

Flash Traders vs the Kerala State Cashew Development Corporation Limited

Flash Traders vs the Kerala State Cashew Development Corporation Limited

SooperKanoon Citation : sooperkanoon.com/1655464

Court : Kerala

Decided On : Sep-14-2021

Judge : Honourable Mr. Justice Devan Ramachandran

Appeal No. : AR/37/2019

Appellant : Flash Traders

Respondent : The Kerala State Cashew Development Corporation Limited

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN TUESDAY, THE 14TH DAY OF SEPTEMBER 2021 / 23RD BHADRA, 1943 PETITIONER: M/S FLASH TRADERS HILL PRODUCE DEALER AND COMMISSION AGENT, PRESENTED BY ITS PROPRIETOR M.P. ABDUL KADER HAJI, CITY CENTRE, IRITTY P.O., KANNUR 670 703. BY ADV C.R.SIVAKUMAR RESPONDENTS: 1 THE KERALA STATE CASHEW DEVELOPMENT CORPORATION LIMITED REPRESENTED BY ITS MANAGING DIRECTOR, CASHEW HOUSE, POST BOX NUMBER 13, MUNDAKKAL P.O., KOLLAM 691 001. 2 M/S. RBS MARITIME SERVICES REPRESENTED BY THE SURVEYOR 92/U FIRST FLOOR, DEVASPURAM ROAD, TUTICORIN P.O., TAMIL

NADU, 628 003. BY ADVS. SRI.VIPIN P.VARGHESE, SC, KERALA STATE CASHEW DEVELOPMENT CORPORATION LTD. SRI.PHILIP MATHEWS THIS ARBITRATION REQUEST HAVING COME UP FOR ADMISSION ON 14.09.2021, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

O R D E R

The petitioner has approached this Court invoking the provisions of Section 11(5) of the Arbitration Conciliation Act, 1996 (hereinafter referred to Act for short), alleging that various disputes have arisen between them and the respondents touching upon and relating to the terms of Annexure A3 Agreement.

2. The petitioner asserts that, as per Clause 15 of

Annexure A3, all disputes between the parties can only be resolved only through the mechanism of Arbitration; and consequently that they addressed Annexure A11 letter asking them to accede to the appointment of an Arbitrator. They allege that the respondents have chosen not to respond to their request or to even cause a reply to be issued.

3. The petitioner, therefore, prays that this Court allow this Arbitration Request and appoint a competent Arbitrator, to adjudicate and resolve the disputes between the parties.

4. I have heard Sri.C.R.Sivakumar - learned counsel for the petitioner and Sri.Vipin P.Varghese - learned Counsel for the respondents.

5. Pertinently, Sri.Vipin Varghese did not this Arbitration

Request, but only submitted that the entire amount as claimed by the petitioner, has already been paid to them. He then added that if this Court is inclined to allow this Arbitration Request, then his clients afore contention may be left open, to be pursued before the said Authority appropriately.

6. I have examined Annexure A3 and it is admitted that

the disputes between the parties will have to be settled through Arbitration. Since the parties have no contest with respect to Clause 15 of the Agreement, I am of the view that this Arbitration Request deserves to be allowed. Resultantly, I allow this Arbitration Request in the following manner:

(a) I nominate Sri.B.G.Harindranath, 'Pournami', Keerthi

Nagar, 3rd Cross Road, Elamakkara, Cochin-682 026 as the sole Arbitrator, to adjudicate and resolve the disputes and differences between the parties to this

CASE ARISING FROM

Annexure A3 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 of the Arbitration and Conciliation Act, 1996.

(e) 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 28.10.2021.

Sd/- DEVAN RAMACHANDRAN JUDGE SAS/14/09/2021 APPENDIX OF AR 37/2019 PETITIONER'S ANNEXURE ANNEXURE A1 THE TRUE COPY OF THE TENDER CONDITIONS. ANNEXURE A2 THE TRUE COPY OF THE PRICE SCHEDULE OF THE TENDER ANNEXURE A3 A TRUE COPY OF THE SALES AND PURCHASE AGREEMENT ANNEXURE A4 THE CUTTING TEST RESULTS OF THE SAMPLE DRAWN ON 13/5/2017 ANNEXURE A5 HE CUTTING TEST RESULTS OF THE SAMPLES DRAWN ON 14/5/2017

ANNEXURE A6 THE TRUE COPY OF THE CUTTING TEST RESULTS OF THE SAMPLES DRAWN BETWEEN 25/5/2017 AND ANNEXURE A7 THE CUTTING TEST RESULTS OF THE SAMPLES TESTED ON 15/6/2017 ANNEXURE A8 THE TRUE COPY OF THE CERTIFICATE OF QUANTITY AND QUALITY, NO./RBS/KLM/44834 DATED 15.6.2017 ANNEXURE A9 TRUE COPY OF THE REPRESENTATION DATED 2.6.2017 ANNEXURE A10 THE TRUE COPY OF THE DEBIT NOTE ANNEXURE A11 THE TRUE COPY OF THE REQUEST DATED 14.11.2017 OF THE PETITIONER BEFORE THE FIRST OPPOSITE PARTY. ANNEXURE A12 THE TRUE COPY OF THE JUDGMENT IN WPC NO. ANNEXURE A13 THE TRUE COPY OF THE ORDER DATED 25/2/2019 OF THE 1ST OPPOSITE PARTY. ANNEXURE A14 THE TRUE COPY OF THE NOTICE DATED 25.06.2019 ANNEXURE A15 THE TRUE COPY OF THE COMMUNICATION DATED 05.07.2019 RESPONDENTS' EXHIBITS: ANNEXURE R2A COPY OF REPRESENTATION DATED 23.7.2019 SENT BY THE SECOND OPPOSITE PARTY TO THE FIRST OPPOSITE PARTY AGAINST ANNEXURE A13.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com