



ARBITRATION AND CONCILIATION

# Clause in Later Agreement Incorporating All Terms of Earlier Contract Brings In Arbitration Clause by Reference: Supreme Court

Hirani Developers v. Nehru Nagar Samruddhi CHS Ltd. and Anr. The Supreme Court of India, in its judgment dated May 13, 2026, held that where a later contract expressly states that all terms and conditions of an earlier development agreement shall be construed to form part of it, the arbitration clause in the earlier agreement [...]

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The Supreme Court of India, in **Hirani Developers v. Nehru Nagar Samruddhi CHS Ltd. and Anr.**, held that where a later contract expressly states that all terms and conditions of an earlier development agreement shall be construed to form part of it, the arbitration clause in the earlier agreement stands incorporated into the later contract by reference under Section 7(5) of the Arbitration and Conciliation Act, 1996. The judgment was delivered on May 13, 2026.

The Bench of **Justice Sanjay Kumar** and **Justice K. Vinod Chandran** set aside the Bombay High Court's order dismissing five Section 11 applications and appointed a sole arbitrator.

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## Background

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### Development Agreement and Arbitration Clause

Hirani Developers, a proprietary concern engaged in real estate, entered into a **Development Agreement** dated December 20, 2011, registered on July 4, 2012, with Nehru Nagar Samruddhi Co-operative Housing Society Limited for the redevelopment of the society's dilapidated project.

**Clause 36** of the Development Agreement provided that in case of any dispute or difference in respect of the terms and conditions of the agreement, both parties shall appoint a sole arbitrator and the proceedings shall be conducted under the Arbitration and Conciliation Act, 1996.

### Permanent Alternate Accommodation Agreements

Subsequently, Hirani Developers entered into separate **Permanent Alternate Accommodation Agreements** with the society and five of its individual members. These agreements were executed on September 2, 2023 and January 12, 2024.

The five individual members were:

- Narayan Haldankar
- Malan Valkunde
- Ravindra Walanju
- Pradeep Govekar
- Suchita Pawar

Each of these Permanent Alternate Accommodation Agreements was on identical lines and contained **Clause 14**. This clause stated that all terms and conditions of the Development Agreement dated July 4, 2012 shall be construed to form part of the later agreement and all clauses of the same shall be binding on the parties thereto.

### Consumer Complaints and Section 11 Applications

The five respondent members filed complaints against Hirani Developers before the **Consumer Disputes Redressal Commission** at Bandra.

Hirani Developers then issued notices under **Section 21** of the Arbitration Act to each of the five members invoking Clause 36 of the Development Agreement and called upon them to nominate an arbitrator. The respondents refused to proceed with arbitration and maintained their consumer complaints.

Hirani Developers filed five applications under **Section 11** of the Act before the Bombay High Court seeking appointment of an arbitrator.

## The High Court's View

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The High Court dismissed all five applications by a common order dated June 26, 2025. It held that the arbitration clause was contained in the Development Agreement executed between Hirani Developers and the society, and that **no arbitration clause appeared** in the Permanent Alternate Accommodation Agreements executed with the individual members.

Referring to Section 7(5) of the Arbitration Act, the High Court held that a mere reference to an earlier document in a later one would not be adequate to incorporate an arbitration clause. It reasoned that a *firm commitment to arbitrate* had to be discernible from the later document itself.

It further held that the individual members were **not privy to the arbitration clause** in the Development Agreement in their individual capacity.

## Supreme Court's Analysis

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### Section 7(5) of the Arbitration Act

The Court examined **Section 7(5)** of the Act, which provides that a reference in a contract to a document containing an arbitration clause constitutes an arbitration agreement if the contract is in writing and the reference is such as to make that arbitration clause part of the contract.

### Key Precedents Applied

The Court relied on two key precedents to interpret the scope of **incorporation by reference**:

- **M.R. Engineers and Contractors Private Limited v. Som Datt Builders Limited, (2009) 7 SCC 696** — This case drew the distinction between a mere reference to another document and the *incorporation* of another document by reference. If a contract provides that all terms and conditions of an earlier document shall be read or treated as part of the contract, the terms of that document get bodily lifted and incorporated into the contract, including any arbitration clause contained in it. A general or limited reference, on the other hand, would not have that effect.
- **NBCC (India) Limited v. Zillion Infraprojects Private Limited, (2024) 7 SCC 174** — This ruling held that an arbitration clause in another document would get incorporated into a later contract by reference if there is a clear reference to the document containing the arbitration clause and the reference clearly indicates the intention to incorporate that clause.

### Application to the Facts

Applying these principles to the facts, the Court found that **Clause 14** of the Permanent Alternate Accommodation Agreements went well beyond a mere reference. It unequivocally recorded that all terms and conditions of the Development Agreement shall be construed to form part of those agreements and that all clauses of the Development Agreement shall be binding on the parties.

The Court held that this was precisely the kind of language contemplated by the illustration in *M.R. Engineers*, where a contract states that all terms and conditions of an earlier document shall be treated as part of the later contract. There was no ambiguity about the intention of the parties to import the Development Agreement in its entirety, including Clause 36, into the Permanent Alternate Accommodation Agreements.

The Court therefore held that the High Court had erred in its understanding of Section 7(5) and that this was a fit case for holding that there was a **valid arbitration agreement between the parties by incorporation**.

## Order

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The Supreme Court set aside the common order of the Bombay High Court dated June 26, 2025 and allowed all five appeals.

**Mr. Vishal Kanade**, Advocate, Bombay High Court, was appointed as Sole Arbitrator to resolve the disputes and differences between Hirani Developers and the five respondent members.

The Arbitrator was directed to make the declaration under **Section 12** of the Arbitration Act within fifteen days of receipt of a copy of the order.

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