

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

WEDNESDAY, THE 31ST DAY OF JANUARY 2018 / 11TH MAGHA, 1939

AR.No. 7 of 2018

PETITIONER(S) :

K.P.INDRABALAN
S/O.K.G.PURUSHOTHAMAN,
INDRAPRASTHAM, CHARUMMOODU,
MAVELIKKARA, ALAPPUZHA DISTRICT.

BY ADV.SRI.M.G.KARTHIKEYAN

RESPONDENT(S) :

AYYAPPAN ASOKAN
AGED 37 YEARS, S/O.P.V.ASOK KUMAR,
NANICHAM HOUSE,VADAKKEVILA P.O.,
MADANANADA, KOLLAM DISTRICT-691 010.

BY ADV. SRI.MILLU DANDAPANI

THIS ARBITRATION REQUEST HAVING BEEN FINALLY HEARD ON 31-01-2018,
THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

APPENDIX

PETITIONER'S ANNEXURES:

ANNEXURE A: PHOTOCOPY OF THE PARTNERSHIP DEED DATED 10.1.2013 EXECUTED
BETWEEN THE PARTNERS OF M/S. HOTEL SIXER

ANNEXURE B: PHOTOCOPY OF THE LAWYER'S NOTICE DATED 6.12.2017 SENT TO THE
RESPONDENT

ANNEXURE C: PHOTOCOPY OF THE REPLY NOTICE DATED 15.12.2017 ISSUED BY THE
ADVOCATE ON BEHALF OF RESPONDENT

RESPONDENT'S ANNEXURES: NIL

//TRUE COPY//

P.A. TO JUDGE

dlk

SHAJI P. CHALY, J.

A.R. No. 7 OF 2018

Dated this the 31st day of January, 2018

ORDER

Petitioner and respondent are partners and they have executed Annexure A partnership deed. It is agreed by and between the parties that in the event of any dispute by and between the parties, the same will be resolved by resorting to the provisions of the Arbitration and Conciliation Act, 1996. The said clause read thus:-

“Any dispute or difference of opinion which may arise between the partners or their representatives with regard to the construction, effect or meaning of any clause or clauses of this Deed or any part thereof; or in respect of the accounts, profits and losses of the business of the firm; or with regard to rights and liabilities of the partners under this deed or in respect of the dissolution of winding up of the business of the firm or relating to any other affairs of the firm shall be referred of the firm or relating to any other affairs of the firm shall be referred to

and settled by arbitration and the proceedings of such arbitration shall be governed by the Indian Arbitration and Conciliation Act, 1996.”

2. Admittedly, dispute arose consequent to which petitioner has issued Annexure B notice making a claim and also appointing a retired District Judge as the arbitrator. The respondent has issued Annexure C reply admitting the agreement for arbitration, however disputing the appointment of the retired District Judge as the arbitrator and sought appointment of a retired High Court Judge in order to resolve the disputes by and between the parties. It is thereupon that the petitioner has submitted this request under Section 11 of the Arbitration and Conciliation Act, 1996.

3. I have heard learned counsel for the petitioner and learned counsel appearing for the respondent.

4. Admittedly going by Clause 22 of Annexure A agreement, there is no procedure accepted by and between the parties in respect of the appointment of arbitrator. Necessarily, when a request is made, which was disputed by

the respondent, the remedy available to the petitioner is to approach this Court seeking appointment of an arbitrator. So also, consequent to the introduction of Sub-section (6A) to Section 11 of the Arbitration and Conciliation Act, 1996 the only thing that is to be looked into by the Court considering a request is whether there is a valid arbitration clause existing by and between the parties. I am convinced that there is a valid arbitration clause as per Annexure A agreement and there is a material dispute pending by and between the parties in respect of the partnership. Therefore, necessarily an arbitrator is to be appointed.

5. I appoint Sri. M. Rajendran Nair, retired District Judge, Thonnalloor, T.C. 18/812(5), Aramada P.O., Thiruvananthapuram, Pin - 695 032, as the Arbitrator. The arbitrator may enter on reference and proceed, in accordance with law and attain finality, in accordance with Section 29A of the Act, 1996, as amended from time to time. I also make it clear that the petitioner shall produce a disclosure statement, as is provided under Section 11(8) of the Act, 1996 before the Registry and on production of the

same alone, a certified copy of this order shall be released to the parties. Original shall be retained with the Registry and a copy shall be appended to the order.

Arbitration Request is disposed of, accordingly.

sd/-
SHAJI P. CHALY
JUDGE

DCS

//True Copy//

P.A. to Judge