

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.HARIPRASAD

MONDAY, THE 1ST DAY OF JUNE 2015/11TH JYAISHTA, 1937

OP(C).No. 658 of 2014 (O)

AGAINST THE ORDER IN EP NO.43/2010 IN OS (ARB.)NO.98/1987 of SUB
COURT,KOTTARAKKARA DATED 26.09.2013

PETITIONER(S)/DECREE HOLDER:

SALU VARGHESE
S/O. M.V.VARGHESE, GOVT. CONTRACTOR
MAPPILA MALIL HOUSE, MALLADU P.O., MOOVATTUPUZHA.

BY ADVS.SRI.PIRAPPANCODE V.S.SUDHIR
SRI.SHAJIN S.HAMEED

RESPONDENT(S)/JUDGMENT DEBTORS:

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1. THE STATE OF KERALA
REPRESENTED BY THE CHIEF SECRETARY
GOVERNMENT SECRETARIAT, GOVERNMENT OF KERALA
THIRUVANANTHAPURAM-695001.
 2. THE SUPERINTENDING ENGINEER
K.I.P (L.B.) CIRCLE, KOTTARAKKARA-691301.

BY GOVERNMENT PLEADER SHRI P.K.ABDUL RAHMAN

THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 01-06-2015, ALONG WITH
OP(C) NO. 660/2014, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP(C).No. 658 of 2014 (O)

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT P1- TRUE COPY OF THE O.S.(ARB.) 98/1987 FILED BY THE PETITIONER BEFORE THE SUB COURT, KOTTARAKKARA.

EXHIBIT P2- TRUE COPY OF THE JUDGMENT DATED 3-3-1994 OF THE SUB COURT, KOTTARAKKARA IN O.S.(ARB.)98/1987.

EXHIBIT P3- TRUE COPY OF THE JUDGMENT DATED 31-8-2000 OF THIS HON'BLE COURT IN M.F.A. 336/1995.

EXHIBIT P4- TRUE COPY OF THE EXECUTION PETITION NO. 43/2010 IN O.S.(ARB) 98/1987 FILED BY THE PETITIONER BEFORE THE SUB COURT, KOTTARAKKARA.

EXHIBIT P5- TRUE COPY OF THE ORDER DATED 22-11-2010 OF THE SUB COURT, KOTTARAKKARA IN E.P. 43/2010 IN O.S.(ARB.) 98/1987.

EXHIBIT P6- TRUE COPY OF THE LETTER DATED 26-11-2011 OF SRI. M.JOPPAN INFORMING THE LEARNED SUB JUDGE, KOTTARAKKARA OF HIS RELINQUISHMENT OF APPOINTMENT AS ABITRATOR.

EXHIBIT P7- TRUE COPY OF THE APPLICATION FILED BY THE PETITIONER, ALONG WITH THE AFFIDAVIT SEEKING APPOINTMENT OF AN ARBITRATOR FROM AMONG THE PANEL OF ENGINEERS.

EXHIBIT P8- TRUE COPY OF THE PETITION CONTAINING THE PANEL OF ENGINEERS, FROM AMONG THEM, TO BE APPOINTED AS ARBITRATOR.

EXHIBIT P9- TRUE COPY OF THE OBJECTION DATED 30-8-2013, FILED ON BEHALF OF THE RESPONDENTS IN O.S.(ARB.) 98/1987.

EXHIBIT P10- TRUE COPY OF THE ORDER DATED 26-9-2013 OF THE SUB COURT, KOTTARAKKARA IN EP NO. 43/2010 IN O.S. 98/1987.

RESPONDENT(S)' EXHIBITS: NIL

//TRUE COPY//

P.S. TO JUDGE

A.HARIPRASAD, J.

O.P.(C) Nos.658 & 660 of 2014

Dated this the 1st day of June, 2015

COMMON JUDGMENT

In both the cases, parties are the same. Since questions arising in both cases are the same, they have been jointly heard and disposed by this common judgment.

2. Petitioner filed original suits (arbitration) before the Sub Court, Kottarakkara under Sections 5, 8, 11 and 20 of the Arbitration Act, 1940 (in short, "the Act") in the matter of arbitration relating to the contract work of Kallada Irrigation and Tree Crop Development Project-LBC formation of Punalur Distributory pursuant to an agreement dated 26.11.1982. The learned Sub Judge decreed both the suits directing to refer the disputes and claims to an arbitrator to be appointed by the court. The parties were directed to file a list of persons to be appointed as arbitrator within a specified time. Such other orders were also passed by the court to effectuate the judgment. Ext.P1 in O.P.(C) No.660 of 2014 and Ext.P2 in O.P.(C) No.658 of 2014 are the copies of judgments in the original suits (arbitration).

3. Respondents challenged the judgments before this Court in appeal. But the appeals were dismissed. Thereafter, the petitioner filed

execution petitions in both the suits. Later, so many arbitrators were appointed by the court below and all of them relinquished their position finding that the records were not available for proceeding with the arbitration.

4. Heard the learned counsel for the petitioner and the learned Government Pleader.

5. Copies of the execution petition filed in both the suits are produced. Objection filed by the State is also produced. Learned counsel for the petitioner submitted that by the impugned orders, the court below dismissed the execution petition only on the reason that the records could not be produced by the respondents as they were pending in criminal courts. According to the lower court, the petitioner is at liberty to approach it seeking reliefs at the appropriate time.

6. Learned counsel for the petitioner submitted that the court below should have directed the respondents to produce the relevant documents for proceeding with the arbitration. In answer to this argument, learned Government Pleader submitted that in the statement filed in O.P. (C) No.660 of 2014, the State has clearly expressed its difficulties to meet the demands of the petitioner. According to the 2nd respondent, petitioner should have taken steps to get an arbitrator appointed within a period of seven months of termination of the work as per the agreement. At present,

more than 28 years have elapsed and it is impossible for the officials to trace out the records. It is seen from the impugned orders that the records available are pending before criminal courts and investigating agencies in connection with various crimes. Learned counsel submitted that the petitioner cannot be compelled to procure the documents as those are public documents in the custody of the Government Officials. According to him, executing court should have either compelled the respondents to see that the documents are produced or taken steps to summon the relevant records from the investigating agencies/criminal courts in whose possession the records are kept.

7. Learned Government Pleader, placing reliance on Annexure-R2(f) letter, contended that some of the records in the case were missing in the course of shifting of the court office from one building to another. This contention also can be raised before the court below and it is bound to enquire into that fact. Therefore, I am of the view that the impugned orders are not proper and require interference.

In the result, both the petitions are allowed. Impugned orders are set aside. The learned Sub Judge shall take the execution petitions back to file and issue appropriate direction to the respondents to trace out the records. In case the respondents are not able to trace out the records, the court below shall explore the possibility to get certified copies of the

records from the investigating agencies/criminal courts in whose possession the records are of course, in accordance with the provisions of law. Petitioner is at liberty to make applications in that regard before the court below and in that event, the court below shall pass appropriate orders thereon in tune with law.

A. HARIPRASAD, JUDGE.

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