

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

FRIDAY, THE 9TH DAY OF JANUARY 2015/19TH POUSHA, 1936

OP(C).No. 64 of 2015 (O)

PETITIONER :

**K.K.SCARIA, AGED 66 YEARS,
S/O.LATE KURIEN, KAYYALATHOTTIYIL HOUSE, MANIKUNI,
SULTHANBATHERI P.O., WAYANAD DISTRICT.**

BY ADV. SMT.TESSY JOSE

RESPONDENTS:-

- 1. N.MOHANDAS,
ARBITRATOR, APPOINTED BY THE HIGH COURT OF KERALA
AS PER ARBITRATION REQUEST NO.22/2011, VAKERI P.O.,
SULTHAN BATHERY, WAYANAD - 673 592.**
- 2. K.K.JOSEPH,S/O.KURIEN,
PARTNER MATHA THEATRE
RESIDING AT KAYYALATHOTTIYIL HOUSE, VAKERI P.O.,
IRULAM AMSOM AND DESOM,
SULTHAN BATHERI TALUK - 673 592.**
- 3. JOHNEY,
S/O.KURIEN, PARTNER MATHA THEATRE
RESIDING AT KAYYALATHOTTIYIL HOUSE, VAKERI P.O.,
IRULAM AMSOM AND DESOM,
SULTHAN BATHERI TALUK - 673 592.**

**THIS OP (CIVIL) HAVING COME UP FOR ADMISSION
ON 09-01-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

sts

OP(C).No. 64 of 2015 (O)

APPENDIX

PETITIONER(S)' EXHIBITS

- EXHIBIT P1. TRUE COPY OF CLAIM PETITION DATED 21.07.2012 FILED BY THE
RESPONDENT NO.2
- EXHIBIT P2. TRUE COPY OF REPLY TO EXHIBIT P1 DATED 20.03.2013 FILED BY THE
PETITIONER.
- EXHIBIT P3. TRUE COPY OF THE AMENDMENT PETITION DATED 27.08.2014 FILED
BY THE 2ND RESPONDENT.
- EXHIBIT P4. TRUE COPY OF ORDER DATED 28.10.2014 PASSED BY THE 1ST
RESPONDENT.

RESPONDENT(S)' EXHIBITS: NIL

/TRUE COPY/

P.A.TO.JUDGE

sts

P.BHAVADASAN, J.

O.P.(C) No. 64 of 2015

Dated this the 09th day of January, 2015

J U D G M E N T

Aggrieved by Ext.P5 order, the respondent before the court below has come up with this Original Petition pointing out the impropriety and irregularity in the arbitration allowing the amendment sought for by the petitioner before the Arbitrator.

2. The petitioner is the proprietor of a firm under the name and style 'Matha Theatre' in Sulthan Bathery, Wayanad District. The second and third respondents are the brothers of the petitioner. It is conceded that on 27.05.1992, a partnership agreement was constituted between the petitioner and respondents for the purpose of availing a loan from the bank. Based on the partnership agreement, loan was sanctioned and theatre was constructed in the 47 cents of land. The petitioner who claims to be the proprietor, is managing the affairs of the

theatre. Due to financial stringency, the petitioner was not in a position to repay the loan to the Bank and the Bank initiated proceedings in that regard.

3. At that time, the second respondent sent a registered notice to the petitioner to render authenticated copies of the accounts of the partnership and demanded payment of his share, interest and remuneration. The petitioner sent a reply denying any right as far as the second respondent is concerned in the running of the theatre. That resulted in a dispute being generated between the parties.

4. It appears that the partnership agreement contained a clause for arbitration to resolve disputes that may arise among the partners. In the light of the stand taken by the petitioner, the second respondent invoked that clause and with the aid of this Court under Section 11 of the Arbitration and Conciliation Act 1996, had appointed an arbitrator. The second respondent filed a claim petition before the Arbitrator on 27.07.2012 seeking a direction to

the petitioner to render correct and proper accounts of the business of the partnership and to settle the share of income and profit including the prayer for dissolution. The petitioner filed his objections denying the contentions in the claim petition. Thereafter, the second respondent moved an application for amendment incorporating a prayer that if in any case it is found that there is no partnership firm and he is not entitled to rights of a partner, he may be given the right to realize the compensation for use and occupation of the property by the petitioner herein. That application was strongly opposed by the petitioner but the Arbitrator allowed the amendment application. The said order is under challenge.

5. The learned counsel appearing for the petitioner contended that the Arbitrator was unjustified in allowing the amendment as it brings out a change in the nature of the relief sought for by the second respondent. It was pointed out that the requirement of the second respondent while

filing a claim before the Arbitrator for rendition of accounts and also determination of his share of profits and for dissolution. That cannot be converted to one for suit for money for occupation and use by the petitioner herein. Therefore, it is contended that the amendment ought not to have been allowed.

6. The court below has noticed that the power of allowing the amendment as far as an Arbitrator is concerned, is considerably wide and the restriction available is under Section 23(3) of the Arbitration and Conciliation Act, 1996. That provision reads as follows:

“23. Statement of claim and defence.--

xxxxxxxxxxxxxxxxxx

(3) Unless otherwise agreed by the parties, either party may amend or supplement his claim or defence during the course of the arbitral proceedings, unless the arbitral tribunal considers it inappropriate to allow the amendment or supplement having regard to the delay in making it.”

7. A bare perusal of the above provision shows that as rightly concluded by the Arbitrator, the discretion to allow

amendment is considerably wide and is not circumscribed as in the case of a suit by the provisions of the C.P.C.. The contention taken before this Court is that the Arbitrator ought to have found that the amendment sought for is inappropriate.

8. It is difficult to say so. It is only an alternative plea that is taken by the second respondent and it could not be said that it is inappropriate to the arbitration proceedings. It needs to be noticed that if going by the arbitration clause, all disputes have to be resolved through arbitration and by way of abundant caution, the second respondent prayed that if for any reason, it is found that there is no partnership as alleged by him, he may be allowed to recover compensation for the use of the property by the petitioner herein. It could not be said that the amendment seeking incorporation of such a prayer is inappropriate or alien to the consideration of the issues before the Arbitrator.

9. It must be remembered that the purpose of arbitration is to resolve all disputes between the parties in a speedy manner. Considering the totality of the circumstances and also the purpose of the Act, this Court finds no irregularity, impropriety or illegality in the order passed by the Arbitrator.

This Original Petition is without merits and it is accordingly dismissed.

Sd/-
P.BHAVADASAN
JUDGE

ds

//True copy//

P.A. to Judge