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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE P. KRISHNA KUMAR

THURSDAY, THE 18TH DAY OF DECEMBER 2025 / 27TH AGRAHAYANA, 1947

OP(C) NO. 3242 OF 2016

AGAINST THE ORDER DATED 07.09.2016 IN IA NO.3826/2016 IN OS

NO.176 OF 2016 OF I ADDITIONAL MUNSIF COURT,ERNAKULAM

PETITIONER:

A.K.SUKUMARAN, AGED 67 YEARS
S/O. KUNJAN BAVA, QUARTER NO .B14,
BSNL QUARTERS, H.NO.CC 56/2431,
PANAMPILLY NAGAR, KOCHI-682036
(RETD. BSNL EMPLOYEE)

BY ADVS.
DR.V.N.SANKARJEE
SHRI.V.N.MADHUSUDANAN
SRI.M.K.SIDHAN
SMT.M.SUSEELA
SMT.R.UDAYA JYOTHI
SRI.M.M.VINOD

RESPONDENT:

BHARATH SANCHAR NIGAM LTD
REPRESENTED BY THE ASSISTANT GENERAL MANAGER
(BUILDING PLANNING), OFFICE OF PGMT,
BSNL, BSNL BHAVAN,
KALATHIPARAMBU ROAD, KOCHI-682016.

THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 18.12.2025, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



P.KRISHNA KUMAR, J

OP(C)No.3242 of 2016

Dated this the 18th day of December, 2025

JUDGMENT

This Original Petition is filed against Ext. P5 order passed by the I Additional Munsiff Court, Ernakulam, whereby an application filed by the respondent herein under Section 8 of the Arbitration and Conciliation Act (hereinafter referred to as “the Act”) was allowed, by referring the subject matter of the dispute to arbitration.

2. The petitioner herein is the plaintiff in the said suit. He filed the suit seeking to restrain the respondent from forcibly evicting him from the quarters building leased out by the respondent.

3. Heard the learned counsel for the petitioner.

4. The learned counsel for the petitioner submitted that this Court had earlier, in OP(C) No. 3067/2016, considered a similar order passed by the Principal Munsiff Court, Ernakulam, in I.A. No. 4015/2016 in O.S. No. 106/2006, and by order dated 2.12.2016, this Court set aside the order



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passed by the Munsiff Court under Section 8 of the Act, holding that matters which are not within the purview of arbitration cannot be referred to an Arbitral Tribunal.

The relevant portion of the said judgment reads as follows:

“2. The petitioner is the plaintiff in O.S.106/2016 on the file of the Principal Munsiff Court, Ernakulam. The suit was filed by the petitioner seeking a relief of injunction. He filed the suit covered by Ext.P1 in this case for an injunction restraining the defendant from forcibly evicting him from the plaint schedule building or from demanding enhanced rent other than the rent fixed by Ext.P3 agreement dated 26.10.2015 for fair rent to be fixed by the competent court or disbursing or disconnecting the amenities including electricity water etc., to the plaint schedule property.

3. The respondent entered appearance and filed Ext.P4 application under Section 8(2) of the Arbitration and Conciliation Act, challenging the maintainability of the suit before the civil court in view of clause (4) in the lease agreement as I.A.4015/2016 in O.S.106/2016 and Ext.P5 objection to the same was filed by the petitioner, stating that the arbitration clause is not applicable to the proceedings. But the court below by Ext.P6 order allowed the application holding that the substantial question to be considered is legality of agreement and collection of rent and not the eviction proceedings alone and the matter is arbitrable one and closed the suits. This was challenged by the petitioner by filing this application.

4. Heard Sri.Dr.V.N.Sankarjee counsel appearing for



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the petitioner and Sri.K.M. Jamaludheen, Standing Counsel appearing for the respondent.

5. The counsel for the petitioner submitted that there are two reliefs claimed in the petition one against forceful eviction and other collection of rent other than the rent mentioned in the agreement unless the rent fixed payable by the competent authority. As regards the eviction is concerned, it is not a arbitrable issue and it cannot be gone into by the Arbitral Tribunal as has been held in the decision reported in [*Booz Allen and Hamilton INC V. SBI Home Finance Ltd., and Others (AIR 2011 SC 2507)*]. The court below was not justified in allowing the application as such and the court below ought to have held that, the suit is maintainable as against the main relief of forceful eviction.

6. On the other hand, the counsel for the respondent submitted that, he filed an affidavit stating that the respondent has no intention to forcefully evict him and the question regarding what is the rate of rent payable can be decided by the Arbitrator and he is not paying rent, even the agreed rent, for a long period which submission has been denied by the counsel for the petitioner.

7. It is an admitted fact that the petitioner in this case has taken the Government quarters belonging to the respondent as per the agreement mentioned in the petition on a particular rate of rent. It is also not in dispute that he received notice from the respondent seeking enhanced rate of rent and also stating that if the rent is not paid at the enhanced rate claimed, they will be taking steps to evict him from the property. It is at that stage that the present suit have been filed by the petitioner seeking intervention of the civil court restraining the respondent from forcefully evicting him from the plaint schedule property and also seeking injunction restraining them from asking for



enhanced rate of rent as claimed in the notice as according to him as per the modified scheme, the respondent is not entitled to get so much rent.

8. In the decision reported in **[Booz Allen and Hamilton INC V. SBI Home Finance Ltd., and Others (AIR 2011 SC 2507)]**, the Supreme Court has considered the question as to what are the nature of disputes that can be referred for arbitration and certain areas where legislature intended to do certain things by virtue of special Tribunal, those aspects should not be referred for arbitrator as Arbitral Tribunal has no jurisdiction to entertain the same. This aspect has been considered by the Apex Court in paragraph 21 and 22 of the judgment which reads as follows:-

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9. This shows that the eviction of tenancy matters governed by special statue where the tenant enjoys statutory protection against eviction, only specified courts are conferred with jurisdiction to grant eviction or to decide the dispute. Since as regards the claim for enhanced rent is concerned, parties are bound by the agreement. Clause (4) of the lease agreement between the parties reads as follows:-

Provided always and it is hereby agreed if at any time they shall arise any dispute, doubt, difference or question with regard to the interpretation or in respect of the right, duties and liabilities of the parties hitherto or anyway touching or arising out of these presence or otherwise in relation to the demise premises, then every such disputes, difference or question (except the decision where is herein expressly provided for) shall be referred to the sole or arbitration of the principal, General Manager, Telecom, BSNL Ernakulam and the award passed by the arbitrator shall be final and binding on both the parties to the agreement.



10. As regards the forceful eviction is concerned, the Arbitral Tribunal cannot go into that aspect in view of the dictum laid down in the decision cited supra. But as regards the rate of rent payable, what is the rate at which the rent has to be paid and whether the modified scheme is applicable to them etc., are matter to be referred for arbitration as it is a dispute regarding the right and liability of the parties arising under the agreement. So to that extent the civil court cannot go into that aspect and parties will have to move the arbitrator for that purpose. Here the question is whether the petitioner's apprehension of forceful eviction which the defendants are not entitled to do is genuine or not and the petitioner is entitled to get a decree for the same, to that extent, the jurisdiction of the civil court is not ousted by the arbitration clause and the court below should not have allowed the application as such closing the suit referring the matter to arbitration as such.

The dictum laid down in the decision reported in ***Sundaram Finance Ltd., and Others v. T. Thankam*** (AIR 2015 SC 1303) has been wrongly interpreted by the court below. In this case, the main relief claimed is against forcible eviction which aspect can be considered only by the court below and not by the Arbitral Tribunal. The question as to whether the respondent is entitled to get enhanced rent or the scheme relied on by the petitioner is applicable to the building etc. are matter incidental question to be considered and the civil court cannot go into that question in view of the arbitration clause. If the reliefs are severable in nature and the main relief cannot be considered by the arbitral tribunal, then civil courts jurisdiction is not ousted. In such circumstances, Section 8(2) of Arbitration and Conciliation Act is not applicable



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to divest the jurisdiction to arbitral tribunal which has no jurisdiction to decide that issue. So under such circumstances the order passed by the court below is unsustainable in law and the same is set aside and the matter is sent back to the court below for fresh consideration on this aspect. If the arbitrator has already been appointed and if the parties agreed before that court that they have no intention to evict forcefully till the arbitrator decides the question regarding the rate of rent payable, then that can be considered by that court and pass appropriate orders in the suit with liberty for the petitioner to challenge the jurisdiction of the forum through which they are going to evict later.

With the above observation and direction the petition is disposed of accordingly. The court below can restore the suit and consider the matter afresh in the light of the observation made above and pass appropriate orders afresh in accordance with law.

Parties are directed to appear the court below on 21.12.2016. Registry is directed to communicate this judgment to the concerned court immediately.”

The factual contentions in the present case are exactly similar to that of the situation referred to above. In these circumstances, the impugned order is set aside.

The parties are directed to appear before the trial court on 20.01.2026.

P.KRISHNA KUMAR, JUDGE



APPENDIX OF OP(C) NO. 3242 OF 2016

PETITIONER EXHIBITS

EXHIBIT P1	TRUE COPY OF THE PLAINT DATED 30-1-2016 IN O.S.NO.176/2016 OF THE I ADDITIONAL MUNSIFF'S COURT, ERNAKULAM.
EXHIBIT P2	TRUE COPY OF THE MEMORANDUM DATED 10-7-2013 ISSUED BY THE RESPONDENT.
EXHIBIT P3	TRUE COPY OF THE GUARANTEE AGREEMENT DATED 5-10-2015.
EXHIBIT P4	TRUE COPY OF THE PETITION DATED 15-5-2016 I.A.NO.3826/2016 FILED BY THE RESPONDENT IN EXT. P-1 SUIT.
EXHIBIT P5	TRUE COPY OF THE ORDER DATED 7-9-2016 IN I.A.NO.3826/2016 FILED BY THE RESPONDENT IN EXT. P-1 SUIT.