



2024:KER:97803

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE SYAM KUMAR V.M.

FRIDAY, THE 20TH DAY OF DECEMBER 2024 / 29TH AGRAHAYANA, 1946

AR NO. 23 OF 2024

PETITIONERS:

UNNIMOIDU
AGED 52 YEARS
KARUTHEDATHU, S/O MUHAMMAD, BUSINESSMAN,
KARUTHEDATHU HOUSE, VELLOOR, POOKKOTTUR AMSHAM,
POOKKOTTUR P.O, ERANADU TALUK,
MALAPPURAM DISTRICT, PIN - 676517

BY ADVS. R.SURAJ KUMAR
SUNIL J.CHAKKALACKAL
N.G.SINDHU
SUNITHA G.
ANJANA R.S.
FARZA N.

RESPONDENTS:

MUHAMMAD IQBAL
AGED 48 YEARS
KIZHAKINIYAKATH, S/O MUHAMMAD NAHA KAZHAKKINIYATH
THEKKEPPADU HOUSE, PARAPPANAGADI AMSHAM
PARAPPANAGADI P.O, MALAPPURAM DISTRICT,
PIN - 676319

BY ADVS. Premjith Menon S K
BINU V V VEETIL VALAPPIL(K/439/2004)
P.J.STEPHEN(K/474/2004)
MANEKSHA D.(K/000478/2005)

THIS ARBITRATION REQUEST HAVING BEEN FINALLY HEARD ON
20.12.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



ORDER

Dated this the 20th day of December, 2024

Petitioner filed this Arbitration Request, invoking Section 11 of the Arbitration and Conciliation Act, 1996 (for short “the Act of 1996”) seeking to appoint a sole Arbitrator to adjudicate the disputes and differences between the petitioner and the respondent arising out of a partnership agreement.

2. Petitioner and the respondent are partners of a firm by name ‘Orchard Builders and Developers’. The partnership agreement dated 04.10.2012 is produced as Annexure A1. The object of the partnership is *inter alia* stated in the deed as acquiring, constructing and selling property. The deed contained an arbitration clause at Clause 21 which reads as follows:

“21. That in case any dispute arises thereafter among the partners or representatives of the deceased partner relating to any term or condition or with regard to the partnership assets/ liabilities, the same shall be referred to arbitration and the provisions of the India Arbitration Act shall apply thereto.”

3. The partnership firm was registered with the Registrar of Firms and a copy of the acknowledgment of registration of firms issued by the



Office of the Registrar of Firms is produced as Annexure A1 (a). A parcel of land situated in Coonoor in Nilagiri District, Tamil Nadu, was purchased and construction was commenced thereon. Subsequently, disputes cropped up between the petitioner and the respondent on various counts regarding the working of the partnership. It is the contention of the petitioner that while the respondent was abroad and showed little interest in the conduct of the partnership, the petitioner had met all expenses and also had put in personal efforts to further the construction work. Later on, when the petitioner developed a reasonable apprehension that the respondent was taking steps to alienate the said property in Coonoor to strangers, he moved Annexure A2 petition under Section 9 of the Act of 1996 before the District Court, Manjeri, seeking an injunction against alienation of the subject property. The respondent entered appearance before the District Court, Manjeri and filed a detailed counter in Section 9 Petition (Annexure A3). The District Court, after being convinced of the partnership deed and the arbitration agreement therein, granted a temporary injunction as revealed by Annexure A4. It is the contention of the petitioner that in the meanwhile the arbitration clause was invoked and an Arbitrator was nominated and the same was concurred by the



respondent. The said Arbitrator entered on reference and issued notice to the parties as revealed by Annexure A5. The petitioner filed Annexure A6 claim petition before the Arbitrator on 16.03.2020 and the respondent filed a statement in counter (Annexure A7). Subsequently, the respondent filed Annexure A8 petition before the Arbitrator raising doubts regarding his impartiality/independence and this led the Arbitrator to withdraw from the proceedings by issuing Annexure A9 notice of withdrawal dated 04.05.2023 to both sides. In the meanwhile, at the instance of the respondent, the temporary injunction granted earlier was vacated by the District Court *inter alia* pointing out that the mandate to commence arbitration within 90 days had lapsed. Pursuant to such lifting of the interim injunction by the Addl. District Court, the respondent hastily alienated the subject property to third parties. The petitioner has filed a Review Petition (Annexure A10) before the District Court, Manjeri, seeking to set aside the said order of vacating the temporary injunction which is stated to be pending. Towards further pursuing the arbitration proceedings which had been left midway due to the withdrawal of the earlier Arbitrator, petitioner issued Annexure A11 notice to the respondent nominating another Arbitrator and calling upon him to duly respond. The respondent replied to



the said notice vide Annexure A12 *inter alia* denying the existence of the partnership arrangement. It has also been stated therein that *“Though not in acquiescence to the jurisdiction of the Tribunal, my client had filed an application before the then sole Arbitrator who was appointed by you unilaterally to appoint an authority for the purpose of scientific investigation pertaining to that of the aspect of forgery as the partnership deed which you rely upon is illegal.”* Thus arbitration proceedings in which the respondent had also chosen to appear and seek an investigation into the alleged forgery, remain in limbo. It is at such juncture that the petitioner has filed this application under Section 11 of the Act of 1996, seeking appointment of an Arbitrator by this Court.

4. The respondent entered appearance and filed a counter affidavit. It is contended therein that the partnership agreement is a forged document created by the petitioner utilising signed blank papers. He had participated in the arbitration procedure under protest and the petitioner has not issued any notice under Section 21 of the Act of 1996 for the commencement of a valid arbitral process. The injunction order granted by the District Court, Manjeri, had lapsed since the arbitration proceedings had not been commenced within 90 days of the date of the order. The



claim petition before the Arbitrator had been filed only on 16.03.2020 which is much later than the stipulated period of 90 days. The respondent had not consented or agreed to the appointment of any Arbitrator since the partnership agreement itself is a fabricated one. It is also contended that the Arbitration Request is barred by limitation since more than 3 years have elapsed from the date of the cause of action. Reliance is placed on the dictum laid down in **B and T AG v. Ministry of Defence** (2023 KLT OnLine 1473 (SC)).

5. Heard Sri.Suraj Kumar R.,the learned counsel appearing for the petitioner and Sri.S.K.Premjith Menon, the learned counsel appearing for the respondent.

6. Annexure A1 partnership agreement stated to have been executed between the petitioner and respondent contains an arbitration clause as reproduced above. The respondent has denied executing such a partnership agreement and claimed not to be bound by any arbitration clause. The Additional District Court, Majeri, has in Annexure A4 order dated 19.10.2019 concluded that the partnership deed and the certificate of registration of partnership are genuine. Be that as it may, the same are not matters that could be looked into by this Court in a referral jurisdiction



under Section 11 of the Act of 1996. The Hon'ble Supreme Court has clearly circumscribed and laid down the contours of the exercise of the referral powers under Section 11 (6) recently in **SBI General Insurance Co. Ltd V. Krish Spinning** [2024 SCC OnLine SC 1754]. It has been held therein that the referral court should limit its enquiry to examining whether a Section 11(6) application has been filed within the three-year period of limitation and that while at the stage of deciding an application for appointment of an Arbitrator, the court must not conduct an intricate evidentiary enquiry into whether the claims raised by the applicant are time-barred and should leave that question for the Arbitrator to determine. Regarding the question of whether an Arbitration Request is barred by limitation, Hon'ble Supreme Court has in **Krish Spinning's** case (supra) referred to the dictum in **Arif Azim Company Ltd. v. Aptech Ltd.** [(2024) 5 SCC 313], which had succinctly laid down the principles to be followed as below:

"Thus, from an exhaustive analysis of the position of law on the issues, we are of the view that while considering the issue of limitation in relation to a petition under Section 11(6) of the Act, 1996, the courts should satisfy themselves on two aspects by employing a two-pronged test – first, whether the petition under Section 11(6) of the Act, 1996 is barred by limitation; and secondly, whether the claims sought to be arbitrated are ex-facie dead claims and are thus barred by limitation on the date of commencement of arbitration proceedings. If either of these issues are answered against the party seeking referral of disputes to



arbitration, the court may refuse to appoint an arbitral tribunal." (emphasis added)

7. The respondent in this case has a contention that the Arbitration Request is barred by limitation. In view of the above dictum in **Krish Spinning's** case (supra), this contention assumes importance and is the only contention in this reference that requires to be examined. If the question is answered in the negative and the matter is found fit to be arbitrated by appointing an Arbitrator, then all other contentions like arbitrability, jurisdiction, maintainability etc will have to be left open to be decided in the arbitration.

8. For considering the question of whether the Arbitration Request is hit by the three year bar of limitation, certain dates assume relevance. The relevant dates are discernible from the annexures produced. The partnership agreement said to have been entered into between the petitioner and respondent is dated 04.10.2012. Disputes between the parties arose in the year 2018, as evidenced by the filing of Section 9 petition dated 09.07.2018 before the District Court, Manjeri. The respondent had filed a counter dated 01.02.2019 before the District Court and an order of temporary injunction was issued on 19.10.2019. Thereafter an Arbitrator was appointed and a notice of arbitration was



issued to the parties on 07.01.2020. The claim petition was filed before the Arbitrator on 16.03.2020 and the respondent entered appearance before the Arbitrator and filed vakalathnama. He further filed a counter statement dated 06.06.2020 before the Arbitrator. Thereafter based on the objection of the respondent, the Arbitrator withdrew from the Arbitration on 04.05.2023. On 06.11.2023 the District Court, vacated the temporary injunction. To revive the stalled arbitration proceedings, the petitioner issued to the respondent a notice of appointing an Arbitrator on 04.09.2023. The respondent replied to the same vide Annexure A12 notice which mentions only the date and year of its issuance as 22nd day of 2023.

9. It is trite that the period of limitation to seek appointment of an Arbitrator under Section 11 of the Act of 1996 shall be three years from the date when the right to apply accrues. The dates mentioned above reveal that the parties had been arbitrating the matter by filing their respective pleadings till the Arbitrator withdrew from arbitration on 04.05.2023. Thereafter, the petitioner had issued a notice/request dated 06.11.2023 *inter alia* seeking to continue the arbitration proceedings by appointing another Arbitrator. The said letter satisfies the mandates of Section 21 of the Act. In view of the above transactions between the parties, petition



filed under Section 11(6) of the Act of 1996 cannot be termed as barred by limitation. Parties had invoked Section 9 interim measures from the competent court and the arbitration proceedings had duly commenced. It was being pursued by the parties till the Arbitrator withdrew from the proceedings. Hence the claims sought to be arbitrated cannot be termed as ex-facie dead claims and or as barred by limitation.

10. Reliance had been placed by the respondent on the dictum of the Hon'ble Supreme Court in **B and T AG's** case (supra) to contend that AR is hit by limitation. It was *inter alia* held by the Hon'ble Supreme Court in **B and T AG** (supra) that if an infringement of a right happens at a particular time, the whole cause of action will be said to have arisen then and there. In such a case, it is not open to a party to sit tight and not to file an application for settlement of dispute of his right, which had been infringed, within the time provided by the Limitation Act, and, allow his right to be extinguished by lapse of time, and thereafter, to wait for another cause of action and then file an application under Section 11 of the Act 1996 for establishment of his right which was not then alive, and, which had been long extinguished because, in such a case, such an application would mean an application for revival of a right, which had long been



extinguished under the Limitation Act of 1963 and is, therefore, dead for all purposes. Such proceedings would not be maintainable and would obviously be met by the plea of limitation under Article 137 of the Limitation Act, 1963. The dictum in **B and T AG's** case (supra) does not apply to the facts of this case. As noted above, in the case at hand the petitioner has not caused extinguishment of his right by delay or by lapse of time. Section 11 application has been filed within time and the same cannot be termed as barred by limitation.

11. In view of the above, I find that this Arbitration Request is fit to be allowed and that a lawyer from the panel of Arbitrators maintained by this Court can be appointed as the Arbitrator.

12. Accordingly, this Arbitration Request stands allowed and it is ordered as follows :

- (i) Sri. Anil Thomas K., Advocate, Room No. 213, Victory Tower, Kacheripadi, Manjeri P.O., Ernad Taluk, Malappuram- 676 121, is nominated as the sole Arbitrator to resolve the disputes that have arisen between the petitioner and the respondent under Annexure-A1 agreement.
- (ii) The learned Arbitrator may entertain all disputes/issues between



the parties in connection with the said agreement, including questions of jurisdiction, maintainability, arbitrability and limitation, if any, raised by the parties.

(iii) The Registry shall communicate a copy of this order to the learned Arbitrator within ten days from today and obtain a Statement of Disclosure from the learned Arbitrator as stipulated under Section 11(8) read with Section 12(1) of the Act of 1996.

(iv) Upon receipt of the Disclosure Statement, the Registry shall issue to the learned Arbitrator a certified copy of this order with a copy of the Disclosure Statement appended. The Original of the Disclosure Statement shall be retained in Court.

(v) The fees of the learned Arbitrator shall be governed by the Fourth Schedule of the Act of 1996.

Sd/-

**SYAM KUMAR V. M.
JUDGE**



APPENDIX OF AR 23/2024

PETITIONER'S ANNEXURES

Annexure A1	TRUE COPY OF THE PARTNERSHIP DEED NO.3668/2012 DATED 21/12/2012
Annexure A1(a)	TRUE COPY OF THE ACKNOWLEDGMENT OF REGISTRATION OF FIRMS DATED 21.12.2012 ISSUED BY THE REGISTRAR OF FIRMS, THIRUVANANTHAPURAM
Annexure A2	TRUE COPY OF THE O.P (ARB) NO. 119/2018 ON THE FILE OF THE DISTRICT COURT, MANJERI
Annexure A3	TRUE COPY OF THE OBJECTION DATED 01.02.2019 IN O.P (ARBITRATION) NO.119/2018 ON THE FILE OF THE DISTRICT JUDGE, MANJERI
Annexure A4	TRUE COPY OF THE ORDER DATED 19.10.2019 IN O.P (ARB.) NO.119/2018 ON THE FILE OF THE ADDITIONAL DISTRICT JUDGE, MANJERI
Annexure A5	TRUE COPY OF THE NOTICE DATED 07.01.2020 ISSUED BY THE SOLE ARBITRATOR TO THE PETITIONER
Annexure A6	TRUE COPY OF THE CLAIM PETITION DATED 16.03.2020 SUBMITTED BY THE PETITIONER BEFORE THE SOLE ARBITRATOR
Annexure A7	TRUE COPY OF THE COUNTER CLAIM STATEMENT DATED 06.06.2020 ON FILE OF THE SOLE ARBITRATOR
Annexure A8	TRUE COPY OF THE PETITION ALONG WITH THE AFFIDAVIT SWORN BY THE RESPONDENT DATED 30.01.2023
Annexure A9	TRUE COPY OF THE LETTER DATED 14.05.2023

