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M. Sheeja vs P.P. Mariya

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Court : Kerala Orders

Decided On : Jul-27-2022

Judge : Honourable Mr. Justice Sathish Ninan

Appeal No. : AR/45/2018

Appellant : M. Sheeja

Respondent : P.P. Mariya

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE SATHISH NINAN WEDNESDAY, THE 27TH DAY OF JULY 2022 / 5TH SRAVANA, 1944 AR NO. 45 OF 2018 PETITIONER : M. SHEEJA, AGED 42 YEARS, D/O.VEERANKUTTY & W/O.V.V.SUNEER, RESIDING AT VALLIYAKATH HOUSE, KALLEPADAM POST, PAZHAYANNUR, THRISSUR DISTRICT, PIN-680 587. BY ADV SRI.C.P.UDAYABHANU. RESPONDENTS :

1 P.P. MARIYA, D/O.LATE P.YUSUF & W/O.V.V.HANEEFA,RESIDING AT PAKKAPARAMBIL, PAZHAYA LAKKIDI POST, OTTAPALAM TALUK, PALAKKAD DISTRICT. 2 V.V.HANEEFA, S/O.VAVAKUTTY,

RESIDING AT PAKKAPARAMBIL, PAZHAYA LAKKIDI POST, OTTAPALAM TALUK, PALAKKAD DISTRICT. 3 V.V.SUNEER, S/O.VAVAKUTTY, RESIDING AT PAKKAPARAMBIL,PAZHAYA LAKKIDI POST, OTTAPALAM TALUK,PALAKKAD DISTRICT. 4 JEFFIN JAMES, S/O.JAMES PAULOSE, RESIDING AT AANIKOOTTATHIL HOUSE, KOLLAPADA POST, PAZHAYANNUR, THRISSUR. BY ADVS. SAIJO HASSAN SREEHARI R SRI.BIJU VARGHESE ABRAHAM SRI.K.M.ANEESH SRI.K.SANTHOSH KUMAR (KALIYANAM) NAGARAJ NARAYANAN(K/700/1994) BENOJ C AUGUSTIN(K/189/2004.) RAFEEK. V.K.(K/134/2003) U.M.HASSAN(K/00033/2016) AATHIRA SUNNY(K/000638/2018) LAKSHMINARAYAN.R(K/001590/2020) K.N.MUHAMMED THANVEER(K/529/2014) N.KRISHNA OZHAKKANAT(K/1518/2019) BINCY JOB(K/001080/2017) THIS ARBITRATION REQUEST HAVING COME UP FOR ADMISSION ON

27.07.2022, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: Arbitration Request No.45 of 2018 2

SATHISH NINAN, J.

========== Arbitration Request No.45 of 2018 ========== Dated this the 27th day of July, 2022

ORDER

Annexure A1 is the registered partnership deed between the petitioner and respondents 1 to 3. The 4 th respondent is not a party to Annexure A1. He is the alienee of a property, which the petitioner claims to be a partnership asset. There arose disputes between the parties. The petitioner seeks for an appointment of an Arbitrator relying on the Arbitration Clause in Annexure A1 partnership deed.

2. The respondents opposed the prayer.

3. Heard the learned counsel on either side.

4. Common contention of all the respondents is that the notice for appointment of an Arbitrator as mandated under Section 11(5) r/w Section 21 of the Act has not been issued by the petitioner.

5. Section 11(5) of the Arbitration and Conciliation Act, 1996 (in short 'the Act') reads thus :

Failing any agreement referred to in sub-section (2), in an arbitration with a sole arbitrator, if the parties fail to agree on the arbitrator within thirty days Arbitration Request No.45 of 2018 3 from receipt of a request by one party from the other party to so agree the appointment shall be made, upon request of a party, by 1[the Supreme Court or, as the case may be, the High Court or any person or institution designated by such Court]."

Though the petitioner has produced Annexure A6 claiming to be the notice issued in terms of the above, there is no material to indicate the issuance or the receipt of such notice by the respondents. Compliance with Section 11(5) and Section 21 of the Act being a mandatory requirement for initiation of Arbitration proceedings, and there being no material on record to indicate such initiation, leaving open the rights of the petitioner to initiate fresh proceedings, the Arbitration Request is closed. It is made clear that all the contentions of the parties including that of the 4 th respondent that he is a stranger to Annexure A1 agreement and hence not bound by the arbitration clause, are left open. Sd/- SATHISH NINAN, JUDGE amk Arbitration Request No.45 of 2018 4 APPENDIX PETITIONER'S ANNEXURES : ANNEXURE A1 : TRUE COPY OF THE REGISTERED PARTNERSHIP DEED DATED 28-2-2006. ANNEXURE A2 : TRUE COPY OF THE O.P NO 1313/2013 ON THE FILES OF THE FAMILY COURT, THRISSUR DATED 11-09-2014. ANNEXRUE A3 : TRUE COPY OF THE WRITTEN STATEMENT FILED BY RESPONDENTS 1 & 2 IN O.P 1313/2014. ANNEXURE A4 : TRUE COPY OF THE ORDER IN IA NO.146/2015 IN O.P NO.1313/2014. ANNEXURE A5 : TRUE COPY OF THE ORDER IN OP(FC) NO.582/2016 DATED 14-3-2017 OF THIS HON'BLE COURT. ANNEXURE A6 : TRUE COPY OF THE NOTICE DATED 28-09-2017. RESPONDENTS' ANNEXURES : NIL.

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