

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

WEDNESDAY, THE 1ST DAY OF JULY 2015/10TH ASHADHA, 1937

AR.No. 65 of 2014

APPLICANT:

**K.S SOMASUNDARAN, AGED 46 YEARS,
S/O.K.R.SREEDHARAN, KURUVATH HOUSE,
PUTHENPEEDIKA.P.O., THRISSUR.**

**BY ADVS.SRI.C.HARIKUMAR
SMT.C.B.ANUROOPA**

OPPOSITE PARTY/RESPONDENT(S):

**K.A. MANOJKUMAR, S/O.K.K.ASHOKAN,
KANNAPPASSERI HOUSE, PULLAZHI NORTH.P.O.,
THRISSUR - 680 012.**

BY ADV. SRI.DILIP J. AKKARA

**THIS ARBITRATION REQUEST HAVING BEEN FINALLY HEARD
ON 01-07-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

mbr/

APPENDIX

PETITIONER'S ANNEXURES:

- ANNEXURE A1 : THE TRUE COPY OF THE LAWYER NOTICE DATED 30.7.2014 TO THE RESPONDENT.
- ANNEXURE A2 : THE TRUE COPY OF THE PARTNERSHIP DEED DATED 23.8.2013.
- ANNEXURE A3 : THE TRUE COPY OF LAWYERS NOTICE ISSUED BY APPLICANT REQUESTED TO WIND UP THE PARTNERSHIP DATED 4.2.2014 ALONG WITH POSTAL RECEIPT.
- ANNEXURE A4 : THE TRUE COPY OF THE LAWYER NOTICE SENT BY THE RESPONDENT DATED 31.5.2014.
- ANNEXURE A5 : THE TRUE COPY OF THE REPLY NOTICE SENT BY THE APPLICANT DATED 12.6.2014.

RESPONDENTS' ANNEXURES:

- ANNEXURE R1(A) : PHOTOCOPY OF AGREEMENT DATED 16.12.2003 EXECUTED BY THE PETITIONER AND RESPONDENT.
- ANNEXURE R1(B) : PHOTOCOPY OF ST 4205/14 DATED 16.7.14 OF CHIEF JUDICIAL MAGISTRATE COURT, THRISSUR.
- ANNEXURE R1(C) : PHOTOCOPY OF PLAINT IN OS.7526/14 DATED 10.11.14 OF MUNSIFF COURT THRISSUR.

//TRUE COPY//

P.S. TO JUDGE

mbr/

B. KEMAL PASHA, J.

.....
Arbitration Request No.65 of 2014
.....

Dated this the 1st day of July, 2015

ORDER

This is an arbitration request from the petitioner for invoking clause (17) of the Partnership Deed executed in between the parties, which stipulates the reference of dispute between the parties relating to the partnership, for arbitration.

2. The respondent has contended that there is no such subsisting dispute between the parties relating to the partnership, as the entire matters have been settled through Ext.R1(a). Ext.R1(a) is a contract entered into between the petitioner and the respondent thereby resolving and settling all the disputes between the parties. Based on Ext.R1(a), one cheque dated 18.01.2014 for an amount of ₹2 lakhs,

another cheque dated 01.05.2014 for ₹77,000/- and another cheque dated 08.05.2014 for an amount of ₹4,50,000/- were issued by the petitioner to the respondent. Ext.R1(a) is dated 16.12.2013. According to the respondent, out of the aforesaid cheques, the cheque dated 18.01.2014 for ₹2 lakhs was honoured on presentation and the amount has been received by the respondent. The other two cheques, when presented, returned dishonoured for insufficiency of funds in the accounts of the petitioner. Consequently, a complaint is filed alleging an offence under Section 138 of the Act. Over and above it, O.S.No.7526 of 2014 has also been filed before the Munsiff's Court, Thrissur for the recovery of the amounts covered by the cheques. On getting information regarding the said complaint and the civil suit, the petitioner has come up with the present arbitration request, it is argued.

3. According to the learned counsel for the petitioner, Ext.R1(a) is a forged document and the same was

never executed between the parties. Even though it has been presently contended that Ext.R1(a) is a forged document, on a perusal of the document it cannot be said that it is a forged document at all. Stamp paper as well as other papers in which the document is prepared, show the thumb impression of the petitioner, over and above his signatures, with name in his own handwriting.

4. Even though the petitioner has got a case that some blank stamp papers and three blank signed cheque leaves were obtained by the respondent from the petitioner, it seems that he has no case that he was made to affix his thumb impressions also on those papers. It is hard to believe the case of the petitioner. Over and above it, the first cheque allegedly handed over by the petitioner to the respondent through Ext.R1(a) contract could be encashed on presentation. If, as a matter of fact, a blank cheque was issued just as a security only, the petitioner would not have honoured the cheque in normal course on presentation.

When three cheques were issued and the first one was honoured, the petitioner cannot be heard to say that the disputes settled through Ext.R1(a) are still subsisting and there is a subsisting dispute, which can be referred for arbitration. The present course adopted by the petitioner is evidently one for obstructing the prosecution of the complaint as well as the civil suit filed by the respondent.

5. The learned counsel for the petitioner has invited the attention of this Court to the decision reported in **Everest Holding Ltd. v. Shyam Kumar Shrivastava[(2008) 16 SCC 774]** wherein it was held as follows:

“Pursuant to the aforesaid JVA dated 26.03.2004 Everest Mining & Mineral (P) Ltd. was incorporated and various amounts were also deposited by the petitioner through the sister concerns for the incorporation and functioning of the said Company. The said Company could not function due to disputes which arose between the parties. Such disputes which

relate to the working of JVA and various deposits made and which arose out of and in relation to the said JVA are required to be considered and decided through the process of arbitration as envisaged under Clause 14.3 of the JVA. Though the JVA may have been terminated and cancelled as stated but it was a valid JVA containing a valid arbitration agreement for settlement of disputes arising out of or in relation to the subject-matter of the JVA. The argument of the respondent that the disputes cannot be referred to the arbitration as the agreement is not in existence as of today is therefore devoid of merit.”

6. The facts of the case relating to the above decision have no similarity to the facts of the present case. It seems that the dispute between the parties have already been settled and there is no subsisting dispute based on the partnership. When no such subsisting dispute is in existence, clause (17) of the original agreement has no

application at all. Matters being so, there is nothing to be referred for arbitration and the Arbitration Request is only to be dismissed, and I do.

In the result, this Arbitration Request is dismissed.

Sd/- B.KEMAL PASHA, JUDGE

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// true copy //

P.S. to Judge.

The order dated 02.11.2015 in R.P. No.765/2015 in A.R. No.65/2014 is appended.

Sd/- Registrar(Judicial)