

Phoenix Multiplex, vs the President,

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Court : Kerala

Decided On : Oct-01-2021

Judge : Honourable Mr. Justice Devan Ramachandran

Appeal No. : AR/110/2019

Appellant : Phoenix Multiplex,

Respondent : The President,

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN
FRIDAY, THE 1ST DAY OF OCTOBER 2021 / 9TH ASWINA, 1943 AR NO. 110
OF 2019 PETITIONERS:

1 M/s.PHOENIX MULTIPLEX, REGISTERED OFFICE AT DOOR NO.10,
1ST FLOOR, VAISHAKA, THAVAKKAL BUILDING, PULLEPADY
ROAD, PULLEPADY DESOM, ERNAKULAM VILLAGE, KANAYANNUR
TALUK, ERNAKULAM DISTRICT, KERRALA STATE, PIN - 682 018,
REPRESENTED BY ITS PARTNER SHRI P.S. SURAJ. 2 PACHAN
RAJAN, S/O LATE PACHAN, BUSINESS, RESIDING AT THIPPATTI
VEEDU, POIKAMUKKU, MUDUKKAL POST, MUDAKKAL VILLAGE,

CHIRAYINKEEZHU TALUK, THIRUVANANTHAPURAM DISTRICT, KERALA STATE, REPRESENTED BY HIS POWER OF ATTORNEY HOLDER SHRI SURAJ P.S. 3 PUNARTHAN SURENDRAN SURAJ ALIAS P.S. SURAJ, S/O P.K.SURENDRAN, BUSINESS, RESIDING AT 'PUNARTHAN' HOUSE, MEKALADY DESOM, KALADY VILLAGE, ALUVA TALUK, ERNAKULAM DISTRICT, KERALA STATE. 4 BINOI SATYAVAN ALIAS BINOI S. SATYAVAN, S/O P.K. SATYAVAN, BUSINESS, RESIDING AT THOZHUTHUNGAL HOUSE, NORTH VAZHAKKULAM DESOM, MARAMPILLY VILLAGE, KUNNATHUNADU TALUK, ERNAKULAM DISTRICT. BY ADVS. M.S.SAJEEV KUMAR SMT.A.N.JYOTHILEKSHMI SMT.LAKSHMI S KUMAR

RESPONDENTS: 1 SNDP YOGAM, KUNNATHUNADU UNION, REPRESENTED BY THE CHAIRMAN, ADMINISTRATIVE COMMITTEE, DOOR NO. XVI/979, PERUMBAVOOR, PIN - 683 542. 2 SNDP YOGAM, KUNNATHUNADU UNION, REPRESENTED BY THE CONVENER, ADMINISTRATIVE COMMITTEE, DOOR NO.XVI/979, PERUMBAVOOR, PIN 683542. AR NO. 110 OF 2019 2 BY ADV SMT.K.SUNITHA VINOD THIS ARBITRATION REQUEST HAVING COME UP FOR ADMISSION ON 01.10.2021, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: AR NO. 110 OF 2019 3

ORDER

The applicants have filed this Arbitration Request invoking the provisions of Section 11 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Act' for short), asserting that they had entered into Annexure 1 agreement followed by Annexure 2 and Annexure 3 Memorandum of Understanding and Supplementary Agreement respectively with the respondents.

2. The applicants say that, however, several disputes have arisen between the parties with respect to the terms of the afore said agreements; and therefore, that they addressed the respondents

through Annexure 4 and Annexure 5, seeking that their claims be acceded to or that a suitable sole Arbitrator be appointed because, going by the terms of the

agreements, the disputes between them can be adjudicated and resolved only through the mechanism of Arbitration. They point out that, in fact, in Annexure 5, they have suggested the name of a former Judge of this Court as the Arbitrator; but that a

AR NO. 110 OF 2019 4 reply had been caused to be made by the respondents, vide Annexure 6, refusing to accede to the claims

impelled by them or even to accept Arbitration request.

3. I have heard Shri.M.Sajeev Kumar, learned counsel for the applicants and Smt.Sunitha Vinod, learned counsel appearing for the respondents.

4. Pertinently, Smt.Sunitha Vinod submitted that

her clients have no objection in this Court appointing a sole Arbitrator because they are also interested in getting a resolution of the disputes between the parties at the earliest. She, therefore, prayed that this Court appoint a competent independent Arbitrator, adding that her clients be allowed to raise all their objections against the claims of the applicants before the said Authority.

5. I have examined Annexures 1, 2 and 3 agreements and notice that - as is also expressly

AR NO. 110 OF 2019 5admitted by

resolved only through Arbitration. In the afore circumstances, I allow this Arbitration Request in the following manner:

(a) I nominate Mr.Justice K.Balakrishnan Nair, Karthika, Smrithi Lane, Chembakassery Temple Road, Aluva - 683101, 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 two weeks 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 AR NO. 110 OF 2019 6 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 11.00 a.m. on 05.11.2021.

Sd/- DEVAN RAMACHANDRAN JUDGE MC/4.10 AR NO. 110 OF 2019 7
APPENDIX OF AR 110/2019 PETITIONER ANNEXURE ANNEXURE 1 TRUE
COPY OF AGREEMENT TO LEASE NO. ANNEXURE 2 TRUE COPY OF
MEMORANDUM OF UNDERSTANDING DATED 05-08-2017.

ANNEXURE 3

TRUE COPY OF SUPPLEMENTARY AGREEMENT NO. ANN

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