

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

TUESDAY, THE 28TH DAY OF SEPTEMBER 2021 / 6TH ASWINA, 1943

WP(C) NO. 20307 OF 2021

PETITIONER/RESPONDENT 2:

SUBRAMANIYAN N.N,
AGED 70 YEARS, S/O. NARAYANAN, 2478
NANDANATHUTHUNDI, THAMMANAM P.O.,
CHAKKARAPARAMBU, OPP. MC DOWNALDS,
ERNAKULAM-682 032

BY ADV BINDU SREEKUMAR

RESPONDENT/CLAIM PETITIONER/RESPONDENTS 1 AND 3:

- 1 ANWAR.C.K, AGE NOT KNOWN,
FATHERS NAME NOT KNOWN,
ADVOCATE ARBITRATOR
- 2 M/S. SHRIRAM TRANSPORT FINANCE CO.LTD.,
2ND FLOOR, SAIRA PLAZA, OPP.MODERN BREAD,
HIGH SCHOOL JN, EDAPPALLY, COCHIN-682 024,
REPRESENTED BY THE POWER OF ATTORNEY HOLDER-
JINSA KHALID
- 3 SREENIVAS.K.,
AGED 40 YEARS, S/O. SREEDHARAN, 1539
KATTUMOOCHIKKAL, SHANTHI NAGAR ROAD, VENNALA,
ERNAKULAM-682 034, PRESENTLY RESIDING AT
KATTUMOOCHIKKAL (H), THOTTAKARA, OTTAPALAM,
PALAKKAD-679 102
- 4 SHAREEF.M.I.,
S/O. MUHAMMED ILLIYAS, THOMAS PARAMBU,
PADIVATTOM, PIPELINE ROAD, EDAPPALLY,
ERNAKULAM-682 024

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR
ADMISSION ON 28.09.2021, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

C.R.

P.B.SURESH KUMAR, J.

W.P.(C) No.20307 of 2021

Dated this the 28th day of September, 2021

J U D G M E N T

Petitioner is one of the guarantors to the loan availed by the third respondent from the second respondent for purchasing a vehicle. Ext.P1 is the agreement entered into between the petitioner, second respondent and the third respondent. Ext.P1 agreement provides that all disputes, differences and/or claim arising out of or in connection with the said agreement, whether during its subsistence or thereafter shall be settled by arbitration in accordance with the provision of the Arbitration and Conciliation Act, 1996, or any statutory amendments thereof and shall be referred to the sole

arbitration of an arbitrator nominated by the second respondent. The third respondent committed defaults in repaying the loan availed from the second respondent. The second respondent, in the circumstances, invoked the clause aforesaid in Ext.P1 agreement and nominated the first respondent as arbitrator to adjudicate their claim against the petitioner and the third respondent. The first respondent has initiated arbitral proceedings on that basis against the petitioner and the third respondent. Ext.P2 is the claim statement preferred by the second respondent before the first respondent. Along with the claim statement, the second respondent has preferred an interlocutory application also. The first respondent issued notice to the petitioner on the interlocutory application directing the petitioner to appear before him on 30.07.2021. Ext.P3 is the notice issued by the first respondent in this regard. The writ petition is filed thereupon, seeking a declaration that the appointment of the first respondent as the arbitrator by the second respondent to

adjudicate the claim of the second respondent against the petitioner is void *ab initio*. The petitioner also seeks stay of the arbitral proceedings. The case set out by the petitioner in the writ petition is that the clause in Ext.P1 agreement conferring authority on the second respondent to nominate the sole arbitrator to adjudicate the claim of the second respondent against the petitioner is invalid.

2. Heard the learned counsel for the petitioner.

3. In the light of the amendments made to the Arbitration and Conciliation Act, 1996 (the Act) in terms of the Arbitration and Conciliation (Amendment) Act, 2015 and various decisions of the Apex Court explaining the scope of the said amendments including the decisions in **TRF Limited v. Energo Engineering Projects Ltd.**, (2017)8 SCC 377 and **Perkins Eastman Architects DPC and Another v. HSCC (India) Ltd.**, 2019 SCC OnLine SC 1517, there is certainly force in the contention of the petitioner that the clause in Ext.P1 agreement conferring authority on the second respondent to

nominate the sole arbitrator to adjudicate the claim of the second respondent against the petitioner is invalid. But, the question arising for consideration is whether the petitioner is justified in approaching this Court seeking a declaration to that effect invoking the jurisdiction of this Court under Article 226 of the Constitution.

4. As is well known, arbitration is an arrangement for taking and abiding by the judgment of selected persons in some disputed matters, instead of carrying the dispute to established courts of justice and is intended to avoid the formalities, the delay, the expense and vexation of ordinary litigation. The object of the Act is to make appropriate provision for an arbitral procedure which is fair, efficient and capable of meeting the needs of the specific arbitration and to minimize the supervisory role of courts in the arbitral process so as to promote the concept of arbitration as an effective dispute resolution mechanism. The Act is a code by itself. Section 5 of the Act which begins with a *non obstante* clause

provides without any sort of ambiguity that in matters governed by Part I of the Act, there shall not be any judicial interference except where so provided in the said Part. Of course, a legislative enactment cannot curtail a constitutional right including the one provided for under Article 226 of the Constitution, but it is now trite that the said power can be invoked only in exceptional circumstances where a party to a dispute is left remediless under the statute or a clear bad faith is shown by one of the parties. The question arises for consideration, therefore, is whether the petitioner has made out any exceptional circumstances or bad faith on the part of the second respondent, for invoking the remedy under Article 226 of the Constitution.

5. Sub-section (2) of Section 13 of the Act lays down the procedure to challenge the appointment of an arbitrator. True, sub-section (4) of Section 13 provides that if such a challenge is not successful, the arbitral tribunal shall continue the arbitral proceedings and make an arbitral award.

Sub-section(5) of Section 13, however, clarifies that where an arbitral award is made under sub-section (4), the party challenging the arbitrator is free to make an application for setting aside the arbitral award in accordance with Section 34 of the Act. In other words, a very effective alternative remedy is provided in the Act for a party to an arbitral proceedings who is challenging the arbitrator. It is evident from the provisions contained in Section 13 of the Act that the scheme of the Act is that the grievances of the parties concerning the appointment of the arbitrator shall be addressed in terms of the provisions of the Act itself and that there shall not be any judicial interference in the course of the arbitral proceedings for redressal of such grievances. That being the scheme of the Act, according to me, if the courts interfere in the arbitral process beyond the ambit of the Act, the efficiency of the arbitral proceedings would be impaired and the object of the Act would be defeated.

In the said view of the matter, according to me,

there is no merit in the writ petition and the same is, accordingly, dismissed.

Sd/-

P.B.SURESH KUMAR, JUDGE.

YKB

APPENDIX OF WP(C) 20307/2021

PETITIONER EXHIBITS

Exhibit P1	TRUE COPY OF THE AGREEMENT DATED 28.2.2017 BETWEEN THE PARTIES
Exhibit P2	TRUE COPY OF THE CLAIM PETITION DATED 9.5.20 FILED BEFORE THE 1ST RESPONDENT
Exhibit P3	TRUE COPY OF THE NOTICE DATED 20.7.2021 ISSUED BY THE 1ST RESPONDENT
Exhibit P4	TRUE COPY OF THE REPRESENTATION DATED 27.8.21 SUBMITTED BY THE PETITIONER
Exhibit P5	TRUE COPY OF THE AFFIDAVIT DATED 9.9.21 SUBMITTED BY THE 2ND RESPONDENT
Exhibit P6	TRUE COPY OF THE E.MAIL COMMUNICATION DATED 11.9.21 SUBMITTED BY THE PETITIONER TO THE 2ND RESPONDENT
Exhibit P7	TRUE COPY OF THE EMAIL COMMUNICATION DATED 13.9.21 SUBMITTED BY THE PETITIONER TO THE 1ST RESPONDENT