



2026:AHC:34930-DB

HIGH COURT OF JUDICATURE AT ALLAHABAD
APPEAL UNDER SECTION 37 OF ARBITRATION AND CONCILIATION
ACT 1996 DEFECTIVE No. - 34 of 2026

M/s S.S. Builders And 7 Others

.....Appellant(s)

Versus

Mr K.W. Buildcons Pvt. Ltd. And Another

.....Respondent(s)

Counsel for Appellant(s)	:	Alok Kumar, Himanshu Tyagi
Counsel for Respondent(s)	:	

Court No. - 3

HON'BLE SAUMITRA DAYAL SINGH, J.
HON'BLE INDRAJEET SHUKLA, J.

1. Heard Sri Himanshu Tyagi alongwith Sri Alok Kumar Singh, learned counsel for the appellant and Sri Shashi Nandan, learned Senior Advocate assisted by Sri Gyanendra Bahadur Rai alongwith Sri Pawan Kumar Choudary and Vishal Agrawal, learned counsel for the respondents.
2. Present appeal is directed against the *ex parte* injunction granted by the Commercial Court, Gautam Buddh Nagar in Arbitration Case No. 06 of 2026, vide order dated 30.01.2026 wherein it has been directed as below :

"13. After considering entire facts and circumstances of the case, till the date fixed in the case, the respondents are directed to maintain status quo with the disputed land and the respondents are restrained from selling, transferring, alienating, mortgaging, leasing, encumbering or creating any third-party interest of any nature whatsoever in respect of the disputed land bearing Khasra Nos. 808, 809, 810, 820, 831, 832, 788, 814, 816, 818, 817, 830 admeasuring 8.04814 and Khasras No. 811, 812, 813, 819, 821 and 822 admeasuring 0.279 Hectares being Chak road and Naali in Village Morta, Pargana Ghaziabad, Uttar Pradesh. The petitioners must take necessary steps forthwith for invoking Arbitration clause of the Memorandum of Understanding dated 02.03.2013. Let notices be issued to respondents. Necessary steps be taken by petitioner for service of notice upon respondents.

Put up on 27.02.2026 for reply/disposal of the petition filed by petitioner under Section 9 of The Arbitration & Conciliation Act, 1996."

3. In view of the facts narrated in the supplementary affidavit, let the the word '**since**' be added before the word '**deceased**' against appellant no.5. Mr. Varun Makkar S/o Shri Inder Kumar Makkar and Mr. Dheeraj Makkar S/o Shri Jagdish Makkar be described as appellant nos. 5/1 in the array of parties, during the course of the day.

4. Leave to appeal granted.

5. Submission is, the learned Commercial Court has erred in granting injunction order, as prayed for. First, there was inordinate delay of 13 years in approaching the Court and seeking arbitral proceeding. Second, the authorisation letter relied by the respondents was not executed by the then existing partner of the firm M/S S. S. Builders Unit-1. Thus, Mr. Hari Mohan Sharma, Mrs. Neha Sharma, Mr. Varun Makkar and Mr. Dheeraj Makkar who were also partners of the said firm did not execute the said authorisation letter. Third, it has been objected that such Momorandum of Understanding was never acted upon by the parties. No action whatsoever was taken by the respondents to secure their rights thereunder. Yet, the learned trial court has granted *ex parte* injunction as prayed for, for the mere asking.

6. Objecting to the appeal, learned Senior Advocate appearing for the respondents would submit, all objections being raised may remain to be tested before the learned trial court. The *ex parte* injunction order was granted on 30.01.2026 i.e. admittedly two weeks ago. The next date in the proceeding fixed is in the next week. The appellant has liberty to raise all issues before the Commercial Court.

7. On the objections as to delay it has been submitted that it would be wrong to assert that there was inordinate delay. Referring to the reply to the notice dated 30.01.2026 issued by the appellant, it has been submitted that the execution of Memorandum of Understanding dated 02.03.2013 is admitted. The rights being claimed by the respondents had been delayed for "multiple reasons" including alleged inaction of the appellants. On the issue of delay, it has been asserted that the parties had been in communication. The Memorandum of Understanding had also been subjected to specific extension. Therefore, decision of a coordinate bench in **M/s Law Publishers & Anr. Vs. Sri Virendra Sagar & 3 Ors.; 2025:AHC:120505-DB** is distinguishable.

8. In face of extensions granted (as are being claimed by the respondents), it cannot be said that the Memorandum of Understanding stood terminated in terms of the clause providing for "Effective date of Memorandum of Understanding and Possible Termination".

9. As to the institution of Section 9 proceedings, it has been submitted, since the parties were in communication and the Memorandum of Understanding had been extended, there did not arise any earlier occasion to institute such proceeding. Only on issuance of advertisement to sell the property that forms the subject matter of Memorandum of Understanding cause of action first arose. Therefore, the proceedings under Section 9 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the 'Act'), were instituted. In that, the learned trial court has only protected the property that forms the subject matter of dispute between the parties. That order is strictly in accordance with Section 9(1)(c) of the Act. There is no inherent lack of jurisdiction. All issues may therefore be tested on the strength of objections that may be filed by the appellant in the proceedings before the learned

Commercial Court.

10. Having heard learned counsel for the parties and having perused the record, in the first place, we are hasten to record that we do not intend to record any finding as may affect the final merits of the proceedings before the learned Commercial Court or the arbitral proceeding itself.

11. To the extent, the document described as Memorandum of Understanding may exist, the further objection as to its execution may remain to be tested on the strength of objections being raised by the appellant and also the response thereto, amongst others by relying on the reply to the notice dated 30.01.2026, issued by the appellant. Plainly, the stage is pre-mature for this Court to offer a full blown discussion on the same as that issue may require evidence to be led before any firm conclusion may be drawn.

12. As to the limitation issue, besides the general proposition - that limitation may involve mixed question of law and fact, at present, suffice to note that a plea of repeated extension of the Memorandum of Understanding, exists. For whatever it may be worth, we are not inclined to offer any interference specially since the appellant have yet to file their response before the learned Commercial Court.

13. Similarly, on the issue of existence of authority letter, we leave the issue open to be tested by the learned trial court.

14. To the extent, there exists notice to which response has been given and there also exists document described as authority letter on which at least two signatures are admitted to the appellant, we refrain from making any further observation as may affect the final merits of the appeal. We specifically provide that the observation made is only indicative of the *prima facie*

consideration offered by the Court but by no means an observation that may weigh with the learned trial court while dealing with the issue upon objections being raised by the appellant.

15. As to the relief that has been granted by the learned trial court, we find that it has provided that the property may not be sold, transferred, alienated, mortgaged, leased, encumbered, till the next date which is 27.02.2026.

16. Considering the objections raised and the fact that the parties have been put to notice, we leave it open to the appellant to file objections alongwith application to vacate the interim injunction before the next date. Subject to such compliance, the learned court below may make best efforts to decide the application for vacation of interim injunction, as expeditiously as possible, preferably within a period of one month from the date of objection being filed by the appellant, in terms of this order.

17. With the aforesaid observation, present appeal is **disposed of**.

(Indrajeet Shukla,J.) (Saumitra Dayal Singh,J.)

February 17, 2026

Abhilash