

Safe Prime Nidhi Ltd vs Rasheed K. I

Safe Prime Nidhi Ltd vs Rasheed K. I

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Court : Kerala

Decided On : Aug-16-2023

Judge : Honourable Mr. Justice Devan Ramachandran

Appeal No. : AR/26/2023

Appellant : Safe Prime Nidhi Ltd

Respondent : Rasheed K. I

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN WEDNESDAY, THE 16TH DAY OF AUGUST 2023 / 25TH SRAVANA, 1945 AR NO. 26 OF 2023 PETITIONER: M/S SAFE PRIME NIDHI LTD XXX/607, 1ST FLOOR, PMS ARCADE, COLLEGE ROAD, KOTHAMANGALAM, ERNAKULAM DISTRICT, PIN 686691, REPRESENTED BY ITS MANAGING DIRECTOR, SRI V.S THANKAPPAN. BY ADVS.ALEXANDER JOSEPH AKHILASREE BHASKARAN ANTONY NIKHIL REMELO RESPONDENTS: 1 SRI RASHEED K.I, S/O IBRAHIM K.M, AGED 49, KAREDATH HOUSE, EDAYAPPURAM, ALUVA P. O, ERNAKULAM DISTRICT, PIN - 683 101. 2 SMT.SUNAIFA RASHEED, W/O RASHEED K. I, AGED 41,

KAREDATH HOUSE, EDAYAPPURAM, ALUVA P. O , ERNAKULAM DISTRICT. PIN - 683 101. BY ADVS.SRI.ANOOP ELIAS T.A MOHAMED SAGEER(K/651/1987) THIS ARBITRATION REQUEST HAVING COME UP FOR ADMISSION ON 16.08.2023, ALONG WITH AR.52/2023, 53/2023, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: -2-

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN WEDNESDAY, THE 16TH DAY OF AUGUST 2023 / 25TH SRAVANA, AR NO. 52 OF 2023 PETITIONER: M/S SAFE PRIME NIDHI LTD, XXX/607, 1ST FLOOR, PMS ARCADE, COLLEGE ROAD, KOTHAMANGALAM, ERNAKULAM DISTRICT, PIN 686691, REPRESENTED BY ITS MANAGING DIRECTOR SRI V.S THANKAPPAN. BY ADVS.SRI.ALEXANDER JOSEPH AKHILASREE BHASKARAN ANTONY NIKHIL REMELO RESPONDENTS:

1 NAVAS K. I, S/O. IBRAHIM K.M., AGED 46, KAREDATH HOUSE, EDAYAPPURAM, ALUVA P. O ERNAKULAM DIST. PIN - 683 101. 2 SMT.NASEEMA NAVAS, W/O NAVAS K. I, AGED 38, KAREDATH HOUSE, EDAYAPPURAM, ALUVA P. O, ERNAKULAM DIST. PIN - 683 101. 3 SRI.RASHEED K. I, S/O IBRAHIM K. M, AGED 49, KAREDATH HOUSE, EDAYAPPURAM, ALUVA P. O ERNAKULAM DIST. PIN - 683 101. BY ADVS.SRI.ANOOP ELIAS T.A MOHAMED SAGEER(K/651/1987) THIS ARBITRATION REQUEST HAVING COME UP FOR

ADMISSION ON 16.08.2023, ALONG WITH AR.26/2023 AND CONNECTED CASES, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: -3-

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN WEDNESDAY, THE 16TH DAY OF AUGUST 2023 / 25TH SRAVANA, AR NO. 53 OF 2023 PETITIONER: M/S SAFE PRIME NIDHI LTD, XXX/607, 1ST FLOOR, PMS ARCADE, COLLEGE ROAD, KOTHAMANGALAM, ERNAKULAM DISTRICT, PIN 686691, REPRESENTED BY ITS MANAGING DIRECTOR SRI V.S THANKAPPAN. BY ADVS.ALEXANDER JOSEPH AKHILASREE BHASKARAN ANTONY NIKHIL REMELO RESPONDENTS:

1 NAZEER K. I, S/O. IBRAHIM K.M., AGED 52, KAREDATH HOUSE, EDAYAPPURAM, ALUVA P. O ERNAKULAM DIST, PIN - 683 101. 2 SMT. JASMINE, W/O NAZEER, AGED 52, KAREDATH HOUSE, EDAYAPPURAM, ALUVA P. O ERNAKULAM DIST. PIN - 683 101. 3 SRI.RASHEED K. I, S/O IBRAHIM K.M, AGED 49, KAREDATH HOUSE, EDAYAPPURAM, ALUVA P. O ERNAKULAM DIST. PIN - 683101. BY ADVS.ANOOP ELIAS T.A MOHAMED SAGEER(K/651/1987) THIS ARBITRATION REQUEST HAVING COME UP FOR

ADMISSION ON 16.08.2023, ALONG WITH AR.26/2023 AND CONNECTED CASES, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: -4-

ORDER

[AR Nos.26/2023, 52/2023, 53/2023] The petitioner - which is stated to be a Nidhi Company, registered under the provisions of the Companies Act, 1956, asserts that they had entered into Annexure A1 Agreement with the respondents, consequent to the request made by the latter for a financing facility; but that, after the loan was sanctioned and disbursed, they defaulted in repayment of the same as per the agreed terms.

2. The petitioner asserts that, vide Clause

Nos. (a) and (b) of Annexure A1 Agreement, all disputes between the parties, relating to the loan transaction, or with respect to its terms, are to be referred to an

Arbitrator; and that they have addressed Annexure A3 notice intimating that unless they pay off the entire amount outstanding in the loan facility, the -5- matter will have to be referred to a sole Arbitrator. They assert that respondents have neither responded to the afore notice, nor have they agreed to the appointment of an Arbitrator; thus constraining them to approach this Court through this Arbitration Request.

3. Sri.Anoop Alias - learned counsel for

the respondents, responded to the afore assertions of the petitioner, as made by their learned counsel - Sri.Alexander Joseph, saying that the amounts claimed by the petitioner are

excessive and that his clients have not committed any default, as has been alleged by them. He, therefore, prayed that, if this Court is inclined to refer the parties to Arbitration, then all contentions of his clients, including on the question of arbitrability of disputes and those relating to the rigour of limitation, be left open.

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4. I have examined Annexure A1 - which is the admitted Agreement between the parties.

5. It is expressly agreed by both parties

before me that, as per Clauses (a) and (b) thereof, all disputes between the parties will have to be referred to arbitration, under the provisions of the Arbitration and Conciliation Act, 1996 (Act, for short). Since there is no

dispute with respect to this, I deem it necessary that this Arbitration Request be allowed. Needless to say, every contention of the rival parties, including the question of arbitrability of the disputes; as well as application of laws of limitation, if any, are left open to be impelled by them before the learned Arbitrator. Resultantly, I allow this Arbitration Request in the following manner: -7-

(a) I nominate Sri.T.V.Mammootty, 3rd Floor, Edassery Building, Banerji Road, Ernakulam 682031, Mobile No.9995556830, e-mail id:

advmammootty1@gmail.com as the sole Arbitrator,

to adjudicate and resolve the disputes Agreement.

(b) The Registry is directed to communicate a copy of this order to the learned Arbitrator within a period of two weeks from today and to obtain a Statement of Disclosure from him under Section 11(8) read with Section 12(1) of the Act.

(c) Once the Disclosure Statement is obtained from the learned Arbitrator the Registry shall release the certified copy of this order, with a copy of the said statement appended to it, retaining the original of the -8- same on the files of this case. (d) The fees of the Arbitrator shall be governed by the Fourth Schedule of the Act.

(e) The parties to this case are ad idem that they will share the arbitration costs and fees equally and it is so recorded.

(f) In order to enable the Arbitrator to commence the proceedings without delay, I direct the parties to mark appearance before him at 11 a.m. on 30.09.2023.

Sd/- DEVAN RAMACHANDRAN JUDGE akv -9- APPENDIX OF AR 52/2023 PETITIONER ANNEXURES ANNEXURE A1 TRUE COPY OF THE LOAN AGREEMENT DATED PETITIONER AND THE RESPONDENTS ANNEXURE A1(A) TRUE ENGLISH TRANSLATIONAL OF ANNEXURE A1 ANNEXURE A2 TRUE COPY OF THE EXTRACT OF THE LOAN LEDGER OF THE RESPONDENTS DATED ANNEXURE A3 TRUE COPY OF THE LAWYER NOTICE DATED THE RESPONDENTS -10- APPENDIX OF AR 53/2023 PETITIONER ANNEXURES ANNEXURE A1 TRUE COPY OF THE LOAN AGREEMENT DATED PETITIONER AND THE RESPONDENTS ANNEXURE A1(A) TRUE ENGLISH TRANSLATIONAL OF ANNEXURE A1 ANNEXURE A2 TRUE COPY OF THE EXTRACT OF THE LOAN LEDGER OF THE RESPONDENTS DATED ANNEXURE A3 TRUE COPY OF THE LAWYER NOTICE DATED THE RESPONDENTS -11- APPENDIX OF AR 26/2023 PETITIONER ANNEXURES ANNEXURE A1 TRUE COPY OF THE LOAN

AGREEMENT DATED 30TH DECEMBER 2019 ENTERED INTO BETWEEN THE PETITIONER AND THE RESPONDENTS ANNEXURE A1(A) TRUE ENGLISH TRANSLATION OF ANNEXURE A1 ANNEXURE A2 TRUE COPY OF THE EXTRACT OF THE LOAN LEDGER OF THE RESPONDENTS DATED ANNEXURE A3 TRUE COPY OF THE LAWYER NOTICE DATED TO THE RESPONDENTS

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