar Parashar vs Sumit Singla and Anr.***, 2025 SCC OnLine Del 1745.

19. In the aforesaid conspectus, it is no longer *res integra* that when an arbitration clause does not stipulate a seat or venue of arbitration, the provisions of Section 2(1)(e) of the A&C Act with Sections 16 to 20 of the Civil Procedure Code, 1908, are determinative for the purpose of considering whether this Court has jurisdiction to entertain the petition.

20. A perusal of the loan agreements brings out that the said agreements between the parties were executed in Pune, Maharashtra. Furthermore, the property mortgaged to the petitioner by the respondents against the sanctioned loan is also situated in Pune, Maharashtra. A perusal of the memo of parties reveal that the respondents reside in Pune, Maharashtra<sup>1</sup> whereas the head office/corporate office<sup>2</sup> of the petitioner is situated in Gurugram Haryana and registered office<sup>3</sup> is situated in Mumbai, Maharashtra.

21. The material on record clearly indicates that no part of the cause of action has arisen within the jurisdiction of this Court.

22. As such, this Court does not have jurisdiction to entertain the present petitions. The same are, consequently, dismissed.

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<sup>1</sup>Om Shanti 416, Raghuvir Society, Mukund Nagar, Pune, Maharashtra, 411037 and Office No. 111, Cts No 7, Time Square Building, S No 669, Gul Tekdi Pune, Pune, Maharashtra - 411037

<sup>2</sup>Plot No.98, Udyog Vihar, Phase-IV, Gurgaon, Haryana

<sup>3</sup>IIFL House, Sun Infotech Park, Road No.16V, Plot No.B-23, MIDC, Thane Industrial Area, Wagle Estate, Thane-400604



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23. Needless to say, the petitioner is at liberty to file an appropriate petition in the concerned jurisdictional Court, which shall be dealt with in accordance with law.

**MAY 13, 2025/sl**

**SACHIN DATTA, J**