
(2022) 07 KL CK 0263

In the High Court Of Kerala

Case No : Arbitration Request No. 141 Of 2022

Sheela,W/O. Aji

APPELLANT

Vs

M/s Shriram Transport Finance Company Ltd

RESPONDENT

Date of Decision : 29-07-2022

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 11(8), 12(1)

Citation : (2022) 07 KL CK 0263

Hon'ble Judges : Sathish Ninan, J

Bench : Single Bench

Advocate : G.Hariharan, Praveen.H., K.S.Smitha, V.R.Sanjeev Kumar, Anjaly T.A, C.Harikumar, Sandra Sunny, Arun Kumar M.A

Judgement

Sathish Ninan, J

1. 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.