

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

WEDNESDAY, THE 22ND DAY OF JULY 2015/31ST ASHADHA, 1937

OP(C).No. 1381 of 2014 (O)

E.P.NO.82/2014 OF DISTRICT COURT, KOZHIKODE.
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PETITIONER:

**JAYARAJAN, S/O.SIVANANDAN,
KARTHIKA, EAST K.C.ROAD,
WEST HILL, KOZHIKODE - 673 005.**

BY ADV. SRI.O.D.SIVADAS

RESPONDENT:

**MAHINDRA & MAHINDRA FINANCIAL SERVICES LIMITED,
REGISTERED OFFICE AT GATEWAY BUILDING,
APOLLO BUNDER, MUMBAI - 400 001 AND
CORPORATE OFFICE AT 2ND FLOOR, P.B.MARG,
SADHANA HOUSE, BEHIND MAHINDRA TOWERS,
WORLI, MUMBAI - 400 018,
REPRESENTED BY ATTORNEY HOLDER ASSISTANT
LEGAL MANAGER GIREESH KUMAR.**

**THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 22-07-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

mbr/

OP(C).No. 1381 of 2014 (O)

APPENDIX

PETITIONERS' EXHIBITS:

EXT. P1 : TRUE COPY OF THE EXECUTION PETITION ON THE FILE OF THE
BEFORE THE DISTRICT COURT, KOZHIKODE.

EXT. P2 : TRUE COPY OF THE ARBITRATION AWARD DATED 13.2.2012.

RESPONDENTS' EXHIBITS: NIL.

//TRUE COPY//

P.S. TO JUDGE

mbr/

B.KEMAL PASHA, J.

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O.P.(C).No.1381 of 2014

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Dated this the 22nd day of July, 2015

J U D G M E N T

Heard the learned counsel for the petitioner. There is no representation for the respondent.

2. According to the learned counsel for the petitioner, the petitioner has never received any notice with regard to the Arbitral proceedings. The arbitration proceedings were allegedly conducted in Mumbai, even though the entire transactions had taken place at Kozhikode.

3. Over and above it, it seems that the execution petition has been directly filed on the basis of the arbitral award, before the District Court, Kozhikode. The

maintainability of such an E.P. has also to be considered by the court below. It seems that the award has been directly produced and the E.P. has been filed before the District Court, Kozhikode without any precept. In normal course, the decree holder ought to have filed the E.P. in the court having jurisdiction and get it transferred for execution to the concerned court. When the petitioner has chosen the District Court, Kozhikode to file the E.P., it seems that in a way the decree holder has agreed that it is the District Court, Kozhikode, which has got jurisdiction in the matter. In such case, it has to be considered whether the arbitral proceedings could be held in Mumbai. Whatever it is, apart from raising the question of maintainability of the present E.P., the petitioner wants to file an appeal under section 34 of the Arbitration and Conciliation Act, 1996, challenging the arbitral award. When the decree holder has submitted to the jurisdiction of the District Court, Kozhikode, the petitioner can file the appeal before that court in the matter. For enabling the petitioner to file an appeal under Section

34 of the Arbitration and Conciliation Act, 1996, this Original Petition (Civil) is disposed of by directing the court below to keep the execution proceedings in abeyance for a period of two months from today.

This Original Petition (Civil) is disposed of accordingly.

Sd/-

B.KEMAL PASHA
JUDGE

DSV/22/7/15