

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE ANIL K. NARENDRA

&

THE HONOURABLE MR. JUSTICE HARISANKAR V. MENON

MONDAY, THE 3RD DAY OF JUNE 2024 / 13TH JYAISHTA, 1946

ARB.A NO. 14 OF 2023

AGAINST THE ORDER DATED 30.08.2022 IN AOP NO.27 OF 2021 OF
COMMERCIAL COURT (PRINCIPAL SUB JUDGE), ERNAKULAM

APPELLANTS/PETITIONERS:

- 1 SOUTHERN RAILWAY, HEAD QUARTERS OFFICE, PARK TOWN,
CHENNAI, PIN - 600003, REPRESENTED BY ITS GENERAL
MANAGER,
- 2 DIVISIONAL COMMERCIAL MANAGER/CO-ORDINATION,
SOUTHERN RAILWAY, THYCAUD, THIRUVANANTHAPURAM, PIN
- 695014
- 3 THE DIVISIONAL RAILWAY MANAGER
OFFICE OF THE DIVISIONAL RAILWAY MANAGER, SOUTHERN
RAILWAY, THYCAUD, THIRUVANANTHAPURAM, PIN - 695014
- 4 UNION OF INDIA, MINISTRY OF RAILWAYS, NEW DELHI,
REPRESENTED BY THE GENERAL MANAGER, SOUTHERN
RAILWAY, HEAD QUARTERS OFFICE, PARK TOWN, CHENNAI,
PIN - 600003

BY ADV T.C.KRISHNA, DSGI IN-CHARGE

RESPONDENT/RESPONDENT:

M.P. SARASAN, S/O.LATE M.K.PADMANABHAN,
MEKKAVELIYIL HOUSE, UDAYAMPEROOR, NADAKKAVU P.O.,
MANAKKUNNAM VILLAGE, KANAYANNUR TALUK, ERNAKULAM
DISTRICT, PIN - 682307

BY ADVS.K.S.BABU
N.SUDHA(S-652)
BABU SHANKAR(K/821/2010)
ALVIN JEWEL S.S.(K/000876/2019)
VIDHYA T.U.(K/000827/2023)
SREELAKSHMI B.T.(K/000991/2023)

Arb.Appeal Nos.14 and 15 of 2023

MENINO FUTO (K/001231/2023)

**THIS ARBITRATION APPEALS HAVING COME UP FOR ADMISSION
ON 03.06.2024, ALONG WITH Arb.A.15/2023, THE COURT ON THE
SAME DAY DELIVERED THE FOLLOWING:**

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE ANIL K. NARENDRAN

&

THE HONOURABLE MR. JUSTICE HARISANKAR V. MENON

MONDAY, THE 3RD DAY OF JUNE 2024 / 13TH JYAISHTA, 1946

ARB.A NO. 15 OF 2023

AGAINST THE ORDER DATED 30.08.2022 IN AOP NO.24 OF 2021 OF
COMMERCIAL COURT (PRINCIPAL SUB JUDGE), ERNAKULAM

APPELLANTS/PETITIONERS:

- 1 SOUTHERN RAILWAY
HEAD QUARTERS OFFICE, PARK TOWN, CHENNAI, PIN -
600003, REPRESENTED BY ITS GENERAL MANAGER,
- 2 DIVISIONAL COMMERCIAL MANAGER/CO-ORDINATION,
SOUTHERN RAILWAY, THYCAUD, THIRUVANANTHAPURAM,
PIN - 695014
- 3 THE DIVISIONAL RAILWAY MANAGER
OFFICE OF THE DIVISIONAL RAILWAY MANAGER,
SOUTHERN RAILWAY, THYCAUD, THIRUVANANTHAPURAM,
PIN - 695014
- 4 UNION OF INDIA, MINISTRY OF RAILWAYS, NEW DELHI,
REPRESENTED BY THE GENERAL MANAGER, SOUTHERN
RAILWAY, HEAD QUARTERS OFFICE, PARK TOWN,
CHENNAI, PIN - 600003

BY ADV T.C.KRISHNA

RESPONDENT/RESPONDENT:

M.P. SARASAN, S/O.LATE M.K.PADMANABHAN,
MEKKAVELIYIL HOUSE, UDAYAMPEROOR, NADAKKAVU P.O.,
MANAKKUNNAM VILLAGE, KANAYANNUR TALUK, ERNAKULAM
DISTRICT, PIN - 682307

BY ADVS.K.S.BABU
N.SUDHA(S-652)
BABU SHANKAR(K/821/2010)
ALVIN JEWEL S.S.(K/000876/2019)
VIDHYA T.U.(K/000827/2023)

Arb.Appeal Nos.14 and 15 of 2023

MENINO FUTO (K/001231/2023)
SREELAKSHMI B.T. (K/000991/2023)

**THIS ARBITRATION APPEAL HAVING BEEN FINALLY HEARD ON
03.06.2024, ALONG WITH Arb.A.14/2023, THE COURT ON THE SAME
DAY DELIVERED THE FOLLOWING:**

JUDGMENT

Anil K. Narendran, J.

These appeals filed by Southern Railway and others arise out of the order dated 30.08.2022 of the Commercial Court (Principal Sub Judge), Ernakulam in AOP Nos.27 and 24 of 2021. These appeals are filed invoking the provisions under Section 37 of the Arbitration and Conciliation Act, 1996, along with C.M.Application Nos.1 and 2 of 2024 for condonation of representation delay and filing delay, in the respective appeals, which were already allowed.

2. On 20.09.2023, when Arb.Appeal No.15 of 2023 came up for admission, this Court admitted the matter on file and the learned counsel took notice for the respondent. By the order dated 20.09.2023, records in the arbitration were called for. While adjourning the matter to 20.10.2023, this Court granted an interim stay of further proceedings till then. The said interim order, which was extended from time to time, is still in force.

3. On 31.05.2024, when these appeals came up for consideration, the learned counsel for the respondent pointed out the law laid down by a Division Bench of this Court in **Alexander Luke v. Aditya Birla Money Ltd. [ILR 2024 (1) Ker. 829]**, which has already been considered by a Division Bench of this Court, in which one among us [Anil K. Narendran, J.] was a

party, in the order dated 27.03.2024 in R.P.No.329 of 2024.

4. Heard the learned Deputy Solicitor General of India-in-charge and also the learned counsel for the respondent.

5. The learned Deputy Solicitor General of India-in-charge would point out that the balance court fee has already been paid and a memo to that effect is also being filed.

6. Registry to verify the same and incorporate the said memo in the judges' papers of this appeal.

7. In **Alexander Luke [2024 KHC OnLine 107]**, a decision rendered on 14.02.2024, the Division Bench of this Court held that a plain reading of the provisions under the Commercial Courts Act, especially Section 6 and Section 10(3), would lead to the inescapable conclusion that the court for the purpose of consideration of a commercial dispute, even if it arises under the Arbitration and Conciliation Act, would be the Commercial Court and the appeal would, therefore, lie only to the Commercial Appellate Court, i.e., District Court.

8. In view of the law laid down in the decision referred to supra, conclusion is irresistible that Arb. Appeal Nos.14 and 15 of 2023 challenging the orders dated 30.08.2022 of the Commercial Court (Principal Sub Court), Ernakulam in AOP Nos.27 and 24 of 2021, respectively, are not maintainable before this Court, since

an appeal under Section 13(1) of the Commercial Courts Act against an order passed by the Commercial Court has to be filed before the Commercial Appellate Court, i.e., the District Court.

9. Having considered the submissions made by the learned Deputy Solicitor General of India-in-charge and also the learned counsel for the respondent, we deem it appropriate to direct Registry to return the memorandum of both appeals, i.e., Arb.Appeal Nos.14 and 15 of 2023, which were filed before this Court on 04.02.2023 and 08.02.2023 respectively, to the learned Deputy Solicitor General of India-in-charge, so as to enable the appellants to present the same before the District Court, Ernakulam.

10. Registry shall return the memorandum of both appeals to the learned Deputy Solicitor General of India-in-charge, forthwith. The trial court records shall also be returned to the concerned court.

Both parties are directed to appear before the District Court, Ernakulam on **18.06.2024**.

Sd/-

ANIL K. NARENDRAN, JUDGE

Sd/-

HARISANKAR V. MENON, JUDGE

Arb.Appeal Nos.14 and 15 of 2023

APPENDIX OF ARB.A 14/2023

PETITIONER ANNEXURES

**Copy of Award of
Arbitrator**

COPY OF AWARD OF ARBITRATOR DATED 20/1/2018

APPENDIX OF ARB.A 15/2023

PETITIONER ANNEXURES

Copy of Award of the Arbitrator	CERTIFIED COPY OF THE AWARD DATED 23/1/2018 PASSED BY THE ARBITRATOR IN THE MATTER OF PARKING CONTRACT AT ERNAKULAM TOWN AND LETTER OF ACCEPTANCE NO. V/C 300/VP/ERN DATED 25/06/2013 AND AGREEMENT EXECUTED ON 22/7/2013 BETWEEN THE CLAIMANT AND SENIOR DIVISIONAL COMMERCIAL MANAGER, SOUTHERN RAILWAY, THIRUVANANTHAPURAM
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