

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

&

THE HONOURABLE MR. JUSTICE ANIL K.NARENDRA

THURSDAY, THE 3RD DAY OF DECEMBER 2015/12TH AGRAHAYANA, 1937

Arb.A.No. 66 of 2015 ()

**(AGAINST THE ORDER DATED 27.11.2015 IN I.A. NO. 6382/2015 IN O.P. (Arb.)
NO. 155 OF 2014 ON THE FILES OF THE ADDL. DISTRICT COURT V, ERNAKULAM)**

APPELLANT(S)/APPELLANTS/RESPONDENTS/PETITIONERS:

1. MR.NISHAD MATHEW,
S/O.K.T.MATHEW, KATTIVEETIL HOUSE, IRITTI.P.O
KANNUR DISTRICT.

2. MRS.NICE MOLE NISHAD,
W/O.NISHAD MATHEW, RESIDING AT KATTIVEETIL HOUSE
IRITTI.P.O, KANNUR DISTRICT.

BY ADVS.SRI.K.K.CHANDRAN PILLAI (SR.)
SRI.H.HAMZA ROWTHER
SRI.V.K.PEERMOHAMED KHAN

RESPONDENT(S)/RESPONDENTS/PETITIONERS/RESPONDENTS:

1. MR. A.A JOSEPH,
S/O.LATE ABRAHAM, RESIDING AT ARAKKATHARA HOUSE
CHEMBUMUKKU, KAKKANADU, KOCHI-30
MANAGING PARTNER, M/S JONARIM MARRIOS.

2. MRS.TREASA JOSEPH,
W/O.JOSEPH, RESIDING AT ARAKKATHARA HOUSE, CHEMBUMUKKU
KAKKANADU, KOCHI-30.

BY ADV. SRI.JACOB MATHEW MANALIL (CAVEATOR)
SRI.JACOB MATHEW MANALIL

THIS ARBITRATION APPEALS HAVING COME UP FOR ADMISSION ON 03-12-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

Arb. Appeal. No. 66 of 2015

APPENDIX

Appellants Annexures :

Annexure I : True copy of the order of injunction passed by the District Court, Ernakulam in I.A. No. 725/2014 in O.P.(Arb.) 155/2014

Annexure II : True copy of the petition and the affidavit in I.A. No. 1256/2014 in O.P.(Arb.) 155/2014

Annexure III: True copy of the petition and affidavit in I.A. No. 6382/2015 in I.A. No. 725/14.

Annexure IV : True copy of the counter affidavit filed by the appellants in I.A. No. 6382

Annexure V : Certified copy of the order in I.A. No. 6382/2015 in I.A. No. 725/2014 in O.P.(Arb.) No. 155/2014

/True copy/

P.A. to Judge

P.R.RAMACHANDRA MENON & ANIL K.NARENDRA, JJ.

Arbitration Appeal No.66 of 2015

Dated this the 3rd day of December, 2015

JUDGMENT

ANIL K.NARENDRA, J.

The appellants are the petitioners in O.P.(Arb.)No.155 of 2014, on the file of the Additional District Court-V, Ernakulam, an application filed under Section 9 of the Arbitration and Conciliation Act, 1996 seeking interim measures for preservation of the property which is the subject matter of an arbitration agreement. Along with the said O.P.(Arb.) the appellants filed I.A.No.725 of 2014 seeking an order of temporary injunction restraining the respondents herein from alienating the petition schedule property and from inducing third parties. By order dated 21.2.2014, the Court below granted an ad-interim injunction restraining the respondents from alienating or encumbering in any manner the petition schedule property directly or indirectly or from committing any act of waste in the said property and from inducing any third parties in the said property till 11.3.2014.

2. On 11.3.2014 the respondents entered appearance and

filed their objection to I.A.No.725 of 2014 and the case was adjourned to 18.3.2014 for further consideration. The interim injunction was also extended till that date. On 18.3.2014, there was no sitting and the case was adjourned to 30.5.2014. Since there was no sitting, the order of injunction could not be extended. The appellants filed I.A.No.1256 of 2014 seeking an order to advance the hearing of I.A.No.725 of 2014 to a near date and also to extend the interim injunction from 18.3.2014 until further orders. While the said application was pending consideration before the Court below, the matter was referred for mediation.

3. While so, the respondents filed I.A.No.6382 of 2015 seeking an order to clarify that, the interim order granted in I.A.No.725 of 2014 stand vacated/lifted from 18.3.2014 and to communicate the same to the Sub Registry, Ernakulam and to the Village Officer concerned. On receipt of the said application, the appellants filed counter affidavit. After hearing both sides, the Court below by order dated 27.11.2015 disposed of I.A.No.6382 of 2015 clarifying that, the interim injunction granted in I.A.No.725 of 2014 is not in existence and it has already expired

on 18.3.2014 and ordered communication of the said fact to the Sub Registry, Ernakulam and also to the Village Officer concerned. It is aggrieved by the aforesaid order passed by the Court below the appellants are before this Court in this appeal.

4. We heard the arguments of the learned Senior Counsel for the appellants and also the learned counsel for the respondents.

5. The sole issue that arises for consideration in this appeal is the legality or otherwise of the order dated 27.11.2015 of the Court below in I.A.No.6382 of 2015.

6. The pleadings and materials on record would show that, along with the O.P.(Arb.) the appellants moved I.A.No.725 of 2014 seeking an order of temporary injunction restraining the respondents from alienating the petition schedule property and from inducting third parties. As evident from the 'B-Diary' proceedings in I.A.No.725 2014, a copy of which is made available for perusal of this Court, on being satisfied that a prima facie case has been established and that the very purpose of the O.P.(Arb.) will be defeated if ad-interim injunction as prayed for is not granted, the Court below granted ad-interim injunction

restraining the respondents from alienating or encumbering in any manner the petition schedule property directly or indirectly or from committing any act of waste in the said property and from inducting any third parties in the said property till 11.3.2014.

7. Though the ad-interim injunction was extended on 11.3.2014 till 18.3.2014, the same could not be extended thereafter, since there was no sitting on 18.3.2014. Without extending the order of interim injunction, the case was adjourned to 30.5.2014 and the appellants filed I.A.No.1256 of 2014 seeking an order to advance the case to a near date and also to extend the order of injunction from 18.3.2014 until further orders. During the pendency of that application, the matter was referred for mediation. While so, the respondents filed I.A.No.6382 of 2015 seeking an order to clarify that, the interim order granted in I.A.No.725 of 2014 stand vacated/lifted from 18.3.2014 and to communicate the same to the Sub Registry, Ernakulam and to the Village Officer concerned. The Court below by order dated 27.11.2015 disposed of I.A.No.6382 of 2015 clarifying that, the interim injunction granted in I.A.No.725 of 2014 is not in existence and it has already expired on 18.3.2014

and ordered communication of the said fact to the Sub Registry, Ernakulam and also to the Village Officer concerned.

8. The reasoning of the Court below in its order dated 27.11.2015 in I.A.No.6382 of 2015 is that, the interim injunction order was granted only for a specified period and subsequently extended up to 18.3.2014. Thereafter it was not extended. Hence the interim injunction already granted in I.A.No.725 of 2014 is not in existence and it has already expired on 18.3.2014. As we have already noticed, the Court below granted the ad-interim injunction on 21.2.2014, on being satisfied that a prima facie case has been established and that the very purpose of the O.P. (Arb.) will be defeated if the ad-interim injunction as prayed for is not granted. Though the said order was extended on 11.3.2014 till 18.3.2014, the same could not be extended thereafter, since there was no sitting on 18.3.2014. Immediately thereafter, the appellants filed I.A.No.1256 of 2014 seeking an order to advance the case to a near date and also to extend the order of injunction from 18.3.2014 until further orders. It was without passing any orders on the aforesaid application, the Court below by the impugned order clarified that, the interim injunction granted in

I.A.No.725 of 2014 is not in existence and it has already expired on 18.3.2014 and ordered communication of the said fact to the Sub Registry, Ernakulam and also to the Village Officer concerned.

9. When the ad-interim injunction was granted on being satisfied that the appellants have made out a prima facie case and that the balance of convenience is also in their favour, the Court below went wrong in not extending the said order of injunction, even without assigning any valid reasons. The procedure adopted by the Court below is per se arbitrary, illegal and also vitiated by total non-application of mind. In that view of the matter, we set aside order dated 27.11.2015 of the Court below in I.A.No.6382 of 2015 and restore the ad-interim injunction granted on 21.2.2014 in I.A.No.725 of 2014 in O.P. (Arb.)No.155 of 2014, which shall continue to be in force till final disposal of I.A.No.725 of 2014 in O.P.(Arb.)No.155 of 2014.

10. It is submitted by both sides that, I.A.No.725 of 2014 in O.P.(Arb.)No.155 of 2014 has already been listed before the Court below for final hearing. In such circumstances it is ordered that, the Court below shall pass final orders on I.A.No.725 of

2014 in O.P.(Arb.)No.155 of 2014, as expeditiously as possible, at any rate within a period of one month from today. Till such time, the ad-interim injunction granted on 21.2.2014 in I.A.No.725 of 2014 in O.P.(Arb.)No.155 of 2014, shall continue to be in force.

It is made clear that, this Court has not expressed anything on the merits of the contentions raised by both sides and it is for the Court below to pass final orders on I.A.No.725 of 2014 in O.P.(Arb.)No.155 of 2014, untrammelled by the observations, if any, contained in this judgment. The appeal is disposed of accordingly.

sd/-

**P.R.RAMACHANDRA MENON,
JUDGE**

sd/-

**ANIL K.NARENDRA,
JUDGE**

kmd