

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE SATHISH NINAN

FRIDAY, THE 29TH DAY OF JULY 2022 / 7TH SRAVANA, 1944

AR NO. 141 OF 2022

PETITIONERS:

- 1 SHEELA, W/O. AJI, PANANCHIKAL HOUSE, KIDANGOOR P.O., THURAVOOR, ERNAKULAM DISTRICT- 683572.
- 2 PRADEEP P.C, S/O. CHANDRAN, PANANCHIKAL HOUSE, NEAR AZHAKAM SUBRAMANYA SWAMI TEMPLE., ALUVA, ERNAKULAM DISTRICT- 683577.
- 3 AJI P.V, S/O. VELAYUDHAN, PANANCHIKAL HOUSE, KIDANGOOR P.O., THURAVOOR, ERNAKULAM DISTRICT- 683572.

BY ADVS.
G.HARIHARAN
PRAVEEN.H.
K.S.SMITHA
V.R.SANJEEV KUMAR
ANJALY T.A

RESPONDENT:

M/S. SHRIRAM TRANSPORT FINANCE COMPANY LTD
1ST FLOOR IRIMPAN'S ANGEL RUDHI TOWER,
OPP. ST. JOSEPH HIGH SCHOOL, ALUVA ROAD,
ANGAMALY, ERNAKULAM DISTRICT - 683572.,
REPRESENTED BY ITS SENIOR MANAGER.

BY ADVS.
C.HARIKUMAR
SANDRA SUNNY
ARUN KUMAR M.A

THIS ARBITRATION REQUEST HAVING COME UP FOR ADMISSION ON 29.07.2022, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

Sathish Ninan, J.

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Arbitration Request No.141 of 2022

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Dated this the 29th day of July, 2022

ORDER

The 1st petitioner availed a loan from the respondent. Petitioners 2 and 3 are guarantors to the transaction. The petitioners had executed a Hypothecation Agreement in favour of the respondent in connection with the transaction. There has arisen disputes between the parties. The petitioners allege that the respondent has unilaterally proceeded to appoint an Arbitrator which is impermissible under law. Accordingly, they approached this Court in this Arbitration Request seeking appointment of an Arbitrator.

2. Heard the learned counsel on either sides.

3. Existence of an arbitration clause providing for appointment of an Arbitrator for resolution of the disputes between the parties, is admitted. That there

cannot be a unilateral appointment of an Arbitrator has been held in *TRF Limited v. Energo Engineering Projects Limited (2017(8) SCC 377)*, *Perkins Eastman Architects DPC and Another v. HSCC(India) Ltd. (AIR 2020 SC 59)* & *Tulsi Developers India Pvt. Ltd v. Dr.Appu Benny Thomas (2021(5) KHC 404)*.

Both sides are agreeable for appointment of an Arbitrator at Ernakulam. Accordingly, leaving open the rights of the parties to urge their contentions before the Arbitrator, the Arbitration Request is ordered as hereunder:

(a) Adv. S.Prasanth, Naduviladath, Punnackal, Elamakkara P.O, Cochin – 26, Mobile No.- 9447060299, is provisionally nominated as the Sole Arbitrator to adjudicate upon the disputes between the parties.

(b) A copy of this order shall be communicated to the learned Arbitrator by the Advocate of the applicant

within a period of one week from today. A copy of the order shall also be forwarded to the learned Sole Arbitrator by the Registry.

(c) The Arbitrator is requested to forward his statement of disclosure under Section 11(8) r/w Section 12(1) of the Arbitration and Conciliation Act, 1996.

(d) The registry shall place the disclosure statement before this Court, for confirmation of the appointment of the Arbitrator.

(e) The Arbitrator's fees shall be payable as per Schedule IV to the Arbitration and Conciliation Act, 1996.

Sd/-

Sathish Ninan, Judge

APPENDIX OF AR 141/2022

PETITIONER ANNEXURES

Annexure I	A TRUE COPY OF THE REGISTRATION CERTIFICATE FOR VEHICLE BEARING REGISTRATION NO. KL-63-8598
Annexure II	A TRUE COPY OF THE LOAN REPAYMENT SCHEDULE FOR THE PERIOD ENDING 30.12.2021
Annexure III	A TRUE COPY OF THE NOTIFICATION ISSUED BY THE GOVERNMENT OF INDIA VIDE NOTIFICATION DATED 24.03.2020
Annexure IV	A TRUE COPY OF THE LAWYER NOTICE DATED 25.11.2021 SENT FROM THE OFFICE OF THE ADVOCATE THROUGH SPEED POST WHICH WAS RECEIVED ON 06.07.2022 DEMANDING PAYMENT OF A SUM OF RS.8,80,833/- AS ON 29.06.2022
Annexure V	A TRUE COPY OF THE ENVELOP BEARING THE DATE OF DISPATCH EVIDENCING RECEIPT OF THE SAME TO THE PETITIONER ON 06.07.2022
Annexure VI	A TRUE COPY OF THE OBJECTION DATED 07.07.2022 SENT BY THE PETITIONER ADDRESSED TO THE RESPONDENT
Annexure VII	A TRUE COPY OF THE INTERIM ORDER PASSED IN CONNECTION WITH A.R.NO.37/2022 DATED 19.01.2022 BY THIS HON'BLE COURT