

Adv. Biju Abraham vs Engineering Designs and Structural Stabilization (E-Dss)

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Court : Kerala Orders

Decided On : Aug-27-2021

Judge : Honourable Mr. Justice Devan Ramachandran

Appeal No. : AR/20/2021

Appellant : Adv. Biju Abraham

Respondent : Engineering Designs and Structural Stabilization (E-Dss)

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN FRIDAY, THE 27TH DAY OF AUGUST 2021 / 5TH BHADRA, 1943 AR NO. 20 OF 2021 PETITIONER: ADV. BIJU ABRAHAM, AGED 55 YEARS S/O.LATE P.P.ABRAHAM, PARAYAMKUZHIYIL HOUSE, BY ADVS.SRI.ALIAS M.CHERIAN SRI.K.M.RAPHY SMT.ANJALY ELIAS SHRI.BRISTO S PARIYARAM RESPONDENTS:

1 M/S. ENGINEERING DESIGNS AND STRUCTURAL STABILIZATION (e-DSS) HAVING REGISTERED OFFICE AT BLDG # 54/3293 S.A.ROAD, KADAVANTHRA POST, KOCHI-682 020, REPRESENTED BY IT MANAGING DIRECTOR, MR.JOSE FRANCIS. 2 MR.JOSE FRANCIS, CHIEF EXECUTIVE OFFICER, M/S.ENGINEERING DESIGNS AND STRUCTURAL STABILIZATION (e-DSS), HAVING REGISTERED OFFICE AT BLDG #54/3293 S.A.ROAD, KADAVANTHRA POST, KOCHI-682 020. BY ADV T.V.SADANANDAN (SREEMOOLANAGARAM)

THIS ARBITRATION REQUEST HAVING COME UP FOR ADMISSION ON 27.08.2021, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: AR 20/21 2

ORDER

The applicant submits that he had entered into an agreement, namely Annexure A-1 with the respondents for the purpose of renovation and raising the height of his building, but that they acted in violation of the terms thereof, thus giving rise to various disputes between them.

2. The applicant asserts that, as per Clause 23 of Annexure A-1

agreement, the disputes between the parties can be settled only through the mechanism of arbitration and consequently that he issued Annexure A- 2 notice to them, with the names of three persons, from whom they were requested to suggest one name as the sole Arbitrator.

3. The applicant says that, however, Annexure A-3 reply was

caused to be issued by the respondents, wherein, though they agreed to the nomination of a sole Arbitrator, they suggested two other names, who are not acceptable to him. He says that he has been, therefore, constrained to approach this Court under Section 11 of the Arbitration and Conciliation Act, 1996, seeking appointment of a sole Arbitrator in terms

AR 20/21 3 of Clause 23 of Annexure A-1 agreement.

4. I have heard Sri.Alias M.Churian, learned counsel for the applicant and Sri.T.V.Sadanandan, learned counsel for the respondents.

5. As I have already indicated above, the respondents do not have a case against the appointment of an Arbitrator by this Court, but prayed that a person having technical expertise be nominated, because the disputes involve assessment of certain scientific and technical aspects.

6. I have gone through the materials available on record, as also the claims made by the parties against each other in Annexures A-2 and A-

3. Annexure A-1 agreement relates to the renovation of a building of the petitioner and the real dispute is as to whether the work has been properly completed and if not, what is the percentage of progress. I do not think that an Engineer is required for this purpose and am of the firm view that it will be sufficient if a competent lawyer of this Court is appointed as the sole Arbitrator, who can also be given liberty to seek the assistance of an expert, if so required, for adjudication of the disputes.

AR 20/21 4 In the afore circumstances, this Arbitration Request is allowed in the following terms:

(a) I nominate Sri.E.M.Joseph, Edasserry Towers, St.Francis

Church Road, Kaloore, Kochi-17 as the sole Arbitrator to adjudicate and resolve the disputes and differences between the parties to this

CASE ARISING FROM

Annexure A1 agreement.

(b) The Registry is directed to communicate a copy of this order to

the learned Arbitrator, within a period of one week from today and to obtain a Statement of Disclosure from him under Section 11(8) read with Section 12(1) of the Arbitration and Conciliation Act, 1996.

(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 same on the files of this case.

(d) The fees of the Arbitrator shall be governed by the Fourth Schedule to the Arbitration and Conciliation Act, 1996. AR 20/21 5

(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 11.10.2021. Needless to say, if the learned Arbitrator finds that assistance of an expert is imperative, then he is at liberty to seek such in the course of the arbitration proceedings.

Sd/- Devan Ramachandran, Judge tkv AR 20/21 6 APPENDIX OF AR 20/2021 PETITIONER ANNEXURE ANNEXURE A1 TRUE COPY OF AGREEMENT DATED 30.01.2018 SIGNED BETWEEN THE APPLICANT AND RESPONDENTS. ANNEXURE A2 TRUE COPY OF NOTICE DATED 08.02.2020 ISSUED BY THE APPLICANT TO THE RESPONDENTS. ANNEXURE A3 TRUE COPY OF REPLY NOTICE DATED 28.02.2020 ISSUED BY THE RESPONDENT TO THE APPLICANT.

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