

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE SATHISH NINAN

FRIDAY, THE 22ND DAY OF DECEMBER 2023 / 1ST POUSHA, 1945

ARB.A NO. 29 OF 2023

AGAINST THE ORDER DATED 13.11.2023 IN O.P. (ARB.) NO.1 OF
2023 OF THE COMMERCIAL COURT, KATTAPPANA

APPELLANTS/RESPONDENTS 1 TO 7 IN O.P. (ARB) NO.1 OF 2023:

1 SABU GEORGE
 AGED 58 YEARS

2 JOSHY FRANCIS
 AGED 58 YEARS

3 KOSHY ALEXANDER
 AGED 48 YEARS

4 BIJOY KURIAN
 AGED 53 YEARS

5 MATHEW SHIBU MATHAI
AGED 57 YEARS

6 SOY THOMAS
AGED 49 YEARS

7 VEENA A WILSON
AGED 38 YEARS

BY ADVS.
R.ASALATHA VARMA
DENNIS JOSE
ARJUN VARMA

RESPONDENTS/PETITIONERS 1 TO 6 IN O.P.(ARB)NO.1 OF 2023

1 JAMES GEORGE
AGED 56 YEARS
S/O. GEORGE, RESIDENT OF
CHELACKELHOUSE, VALIYATHOVALA P.O., IDUKKI
DISTRICT AND PRESENTLY RESIDING AT VILLA-23,
EZDAN-37, ZONE-91, STREET-871, BUILDING-117,
DOHA, QATAR, PIN - 685514

- 2 VARUGHESE MATHEW
AGED 66 YEARS
S/O. P.C.VARGHESE, RESIDENT OF KALLARACKAL
HOUSE, VADAVATHOOR P.O., KOTTAYAM DISTRICT AND
PRESENTLY RESIDING AT BUILDING-101, UMM AL
SANEEM STREET, STREET-149, AL RAYYAN, ZONE-56,
P.B NO. 22301,DOHA,QATAR, PIN - 686010
- 3 GEORGE JOSEPH
AGED 60 YEARS
S/O. K.K. VARGHESE RESIDENT OF MERIN VILLA,
VELLOONNI P.O., KOTTAYAM DISTRICT AND
PRESENTLY RESIDING AT EV 28-RO63-A. EZDAN
VILLAGE 28, ZONE-91, BUILDING-108, STREET-900,
DOHA, QATAR, PIN - 686008
- 4 SIGY MATHEW
AGED 55 YEARS
S/O. MATHEW, CHEERAMVELIL HOUSE, MUTTAR P.O.,
ALAPPUZHA DISTRICT, PIN - 689571
- 5 SONU AUGUSTINE
AGED 56 YEARS
S/O. A.P. AUGUSTINE , RESIDING AT MDRA-52,
MORARJI DESAI ROAD, THRIKKAKARA, VAZHAKKALA
VILLAGE, KAKKANAD P.O., ERNAKULAM DISTRICT.,
PIN - 682023
- 6 VARUGHESE DANIEL
AGED 54 YEARS
S/O. DANIEL, VALLIKALAYIL HOUSE, MALLASSERY
P.O.,PATHANAMTHITTA, PIN - 689646
BY ADV JAWAHAR JOSE

THIS ARBITRATION APPEALS HAVING COME UP FOR ADMISSION
ON 22.12.2023, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

SATHISH NINAN, J.

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Arb. Appeal No.29 of 2023

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Dated this the 22nd day of December, 2023

JUDGMENT

The order under Section 9 of the Arbitration and Conciliation Act, 1996 is under challenge in this appeal by respondents 1 to 7 in the O.P (Arbitration).

2. The respondents raise a preliminary objection with regard to the maintainability of the appeal before this Court.

3. I have heard the learned Senior Counsel, Shri.K. Ramakumar on behalf of the appellants and Shri.Jawahar Jose, the learned counsel for the contesting respondents.

4. According to the learned counsel for the respondents, Section 13 of the Commercial Courts Act, 2015 provides that an appeal against an order passed by the Commercial Court lies before the Commercial

Appellate Court. On 24.02.2020, the Government issued a notification as per which the Principal District Courts in each Districts are notified as Commercial Appellate Courts. Therefore, the appeal lies before the District Court, it is contended.

5. The learned Senior Counsel appearing for the appellants would on the other hand refer to Section 9 and Section 2(1)(e) of the Arbitration Act and contend that such application would lie only before the District Court going by the definition of "Courts" as, Principal Civil Court of original jurisdiction in a District. An order under Section 9 of the Arbitration Act by the District Court is appealable in terms of Section 37 and it would lie only before this Court, it is argued.

6. The order under challenge is passed by the Commercial Court, Kattappana. The Subordinate Judge's Court, Kattappana is acting as the Commercial Court by

virtue of a notification dated 18.03.2022 issued by the Government in terms of Section 3 of the Commercial Courts Act, 2015. Section 13 of the Commercial Courts Act provides for an appeal against an order of the Commercial Court before the Commercial Appellate Court. The Government has issued a notification designating the Principal District Courts in each Districts as Commercial Appellate Courts. Therefore, the appeal against the order impugned lies before the concerned Commercial Appellate Court – District Court.

7. Having held as above regarding the maintainability of the appeal before this Court, it is only appropriate that the other contentions raised by the appellants are not adverted to by this Court. All such contentions are left open to be urged before the proper forum.

Accordingly, holding that this Court does not have

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jurisdiction to entertain this appeal, Registry is directed to return the memorandum of appeal along with the original order impugned, for presentation before the proper forum.

Sd/-

SATHISH NINAN, JUDGE

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APPENDIX

PETITIONER ANNEXURES

Annexure 1	ORIGINAL COPY OF THE EMAIL
Annexure 2	CERTIFIED COPY OF THE IMPUGNED ORDER DATED 13-11-2023 IN O.P. (ARB.) 01/2023 OF THE COMMERCIAL COURT KATTAPPANA