

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN

TUESDAY, THE 31<sup>ST</sup> DAY OF OCTOBER 2023 / 9TH KARTHIKA,

1945

AR NO. 144 OF 2023

PETITIONERS:

1 ALSA PARKDALE APARTMENT OWNERS' ASSOCIATION  
REG. NO.TVM/TC/881/2021, VANCHIYOOR P.O.,  
THIRUVANANTHAPURAM REPRESENTED BY ITS  
SECRETARY, PIN - 695035

2 SURESH CHANDRA DUTT  
SECRETARY, ALSA PARKDALE APARTMENT OWNERS'  
ASSOCIATION, FLAT NO.C4, ALSA PARK DALE,  
VANCHIYOOR P.O., THIRUVANANTHAPURAM, PIN -  
695035

BY ADVS.  
V.KRISHNA MENON  
P.VIJAYAMMA  
J.SURYA  
E.K.MADHAVAN

RESPONDENTS:

1 CYRIAC SABU  
FLAT NO. B1 & C1, ALSA PARKDALE, VANCHIYOOR  
P.O., THIRUVANANTHAPURAM, PIN - 695035

2 ALICE JAMES  
OWNER OF FLAT NO. GF, ALSA PARKDALE, VANCHIYOOR  
P.O., THIRUVANANTHAPURAM - 695035, RESIDING AT  
KOYIPPURATH, POOJAPURA P.O., .  
THIRUVANANTHAPURAM -695012.

3 AUGEN P.V  
FORMER OWNER OF FLAT NO. A4, ALSA PARKDALE,  
VANCHIYOOR P.O., THIRUVANANTHAPURAM - 695035  
NOW RESIDING AT C-304, RENKA CORNER, CAMBRIDGE  
LAYOUT, BANGALORE - 560008.

THIS ARBITRATION REQUEST HAVING COME UP FOR  
ADMISSION ON 31.10.2023, THE COURT ON THE SAME DAY  
DELIVERED THE FOLLOWING:

**ORDER**

The 1<sup>st</sup> petitioner asserts to be an Association of the Owners of Apartments in a Residential Complex, registered under the Travancore Cochin Literary, Scientific and Charitable Societies Registration Act, 1955; and the 2<sup>nd</sup> petitioner to be its Secretary.

2. The petitioner say that respondents are members of the Association, having subscribed to Annexure II – Agreement; but that they are refusing to pay the eligible amounts due from them; thus that disputes have arose between the parties. They say that, as per Clause 42 of Annexure II – Agreement; all such disputes will have to be resolved only through the mechanism of Arbitration; and hence that they had issued Annexure III - notice to them, seeking that either they honour the dues, or agree to the appointment of a Sole Arbitrator, but that they have replied it through Annexures IV to VI notices, raising untenable contentions and requiring that petitioners apologize to them. They say they have, therefore, been left without any other option, but to approach this Court seeking appointment of an Arbitrator.

3. I notice from the files that even though respondents 1 and 2 have accepted summons from this Court, they have chosen not to be present in person or to be represented through counsel; thus inferentially guiding me to the impression that they have nothing to offer in opposition to this request. As far as third respondent is concerned; he has refused to accept the summons from this Court, thus constraining me to dispose of this matter in his absence.

4. I have examined Annexure II - Agreement between the parties; and as rightly argued by the learned counsel for the petitioner – Sri.Krishna Menon, Clause 42 (d) thereof mandates that every dispute between its members and the members of the Association, shall be first attempted to be settled in an amicable manner and that if it is not possible, will have to be referred to a sole Arbitrator, under the provisions of Arbitration and Conciliation Act, 1996.

5. In the case at hand, even though the petitioners issued Annexure III - notice to the respondents, it has been responded to by them through Annexures IV to VI clearly saying that they are not amenable to Arbitration and that they are not liable to pay any amounts. Obviously, there cannot be

now a resolution of disputes through amicable means; and hence this Court is now enjoined to allow this Arbitration Request .

This Arbitration Request is thus ordered in the following manner:

(a) I nominate, Adv.A.Ratheesh (Manacaud), Padmajam, T.C.27/1057, Vanchiyoor P.O.,Thiruvananthapuram – 695035, Mob.No.9447092212, as the sole Arbitrator, to adjudicate and resolve the disputes and differences between the parties to this case arising from Annexure II Agreement.

(b) The Registry is directed to communicate a copy of this order to the learned Arbitrator within a period of two weeks from today and to obtain a Statement of Disclosure from him under Section 11(8) read with Section 12(1) of the Arbitration and Conciliation Act, 1996.

(c) Once the Disclosure Statement is obtained from the learned Arbitrator, the Registry shall release the certified copy of this order, with a copy of the said statement appended to it, retaining the original of the same on the files of this case.

(d) The fees of the Arbitrator shall be governed by the Fourth Schedule of the Arbitration and Conciliation Act, 1996.

(e) In order to enable the Arbitrator to commence the proceedings without delay, I direct the parties to mark appearance before him at 11 AM on 21.12.2023.

Since the respondents are remaining exparte before this Court, I request the learned Arbitrator to issue them necessary notice before proceeding forthwith the matter.

**Sd/- DEVAN RAMACHANDRAN,  
JUDGE**

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APPENDIX OF AR 144/2023

PETITIONER ANNEXURES

Annexure I	A COPY OF THE CERTIFICATE OF REGISTRATION ALSA PARKDALE APARTMENT OWNERS' ASSOCIATION, REG. NO.TVM/TC/881/2021
Annexure II	THE COPY OF THE MEMORANDUM OF ASSOCIATION AND BYELAWS OF THE FIRST PETITIONER ASSOCIATION
Annexure III	A COPY OF THE NOTICE DATED 6.5.2023
Annexure IV	A COPY OF THE LAWYER NOTICE DATED 6.6.2023
Annexure V	COPY OF THE REPLY NOTICE DATED 10.7.2023
Annexure VI	A COPY OF THE REPLY DATED 21.7.2023 SENT ON BEHALF OF THE FIRST RESPONDENT

RESPONDENTS EXHIBITS: NIL

TRUE COPY

P.A TO JUDGE

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