

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

MONDAY, THE 9TH DAY OF FEBRUARY 2015/20TH MAGHA, 1936

OP(C).No. 1649 of 2013 (O)

**AGAINST THE ORDER DTD.10.3.2013 IN IA.NO.1/2012 IN ARBITRATION REFERENCE
NO.35/2007 OF ARBITRATION TRIBUNAL**
.....

PETITIONER(S):

- 1. E.G.JAYASANKARAN,
S/O. GOPALAN, ERATHU HOUSE, CHIRALAYAM,
KUNNAMKULAM P.O., THRISSUR.**
- 2. K.K.PRAKASAN,
S/O KRISHNAN KUTTY, KOTTINGAL HOUSE, KOTTOL,
KARIKADU P.O., THRISSUR DISTRICT.**

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

RESPONDENT(S):

**C.BALAKRISHNAN,
S/O UNNAYKKAN, CHERUPARAMBIL HOUSE,
GURUVAYOOR P.O., THRISSUR DISTRICT,
REPRESENTED BY HIS POWER OF ATTORNEY
HOLDER K.T.JAYADEVAN, S/O THEYAN,
KALLAYIL HOUSE, ORUMANAYUR P.O.,
THRISSUR DISTRICT - 680 512.**

BY ADV. SRI.G.SREEKUMAR (CHELUR)

**THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON 09-02-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

msv/

OP(C).No. 1649 of 2013 (O)

APPENDIX

PETITIONER(S)' EXHIBITS

**EXHIBIT P1: TRUE COPY OF PARTNERSHIP DEED ENTERED BETWEEN THE
PETITIONERS AND RESPONDENT DATED 9.5.2000.**

**EXHIBIT P2: THE TRUE COPY OF THE STATEMENT OF THE CLAIM IN AR 35/2007
FILED BY THE RESPONDENTS DATED 3.8.2012 BEFORE THE ARBITRAL
TRIBUNAL, THRISSUR.**

**EXHIBIT P3: TRUE COPY OF THE ORDER DATED 10.3.2013 IN I.A. NO.1/2012 IN
ARBITRATION REFERENCE NO.35/2007 OF ARBITRATION TRIBUNAL.**

RESPONDENT(S)' EXHIBITS:

NIL

//TRUE COPY//

P.S.TO JUDGE

Ms v/

P. BHAVADASAN, J.

O.P.(C). No. 1649 of 2013

Dated this the 9th day of February, 2015.

JUDGMENT

In an arbitration proceedings in which an Arbitrator was appointed by this Court, the petitioners raised a preliminary dispute regarding the arbitrability of the dispute. According to the petitioners, the claimant before the Arbitrator was not a partner in the partnership and therefore he could not maintain a claim for arbitration.

2. The Arbitration Tribunal held that since the matter has been referred by the High Court, the question does not arise for consideration. Further, the Arbitration Tribunal was also of the opinion that it is too late in the day to contend that the claimant is not a partner. The Arbitration Tribunal was of the opinion that the said could not be raised at that point of time.

3. Learned counsel for the petitioners submits that the Arbitration Tribunal was not justified in holding so because going by Section 16 of the Arbitration and Conciliation Act, the Arbitration Tribunal is competent to decide about its jurisdiction. The petitioners have specifically raised the issue before the Arbitration Tribunal that since the claimant was not a partner, the arbitration proceedings was invalid.

4. Learned counsel for the respondent contended that this issue is no longer available in view of the fact that it is after finding that it is an arbitrable dispute that this Court had appointed an Arbitrator. Even assuming that such an issue is raised, it is a question of fact and law and does not qualify it to be decided as a preliminary issue.

5. There seems to be considerable force in the contention of the learned counsel for the respondent. When this Court referred the matter for arbitration, it is not proper for the petitioner now to raise a preliminary issue

for, for reasons best known to the petitioners they did not chose to raise this issue earlier when the parties approached this Court under Section 11 of the Arbitration and Conciliation Act. Therefore, it could not be said that there is any illegality in the order passed by the Arbitration Tribunal. There is no reason to interfere with the finding of the Arbitration Tribunal.

This Original Petition is disposed of observing that the Arbitration proceedings shall be completed untrammelled by any observation made by the Arbitration Tribunal while passing the impugned order.

sb.

P. BHAVADASAN,
JUDGE