

Leo Davis vs Ajith E.V.

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Court : Kerala

Decided On : Feb-20-2025

Judge : Honourable Mr. Justice Syam Kumar V.M.

Appeal No. : AR/225/2024

Appellant : Leo Davis

Respondent : Ajith E.V.

Judgement :

AR NO.225/2024 1

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE SYAM KUMAR V.M.
THURSDAY, THE 20TH DAY OF FEBRUARY 2025/1ST PHALGUNA,
1946 AR NO. 225 OF 2024 PETITIONER: LEO DAVIS AGED 49 YEARS
S/O.DEVASSY MANAGING DIRECTOR, LEO DAVIS OVERSEAS
EDUCATION CONSULTANCY SERVICES PVT. LTD, 3RD FLOOR,
CROWN TOWERS THRISSUR, PIN - 680006 BY ADVS. ANOOP
JOSEPH ZERENE LINDA MITCHEL ASWANI THUVVAKKADAN LIYA
JOSE RESPONDENTS: 1 AJITH E.V.
S/O.VISWAMBARAN,ELUVANGEL HOUSE, ANAKUZHI, PUTHOOR
P.O., KAINOOR,THRISSUR, PIN - 680014 2 KRISHNA PRASAD

S/O.RAVINDRAN, EDATHARA KURIYADATH HOUSE,
PERAMANGALAM P.O., PERAMANGALAM, THRISSUR, PIN - 680545
3 JIJI JOHNSON W/O.JOHNSON V.J., VALANCHERY HOUSE,
NADUVATTAM P.O., KALADY, ERNAKULAM, PIN - 683574 AR
NO.225/2024 2 4 SHIJI W/O.JINCE JOSEPH, VELIYANIRAPPEL
HOUSE, NOOLUVELLY EAST, CHEMBUCHIRA P.O., MATTATHUR,
THRISSUR, PIN - 680684 5 SHIBU P.D. S/O.DEVASSY P.V,
PADINJAREPEEDIKA HOUSE, MUPLIYAM,MUKUNDAPURAM,
THRISSUR, PIN - 680312 BY ADVS. ANJANA KANNATH, R1 & R2
MARIYA JOSE(K/004011/2023), R1 & R2 SASITH M R, R4 & R5 THIS
ARBITRATION REQUEST HAVING BEEN FINALLY HEARD ON
20.02.2025, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING: AR NO.225/2024 3

ORDER

Dated this the 20th day of February, 2025 Petitioner has filed this Arbitration Request invoking Section 11 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the Act) seeking to appoint an Arbitrator to resolve the disputes that have arisen between the petitioner and the respondents.

2. Petitioner is the Managing Director of a Private Limited

Company engaged in educational consultancy services. Respondents 1 to 5 are individuals who have entered into separate memorandums of understanding with the petitioner Company. Respondents 1 to 5 have entered into Annexures A1 to A5 memorandums of understanding respectively with the petitioner Company. The respondents have made distinct and separate investments of various amounts in the petitioner Company. Annexures A1 to A5 contain an arbitration clause, which reads as follows: Any dispute or difference whatsoever arising AR NO.225/2024 4

between the parties out of or relating to the construction, meaning, scope, operation, or effect of this contract or its validity or breach shall be settled by arbitration in accordance with the Rules of Arbitration of the

Indian Council of Arbitration, and the award made in pursuance thereof shall be binding on the parties.

Disputes have cropped up between the petitioner and the respondents under the respective memorandums of understanding and the petitioner claims that though certain amounts have been returned to the respondents differences persisted and to resolve the same, the petitioner had requested referring the dispute to the arbitration as stipulated in the memorandums of understanding. The respondents are reluctant to accept the said request to arbitrate and hence the petitioner has filed this Arbitration Request invoking Section 11 of the Act.

3. Notice was issued in the Arbitration Request and was served on all the respondents.

4. Heard Sri.Anoop Joseph, Advocate for petitioner, Smt.Anjana Kannath, Advocate for respondents 1 and 2, and Sri.M.R.Sasith, Advocate for respondents 4 and 5. There was no AR NO.225/2024 5 appearance for the 3rd respondent.

5. The relevant clause in Annexures A1 to A5 reproduced

herein above, specifically stipulates a dispute resolution through arbitration. The pleadings and the submission made by the counsel reveal the existence of disputes between the parties under Annexures A1 to A5. The invocation of the relevant arbitration clause as claimed by the petitioner has not been denied or disputed by the respondents. The counsel for the respondents concur that the arbitration clause had been invoked and that their clients are amenable to a resolution of the disputes by arbitration. However, the arbitration has to be by an independent and neutral Arbitrator as envisaged in Section 12 (5) of the Act as appointed by this Court. It is also prayed that for the convenience of parties, who are based in Thrissur District, a lawyer from the panel of Arbitrators maintained by this Court, who is based in Thrissur, may be appointed.

6. The essential elements to constitute an arbitration agreement viz., (1) The presence of a present or a future difference in connection with some contemplated affair (2) Intention of the AR NO.225/2024 6

parties to settle such differences by a private tribunal (3) Agreement in writing to be bound by the decision of such tribunal, and (4) the parties being in ad idem regarding same, are found satisfied [See Babanrao Rajaram Pund v. Samarth Builders & Developers and another [(2022) 9 SCC 691]]. The invocation of the arbitration clause is also admitted. If there is any challenge regarding jurisdiction/arbitrability/maintainability and limitation, it is trite that the parties can raise the same before the Arbitrator who can decide the said questions in the arbitration proceedings. It is trite law that it is not open to either of the parties to unilaterally appoint an Arbitrator for the resolution of the disputes [See Trf Ltd. v. Energo Engineering Projects (2017 KHC 4463), Perkins Eastman Architects DPC and another v. HSCC (India) Ltd. (2019 KHC 7173) and Central Organisation for Railway Electrification v. M/s ECI SPIC SMO MCML (JV) (2024 KHC OnLine 6620)].

7. The existence of an arbitration agreement, its due invocation and the cause of action not being barred by limitation have been validly made out. Hence I deem it fit and appropriate to AR NO.225/2024 7 allow the Arbitration Request and to appoint an Advocate from the panel of Arbitrators maintained by this Court as the Arbitrator. Accordingly, this Arbitration Request stands allowed and it is ordered as follows :

(i) Sri.T.P. Saju, Advocate, Nambanath Swathi Building,

Ayyanthole, Thrissur - 680 003 is nominated as the sole Arbitrator to resolve the disputes that have arisen between the petitioner and the respondents under Annexures A1 to A5 memorandums of understanding.

(ii) The learned Arbitrator may entertain all disputes/ issues

between the parties in connection with the said agreement, including questions of jurisdiction 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. AR NO.225/2024 8

(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. Sd/- SYAM KUMAR V.M. JUDGE csl AR NO.225/2024 9 APPENDIX OF AR 225/2024 PETITIONER'S ANNEXURES
Annexure A1 A TRUE COPY OF THE MEMORANDUM OF UNDERSTANDING DATED 11.10.2023 EXECUTED BETWEEN THE PETITIONER AND THE FIRST
Annexure A2 A TRUE COPY OF THE MEMORANDUM OF UNDERSTANDING DATED 12.12.2022 EXECUTED BETWEEN THE PETITIONER AND THE 2ND
Annexure A3 A TRUE COPY OF THE MEMORANDUM OF UNDERSTANDING DATED 16.12.2023 EXECUTED BETWEEN THE PETITIONER AND THE 3RD
Annexure A4 A TRUE COPY OF THE MEMORANDUM OF UNDERSTANDING DATED 09.09.2023 EXECUTED BETWEEN THE PETITIONER AND THE 4TH
Annexure A5 A TRUE COPY OF THE MEMORANDUM OF UNDERSTANDING DATED 24.07.2023 EXECUTED BETWEEN THE PETITIONER AND THE 5TH

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