

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE MR.JUSTICE THOTTATHIL B.RADHAKRISHNAN
&
THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN**

TUESDAY, THE 31ST DAY OF JULY 2012/9TH SRAVANA 1934

Arb.A.No. 52 of 2011 ()

OP(ARB) NO.533/2011 of DISTRICT COURT, ERNAKULAM

APPELLANT/PETITIONER:

**KOTAK MAHINDRA BANK LTD.,4TH FLOOR,
THADIKARAN CENTRE, PALARIVATTOM, COCHIN-682 025
REP. BY ITS POWER OF ATTORNEY HOLDER,
MR.SANEESH KUMAR.K., S/O.M.GOPALAKRISHNAN,
AGED 30 YEARS.**

BY ADV. SRI.SAIBY JOSE KIDANGOOR

RESPONDENT(S)/RESPONDENTS:

- 1. VIJAYAKUMAR,S/O.DEVAKIAMMA,
AGED 45 YEARS, MADAVAPPILLY HOUSE, H.NO.17/482,
P.W.D. ROAD, NETTOOR P.O., -682 304.
KUNDANNOOR.**
- 2. MAYA BHASKARAN,
W/O. VIJAYAKUMAR, AGED 37 YEARS, MADAVAPPILLY HOUSE,
H.NO.17/482, P.W.D. ROAD, NETTOOR P.O.,-682 304.
KUNDANNOOR.**
- 3. WILSON, S/O.ANTONY,
KUNNEL HOUSE, CHELLANAM P.O., KOCHI TALUK,
ERNAKULAM DISTRICT-682 008.**

**R1 & R2 BY ADV. SRI.K.L.NARASIMHAN
SRI.A.MOHAMMED FAIZAL
SRI.N.KRISHNA PRASAD**

**R3 BY ADV. SRI.K.M.JAMALUDHEEN
SMT.LATHA PRABHAKARAN**

**THIS ARBITRATION APPEALS HAVING BEEN FINALLY HEARD
ON 31-07-2012, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

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ARBA.NO.52/2011

APPENDIX

PETITIONER'S ANNEXURES:

- ANNEX A** COPY OF THE AWARD IN ACP(KOTAK) NO.261/2010 DATED 23/02/2011
- ANNEX B** COPY OF THE AWARD IN ACP (KOTAK) NO.262/2010 DATED 23/02/2011
- ANNEX C** COPY OF THE AWARD IN ACP(KOTAK) NO.265/2010 DATED 23/02/2011

RESPONDENT'S ANNEXURES:

- ANNEX R3(A)** COPY OF THE LETTER ISSUED BY THE PETITIONER DATED 5/3/2008 TO THE RESPONDENTS 1 AND 2
- ANNEX R3(B)** COPY OF THE RECEIPT ISSUED BY PETITIONER TO THE RESPONDENTS 1 AND 2
- ANNEX R3(C)** COPY OF THE ORDER OF MADRAS HIGH COURT ALONG WITH THE LETTER OF THE ADVOCATE COMMISSIONER
- ANNEX R3(D)** COPY OF THE INTERIM ORDER OF THIS HON'BLE COURT DATED 5/1/2011 IN WP(C)NO.29572/2010
- ANNEX R3(E)** COPY OF THE JUDGMENT OF HON'BLE HIGH COURT OF MADRAS IN A.NO.4118/2010, A.NO.5901 TO 5903/2010 DATED 2/2/2011
- ANNEX R3(F)** COPY OF THE JUDGMENT OF THIS HON'BLE COURT IN WRIT PETITION NO.29572/2010 DATED 7/3/2011
- ANNEX R3(G)** COPY OF THE AGREEMENT ENTERED INTO BY THE 3RD RESPONDENT WITH THE 1ST RESPONDENT
- ANNEX R3(H)** COPY OF THE COMPLAINT SUBMITTED BY 3RD RESPONDENT BEFORE KANNAMALI POLICE STATION
- ANNEX R3(I)** COPY OF THE RELEVANT PORTION OF THE STATEMENT MADE BY THE PARTIES BEFORE KANNAMALI POLICE STATION ON 27/07/10
- ANNEX R3(J)** COPY OF THE RECEIPT ISSUED TO THE 3RD RESPONDENT

/TRUE COPY/

P.A.TO.JUDGE

sts

**THOTTATHIL B.RADHAKRISHNAN
&
K.VINOD CHANDRAN, JJ.**

Arb.A.No.52 of 2011

Dated this the 31st day of July, 2012

JUDGMENT

Thottathil B.Radhakrishnan,J.

- 1.The appellant, a financier, moved the court below for an interim measure under section 9 of the Arbitration & Conciliation Act, 1996. That was refused. This Court granted an interim order at the stage of admission, whereby, a stage carriage was attached. Since there was none to take it into custody; to prevent its deterioration, it was ultimately sold through the court below, pending this appeal, under order of this Court. Money is lying in deposit with the court below.

- 2.The arbitral proceedings on the basis of the agreement in relation to which the appellant financier went to the court below under section 9 of the A&C Act is not yet over. This means that whatever has been pushed under section 9 has to

be protected pending that arbitral proceeding, to enable the parties to await its result.

3. Learned counsel for the contesting third respondent says that his client had purchased the rights over the stage carriage from the person who was in possession of that vehicle. He also says that there is documentary evidence to show that the appellant Kotak Mahindra Bank Ltd. had certified that the entire amount due on account of that stage carriage had been paid.

4. In the aforesaid facts and circumstances, this appeal is ordered as follows:

(i) The amount lying in deposit being one in satisfaction of orders issued by this Court in appeal and, therefore, relatable to section 9 of the A&C Act, shall be released by the court below to the appellant, pending the arbitral proceedings on the

basis of the agreement in relation to which the parties were before the court below in proceedings under section 9 of the Act, if the appellant furnishes bank guarantee to the satisfaction of the court below, for the amount lying in such deposit before the court below.

(ii) Having regard to the peculiar contentions of the third respondent, the appellant agrees, and it is therefore directed that the third respondent shall be a party to, and shall be permitted to participate in the arbitration proceedings and shall be permitted to plead, including as to discharge and satisfaction of the claims of the appellant financier as against the stage carriage concerned.

(iii) Appeal ordered accordingly without expressing anything on merits.

(iv) Re-transmit LCR with copy of the judgment at the earliest.

Sd/-
THOTTATHIL B.RADHAKRISHNAN
Judge.

Sd/-
K.VINOD CHANDRAN
Judge.

k kb.3/8.