

IN THE COURT OF MUNSIFF, ERNAKULAM
Present :- Sri. Nanda Krishna M, I Additional Munsiff
Friday, the 12th day of June, 2026/22nd Jyaishta, 1948
I.A. No. 2/2025 in O.S. No. 477/2025

Applicants/Defendants-

1. M/s. Magic Frames, Door No. 2704, Kolaparambil Building, South Janatha Road, Palarivattom P O, Ernakulam – 682 025.
2. Listin Stephen, Proprietor of M/s. Magic Frames, Door No. 2704, Kolaparambil Building, South Janatha Road, Palarivattom P O, Ernakulam – 682 025.

By Advs. Shameem Ahamed. Ahamed Iqbal, T V Sreejith.

Respondents/Plaintiffs:-

1. M/s. Pauly Junior Pictures LLP 20/4632, 6th cross Girinagar, Ernakulam – 682 017.
2. Nivin Pauly, aged 40 years, S/o Pauly, 20/4632, 6th cross Girinagar, Ernakulam – 682 017.

By Advs. Sukesh Roy, Meera Menon.

This petition is filed under Section 8 of the Arbitration Act, prayed that this Court may refer the parties for arbitration for all disputes connected with the film 'RAMACHANDRA BOSS & CO.

This Petition has been come up for hearing before me on 06.04.2026 in the presence of the said counsel and this Court on 12.06.2026 delivered the following :-

ORDER

This is a petition filed under Sec.8 of the Arbitration Act.

2. The petition can be briefed as follows:- The plaintiff has filed a suit arising from a production agreement dated 12 September 2022 (and subsequent agreements) for the Malayalam film 'RAMCHANDRA BOSE &

CO' (formerly 'YELLA HABIBI'). The plaintiff contends that while they were responsible for managing production on a profit-sharing basis, the defendants—responsible for theatrical distribution—withheld vital financial information regarding revenues and expenses. This alleged lack of transparency prevented the plaintiff from verifying the project's true financial performance and deprived them of rightful profits. The plaintiff further alleges that the defendants employed similar tactics regarding the film "*MALAYALI FROM INDIA*," claiming financial losses without documentary evidence. Additionally, the plaintiff claims they were forced to accept a liability of INR 7,50,00,000 without verifiable accounts, violating fiduciary duties. The plaintiff also asserts that despite repaying INR 5,50,00,000 of a INR 10,00,00,000 loan, the defendants unlawfully retained undated security cheques. Furthermore, the plaintiff alleges that on 2 May 2025, Defendant No. 2 made defamatory public statements against Plaintiff No. 2. The petitioner herein contend that the primary dispute stems from the co-production agreement. It is highlight that the Supplementary Agreement dated 22 August 2023 contain express arbitration clause under which, all disputes must be referred to a sole arbitrator in Kochi per the Arbitration and Conciliation Act, 1996. Consequently, the petitioner avers the court lacks jurisdiction to try the matter, as the settlement of accounts must be resolved

through arbitration. Hence the petition.

3. Respondents filed objection with the following contentions :- The Respondents/Plaintiffs have filed a composite suit for Rendition of Accounts under Order 20 Rule 16 of the CPC. The suit encompasses several distinct and independent causes of action: accounts regarding the film '*Malayali From India*' (performed without a written agreement), a claim for the tort of defamation arising from derogatory remarks made on 02.05.2025, and urgent equitable relief against criminal coercion and the unlawful encashment of security cheques. The Respondents/Plaintiffs contend that the dispute is not limited to the film '*Ramachandra Boss & Co*' or the 2022 agreement. They argue that the claims regarding defamation and the film '*Malayali From India*' are independent grievances that fall outside the scope of any existing contractual accounts. The Respondents/Plaintiffs challenge the Defendants' attempt to refer the matter to arbitration, asserting that no valid arbitration agreement exists. They argue that Clause 4.1 of the Supplementary Agreement dated 22.08.2023 uses the permissive term "**may**" (stating a party "*may refer the dispute to arbitration*"). Relying on *Jagdish Chander v. Ramesh Chander* and the recent Supreme Court ruling in *BGM and M-RPL-JMCT (JV) v. Eastern Coalfields Limited (2025)*, they submit that such language constitutes a mere "enabling provision" requiring fresh consent,

rather than a binding obligation. Furthermore, citing *Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co.*, they argue that the suit contains non-arbitrable causes of action, such as defamation and criminal coercion. They contend that the court cannot split the suit, as referring only certain parts to arbitration would lead to conflicting findings. The Respondents/Plaintiffs pray for the dismissal of the Defendants' application to refer the parties to arbitration, asserting that the Defendants have failed to satisfy the requirements of Section 8 of the Arbitration Act. They conclude that the Civil Court maintains exclusive jurisdiction to try the suit in its entirety. Hence it is prayed that the petition is to be dismissed

4. The point that arose for consideration is:-

Whether the Parties to this suit should be referred for arbitration?

5. Exhibits A1 and A2 were marked on the side of the petitioners while Exhibits B1 to A4 were marked on the side of the respondent.

6. Heard both sides.

7. **The point**:- Petitioner is the defendant in the suit. Suit is one for rendition of accounts of all revenues generated from two motion pictures and for a permanent prohibitory injunction, restraining the defendants from publishing or disseminating any defamatory or derogatory statements and from encashment of security cheques for initiation of criminal proceedings.

First plaintiff in the suit is a limited liability company engaged in the business of film production and distribution and the second plaintiff is a film actor who is also the partner of plaintiff No. 1. Defendant No. 1 is a Movie production company which is being represented in this suit by defendant No. 2. Plaintiffs and defendants entered into a co-production agreement dated 20.09.2022 and a supplementary agreement dated 22.08.2023 in relation to a movie by the name " Ramachandra Boss & Co". The dispute between the parties primarily revolves around the alleged non-sharing of financial details and account details in relation to the said film and also in a subsequent film titled Malayali from India produced by the defendants in which plaintiff No. 2 has acted. Plaintiff alleges the defendants have committed financial discrepancies and deliberate obfuscation of financial records. It is also alleged that the second defendant made derogatory statements regarding the second plaintiff in a public function with an intention to harm his reputation.

8. In the present petition, the petitioner who is the second defendant in the suit contends that as per clause 4 of the supplementary agreement, dated 22.08.2023, each and every dispute between the parties has to be resolved only through the process of arbitration, and this Court will not have any jurisdiction to try the same.

9. Respondents who are the plaintiffs in the suit filed counterfeit

strongly opposing the petition by stating that there is no mandatory arbitration clause in the supplementary agreement and that the word used is only in name " Ramachandra Boss & Co". It is further contended that the dispute involved in the present suit is not confined to the movie and that the plaintiffs have also raised a distinct independent cause of action regarding the movie "Malayali from India" and also independent tortious claim for defamation committed by the second defendant . It was further contended that the present suit is a composite action involving multiple films and torturous claims and it is well settled that a corporation cannot be split or bifurcated. It was further contended that the issues regarding tort of defamation and the relief of permanent prohibitory injunction are non-arbitrable and therefore it must remain before this Hon'ble Court.

10. S.8 of the The Arbitration And Conciliation Act, 1996 is provided below for referance

S.8 Power to refer parties to arbitration where there is an arbitration agreement.

1[(1) A judicial authority, before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party to the arbitration agreement or any person claiming through or under

him, so applies not later than the date of submitting his first statement on the substance of the dispute, then, notwithstanding any judgment, decree or order of the Supreme Court or any Court, refer the parties to arbitration unless it finds that prima facie no valid arbitration agreement exists.]

(2) The application referred to in sub-section (1) shall not be entertained unless it is accompanied by the original arbitration agreement or a duly certified copy thereof:

2[Provided that where the original arbitration agreement or a certified copy thereof is not available with the party applying for reference to arbitration under sub-section (1), and the said agreement or certified copy is retained by the other party to that agreement, then, the party so applying shall file such application along with a copy of the arbitration agreement and a petition praying the Court to call upon the other party to produce the original arbitration agreement or its duly certified copy before that Court.]

(3) Notwithstanding that an application has been made under sub-section (1) and that the issue is pending before the judicial authority, an arbitration may be commenced or continued and an arbitral award made.

11. In the present case, the petitioner has not produced the original arbitration agreement or a certified copy of the same. Only an ordinary photostat copy is produced by the petitioner. Petitioner has no case that he does not have possession of the original arbitration agreement or that the same is with the opposite party. No petition to call upon the other party to produce the original arbitration agreement or its newly certified copy has been filed by the petitioner herein. Therefore, there is no compliance of S.8(2) of the The Arbitration And Conciliation Act, 1996.

12. The arbitration clause in the supplemental agreement entered between the parties, copy of which was produced and marked as Ext A2 reads as follows.

"4.1 Dispute Resolution:

In the event of a dispute or difference arise in connection with the interpretation or implementation of this agreement, the parties to the dispute shall attempt in the first instance to amicably resolve such dispute through

mutual consultations. If the dispute is not resolved within 30 days from the date of commencement of discussions or such longer period as such parties agree in writing, then a party may refer the dispute to arbitration in accordance with the provisions of the Arbitration and Conciliation Act, 1996 before a sole arbitrator. The seat of arbitration shall be at Kochi and the proceedings shall be conducted in the English language. "

13. It is clear from the provision that the mandate for amicable resolution of disputes through mutual consultation has been incorporated in the clause using the word "shall" while the word "may" is used for referring the dispute to arbitration if the dispute is not settled mutually. The word "shall" is again used to indicate that the seat of arbitration is at Kochi alone.

14. Learned counsel appearing for the respondent contended that since the word used is "may" it cannot be said that there is a valid arbitration clause which would exclude the jurisdiction of this court. Reliance was placed upon the judgment of the Hon'ble Apex Court in **Wellington Associates Ltd v. Kirit Mehta AIR 2000 SC 1379** . The Hon'ble Apex Court in the said judgement has observed as follows; "the words "may be referred" used in

clause 5, read with clause 4, lead me to the conclusion that clause 5 is not a firm or mandatory arbitration clause and in my view, it postulates a fresh agreement between the parties that they will go to arbitration. The Hon'ble Apex Court has ruled that the word may could not be construed as shall rendering the clause merely an enabling provision requiring fresh consent for arbitration. The fact situation of the present case is almost identical to the facts of the case decided by the Hon'ble Apex Court, which is referred to above. Therefore, the dictum of the Hon'ble Apex Court is squarely applicable to the present case. It follows that there is no valid arbitration agreement in Exhibit A2 agreement which would exclude the jurisdiction of this court.

15. Respondents also contended that the disputes involved in the present suit and the relief sought for could not be entertained by an arbitrator and that the same are not arbitrable. It can be seen that the disputes between the parties as decipherable from the pleadings in the plaint is not confined to the movie " Ramachandra Boss & Co regarding which there is Exhibit A1 and Exhibit A2 agreements between the parties. There is disputes pertaining to a subsequent movie and also the alleged acts of defamation committed by the defendants. Reliefs sought for in the suit includes a decree of permanent prohibitory injunction restraining the defendants from the alleged

defamatory acts.

16. The Hon'ble apex Court in **Vidya Drolia v. Durga Trading Corpn., 2020 KHC 6711**, laid down a four-fold test for determining when the subject-matter of a dispute in an arbitration agreement is not arbitrable.

These were:

(1) When cause of action and subject matter of the dispute relates to actions in rem, that do not pertain to subordinate rights in personam that arise from rights in rem.

(2) When cause of action and subject matter of the dispute affects third-party rights; have erga omnes effect; require centralised adjudication, and mutual adjudication would not be appropriate and enforceable.

(3) When cause of action and subject matter of the dispute relates to inalienable sovereign and public interest functions of the State and hence mutual adjudication would be unenforceable.

(4) When the subject-matter of the dispute is expressly or by necessary implication non-arbitrable as per mandatory statute(s)."

17. Arbitration clause in Exhibit A2 supplementary agreement would not cover the disputes involved in the suit including the allegation as to defamation and reliefs sought over the same. Therefore, it cannot be said that

the disputes involved in the present suit is arbitrable. In light of the discussions above, the point is found against the petitioner. The petition is dismissed.

In the result, the petition is dismissed.

Dictated to the Confidential Assistant, typed by her, corrected by me and pronounced in Open Court on this the 12th day of June, 2026.

**Nanda Krishna M
I Additional Munsiff**

Appendix:- Nil

I Additional Munsiff

ORDER
I.A. No. 2/2025
in O.S. 477/2025
Dated : 12.06.2026