

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

THURSDAY, THE 19TH DAY OF FEBRUARY 2015/30TH MAGHA, 1936

OP(C).No. 3103 of 2014 (O)

**ORDER DTD.12.12.2014 IN I.A.NO.5781/2014 IN IA.NO.5617/2014 IN ARB. APPEAL
NO.21/2014 OF DISTRICT JUDGE, ERNAKULAM**
.....

PETITIONER(S):

**M/S.KOTAK MAHINDRA PRIME LTD.,
BRANCH OFFICE, 4TH FLOOR, THADIKKARAN CENTRE,
PALARIVATTOM, KOCHI-35,
REPRESENTED BY ITS AUTHORIZED SIGNATORY
AND DY. MANAGER MR.JOMET K.J.**

**BY ADVS.SRI.NAGARAJ NARAYANAN
SRI.SAIJO HASSAN
SRI.PRATHAP PILLAI
SRI.BENOJ C AUGUSTIN**

RESPONDENT(S):

- 1. LONAPPAN JOSE,
THAYYALAKKAL HOUSE, ALANGAPPANGAR P.O.,
THRISSUR - 680 302.**
- 2. STANELY JOSE,
THAYYALAKKAL HOUSE, ALAGAPPANAGAR P.O.,
THRISSUR-680 302.**
- 3. THE ARBITRATRAL TRIBUNAL COSISTING OF SOLE ARBITRATOR,
MR.M.T.BALAN, T4, EMPIRE BUILDING,
OPP. CENTRAL POLICE STATION, ERNAKULAM, KOCHI-18.**

R1 & R2 BY ADV. SRI.AYPE JOSEPH

**THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 19-02-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

msv/

OP(C).No. 3103 of 2014 (O)

APPENDIX

PETITIONER(S)' EXHIBITS

EXHBIT P1. TRUE COPY OF THE RESOLUTION DATED 21/3/2011 OF THE BOARD OF DIRECTORS OF THE PETITIONER.

EXHBIT P2. TRUE COPY OF THE CLAIM PETITION DATED 13/10/2013 IN ARBITRATION CASE NO.345/14.

EXHBIT P3. TRUE COPY OF THE IA NO.268/2014 IN ARB. CASE NO.345/2014 U/S.17 OF THE ARBITRATION AND CONCILIATION ACT 1996 FOR INTRERIM CUSTODY OF THE VEHICLE.

EXHBIT P4. TRUE COPY OF THE ORDER DATED 13/10/2014 PASSED BY THE ARBITRAL TRIBUNAL.

EXHBIT P5. TRUE COPY OF THE ORDER DATED 4/12/2014 OF THE DISTRICT COURT, ERNAKULAM IN IA 5617/14 IN ARB.APPEAL NO.21/2014.

EXHBIT P6. TRUE COPY OF THE ORDER DATED 12/12/2014 OF THE DISTRICT COURT, ERNAKULAM IN IA 5781/14 IN IA NO.5617/2014 IN ARB.APPEAL NO.21/2014.

RESPONDENT(S)' EXHIBITS:

NIL

//TRUE COPY//

P.S.TO JUDGE

Msv/

P.BHAVADASAN, J.

O.P.(C) No.3103 of 2014

Dated this the 19th day of February, 2015

J U D G M E N T

This is an original petition challenging Ext.P6 order whereby the court below has stayed the arbitration proceedings and directed the petitioner before it to make a payment of ₹ 8,900/- to the respondent and directing the respondent to release the vehicle thereafter.

2. The learned counsel appearing for the petitioner pointed out that even assuming that the District Court could have interfered during the pendency of the arbitration as far as the interim orders are concerned, there was no justification in staying the arbitration proceedings for which it had no power. It is further pointed out that several other cheques given by the respondent before this Court had bounced and in fact, he has promptly paid only one instalment and all subsequent instalments were paid far beyond the time stipulated in the contract and there was

default in payment also.

3. The learned counsel appearing for the petitioner pointed out that whatever that be, if the respondent is willing to furnish sufficient security for the balance amount due to the company, they have no objection in releasing the vehicle.

4. The learned counsel for the respondent then pointed out that he is handing over a demand draft for ₹ 44,500/- being the amount for five instalments and he is willing to furnish bank guarantee for the balance amount that is due as per the agreement. If on payment of the entire instalment due as on 28.02.2015 is made ten days from today, vehicle shall be released immediately. The petitioner shall continue to pay subsequent instalments as stipulated in the agreement. If any two instalments are defaulted, the respondent shall surrender the vehicle to the petitioner or the petitioner will be entitled to seize the vehicle.

5. According to the learned counsel for the petitioner, as on 10th March 2015, 8 instalments are due, out of which amounts for 5 instalments is being paid. It is also stipulated that the respondent shall not alienate the vehicle or deal with in any manner which is detrimental to the diminution in value of the vehicle. The DD for ₹44,500/- is handed over to the counsel for the petitioner by the respondent's counsel. The respondent in O.P. by way of abundant caution shall furnish a bank guarantee for ₹ 1,25,000/- within ten days from today.

This petition is disposed of accordingly.

Sd/-
P.BHAVADASAN
JUDGE

ds

//True copy//

P.A. to Judge