

**Kuruvilla Vs. Kuruvilla and ors.**

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**SooperKanoon Citation :** [sooperkanoon.com/723852](http://sooperkanoon.com/723852)

**Court :** Kerala

**Decided On :** Feb-12-1959

**Reported in :** AIR1959Ker405

**Judge :** Sankaran, C.J. and; Varadaraja Iyengar, J.

**Acts :** [Arbitration Act, 1940](#) - Sections 14

**Appeal No. :** A.S. No. 575 of 1958

**Appellant :** Kuruvilla

**Respondent :** Kuruvilla and ors.

**Advocate for Def. :** P. Govindan Nair and; P.K. Kurien, Adv.

**Advocate for Pet/Ap. :** C.M. Kuruvilla, Adv.

**Disposition :** Appeal dismissed

**Judgement :**

**Varadaraja Iyengar, J.**

1. The matter arises out of the Award of an arbitrator in a reference through court in Company Petition No. 13 of 1953 on the file of the Kottayam District Court. The Award though questioned by the appellants -- respondents 2 and 3 in the petition -- was to a major extent accepted and made order of court. Hence this appeal.

2. The Company Petition No. 13 of 1953 was filed under Section 153(c) of the Companies Act of 1913 corresponding to Section 397 of the present Act of 1956, by a share-holder of the 1st Respondent -- Vijayalekshmi Oil Industries, Ltd., Kottayam. The 2nd Respondent in the Petition was the Industrial Managers, Ltd., who had been appointed and were functioning as the Managing Agents of the 1st Respondent-Company, while the 3rd respondent in the petition was the Governing Director of the 2nd Respondent-Company. The main prayer in the Petition was to terminate the managing agency agreement of the 2nd Respondent and direct the 2nd Respondent and also the 3rd Respondent Personally to pay to the 1st Respondent-Company all the amounts misappropriated by them and to make good all the loss caused to the 1st Respondent by their various acts of misfeasance and malfeasance. Respondents 2 and 3 resisted the Petition both by way of preliminary objections as to maintainability and on the merits.

The preliminary objections were overruled right up to the High Court. All the differences between the parties were then referred to the decision of sole arbitrator Mr. B. Chandi Itty. By his Award dated 31-3-1957 the arbitrator held (i) that the respondents 2 and 3 were jointly and severally liable to the 1st Respondent-Company in the total sum of Rs. 17,133-3-3 under the various counts detailed in the Award and (ii) that the 3rd Respondent should not participate in the meetings of the Directors and shareholders until he discharged his obligations under the Award. On this Award being filed, Respondents 2 and 3 raised various objections. However they pressed only three of them in respect firstly, of the grant of Rs. 2,830 on account of damages to building incurred after the reference had been made; secondly, the joint and several liabilities laid upon the 3rd Respondent in the whole matter and thirdly, the disability imposed on the 3rd Respondent in attending the meetings of the Directors and shareholders. The court below found that the 1st and 3rd points raised were well-founded but there was no merit in the second and upheld the Award pro tanto.

3. Learned counsel for the appellants raised two questions before us (i) that the second objection to the Award as to the personal liability of the 3rd Respondent raised in the court below was wrongly disallowed by it, and (ii) that it was not proper to sanction damages on account of misfeasance and malfeasance as

against the managing agents without at the same time specifically terminating the managing agency agreement as the court below has here failed to do. On the first question we notice that this particular aspect of personal liability was one of the various points of difference between the parses and was as such specifically referred to and decided by the arbitrator. So, even assuming it as a pure question of law as learned counsel contends for, still the arbitrator's decision on it is final, however patently he may have erred. See *Vulson v. Kelu-kutty*, 1958 Ker LT 977: (AIR 1959 Kerala 174), where his Court refused on similar ground to intervene and said:

'it may be that if there was a mistake of law on the face of the award arising from this decision on the question, the court might have opportunity to interfere and correct it, unless of course the question of law is held to have been specifically referred as a point of difference for decision of the arbitrator as such.'

and reference was made to the decision of the Supreme Court in the contrasted case in *Thawardas Pherumal v. Union of India*, AIR 1955 SC 468.

'If no specific question of law is referred, either by agreement or by compulsion the decision of the arbitrator on that is not final, however much it may be within his jurisdiction and indeed essential for him to decide the question incidentally.'

The second point also we cannot consider because it was not raised in the court below nor in the appeal memorandum before us. In any event the objection is merely technical.

4. The result is that there is no substance in this appeal. It is therefore dismissed with costs.