

**IN THE COURT OF THE ADDL. DISTRICT JUDGE -III,**  
**THIRUVANANTHAPURAM**

PRESENT:-SRI. RADHAKRISNAN.S., ADDL. DISTRICT JUDGE-III

Friday 21<sup>th</sup> day of July, 2023 /30<sup>th</sup> Ashadha 1945

**E.P. No.888/2022**

(Arbitration Reference No.ICFL/PL/RB/5930/L-24/328 NEW LOT -30/34 on  
the file of Mr. Sanjay Kanojia, Sole Arbitrator at New Delhi )

**Decree Holder:-**

Dhani Loans And Services Ltd.  
M-62 and 63, 1st Floor Connaught Place,  
New Delhi-110001.

**(By Advocate M.S. Mohammed Ansary)**

**Judgment Debtor:-**

Niza Begum, W/o Kabir, R/o MAKN House,  
Ayyankali Junction, Chitattilkara, Kizhuvalam,  
Koonthallor, Chirayankeezhu,  
Thiruvananthapuram -695104

**(By Advocate Saabir F. Haq )**

This E.P having been finally heard on **21/07/2023** and the Court on the **same day** passed the following:-

**ORDER**

This Execution Petition is for realization of ₹4,23,177/- on the basis of an Arbitral Award dated 25/01/2021 in Arbitration Case No.ICFL/PL/RB/5930/LOT-24/328 NEW LOT-30/34, by Mr. Sanjay Kanojia, Sole Arbitrator at New Delhi.

2. On service of notice, the Judgment Debtor appeared and filed objection to the EP, challenging its maintainability, inter-alia on the grounds

that no notice was issued to her on commencement of Arbitral Proceedings. No materials to hold that S.21 of Arbitration and Conciliation Act has been complied with. 1<sup>st</sup> respondent was not given a proper notice of appointment of an Arbitrator. Arbitral Proceedings are hit by S. 43 of the Act. For these and other reasons the JD challenged the maintainability of this Execution proceedings.

6. Heard, the learned counsels appeared on either side.

7. The learned counsel for the Judgment Debtor, by referring to a decision of the Hon'ble Madras High Court in M/s. Indus Ind Bank Ltd v. Mulchand B Jain dated 13.02.2013 in Original Side Appeal No. 266 of 2011, reported in Indian Kanoon, had argued that if no notice is received by the concerned respondent there was no commencement of arbitral proceedings. According to the JD, since there is no evidence of receipt of notice by the respondent/JD in that arbitral proceedings, the arbitral proceedings is vitiated and since such an Arbitral Award non-est and is vitiated by fraud and hence this EP is not maintainable, it is urged.

On the contrary, the learned counsel for the Decree Holder pointed out that the award itself reveals that the respondent failed to appear before the Arbitral Tribunal in spite of proper service of notice. The challenges raised by the JD can only be considered as grounds for setting aside an arbitral award

u/S.34 of the Act and by referring to an Apex Court Decision in Union of India v. Popular Construction Co. dated 05.10.2001 reported in Indian Kanoon, it is argued that where the time for making an application to set aside the arbitral award u/S. 34 has expired, the award can be enforced as per CPC as if it was a decree of court.

Here the objections raised by the JD are not acceptable at the stage of Execution Proceedings and there is no evidence on the part of the JD that the award is under challenge u/S.34 of the Act. All such objections can be raised as grounds to set aside the Arbitral Award u/S.34 or to stay the award u/S. 36 (2) or (3) pending disposal of the application u/S.34 and that cannot be raised as a ground obstruct the execution proceedings. The Execution Petition is maintainable.

So the EP can be proceeded further. For further steps call on 25/08/2023.

Dictated to the Confidential Assistant, transcribed and typed by her, corrected by me and pronounced in open Court on this the 21<sup>st</sup> day of July, 2023.

APPENDIX:-

NIL

(Copy-3) :  
Typed by : Anupama  
Comp by : Rifa

True Copy

F.C.S. :

Sd/-  
Radhakrishnan.S.  
Addl. District Judge–III  
Id/-  
Addl. District Judge–III  
By Order

SHERISTADAR

Copy of Order in  
E.P. No.888/2022  
Dated:21.07.2023

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