

IN THE COURT OF THE MUNSIF, KOCHI

Present :-

Smt. Simi P Siju, Additional Munsiff

Wednesday the 6th day of August, 2025/ 15th Sravanam, 1947

IA No. 14/2025 in O.S. No. 332/2018

Petitioners/Defendants 1 to 4:-

1. M/s.Indo Marine Sea Foods having its registered office at Kalanganthuruthil House, Njarakkal PO, Vypin, Ernakulam, Kerala-682505 duly represented by its Managing Partners.
2. Nijil K V, aged 33 years, S/o.K K Valsan, residing at Kalanganthuruthil House, Njarakkal PO, Vypin, Ernakulam, Kerala-682505, Managing Partner M/s.Indo Marine Sea Foods having its registered office at Kalanganthuruthil House, Njarakkal PO, Vypin, Ernakulam, Kerala-682505
- 3 Sanju K S, aged 32 years, S/o.Selvan, Kalathithara House, New Colony, Njarakkal PO, Vypin, Ernakulam, Kerala -682505, Managing Partner M/s.Indo Marine Sea Foods having its registered office at Kalanganthuruthil House, Njarakkal PO, Vypin, Ernakulam, Kerala-682505
- 4 Linesh Kalesan, aged 35 years, S/o.Kalesan, Ramadi House, Njarakkal PO, Vypin, Ernakulam, Kerala-682505, Managing Partner M/s.Indo Marine Sea Foods having its registered office at Kalanganthuruthil House, Njarakkal PO, Vypin, Ernakulam, Kerala-682505

By Adv. Dennizen Komath, Rekha V & Dastus Komath

Respondents/Plaintiff and 5th Defendant:-

1. Sanoj, aged 37 years, S/o.Suresh, Paruthiezath House, Near Shodara Nagar, Njarakkal PO, Vypin, Ernakulam, Kerala -682505 (plaintiff)
2. T C Praveen, S/o.Chandran, Fona-Aqua Farm, Kanakar Karki,

Honnavar, Karnataka-581341

R1 By Adv. Anwar C K & Safeena M A

R2 Exparte

This petition come up for hearing before me on 26.07.2025 and the court on 06.08.2025 passed the following:-

ORDER

This is an application filed by the petitioner seeking to hear and decide the issue of maintainability of the suit.

2. **The averments contained in the application is as follows** :- The petitioners are the defendants in the suit. The above suit is filed for realization of money by the respondents. The defendants 1 to 4 had categorically denied the transaction and filed a written statement. Thereafter the case was listed for trial on 10/03/2025. On that day plaintiff had produced an agreement dated 12/10/2017 alleged to be executed between plaintiff and defendants 2 to 4 acknowledging the plaint transaction and the document is sought to be marked as Ext. P4 in the proof affidavit. The defendants 1 to 4 have filed an objection categorically denying the petition for receiving the documents numbered as IA 13/2025 that those documents are belatedly produced without any mention in the plaint and hence inadmissible. On perusal of the

said agreement it is seen that in Clause 16 of the said document in page number 5 it is stated as “ All disputes and differences arising out of this Agreement between the parties relating to this Agreement or its implementation or to the rights and obligation of the parties shall be preferred to a single Arbitrator to be agreed upon by the parties, and the parties will share the cost of such Arbitrator equally. In the event that the parties are unable to agree on a single Arbitrator each party shall appoint one Arbitrator and the two appointed Arbitrator shall appoint a third Arbitrator who shall act as the presiding Arbitrator in accordance with and subject to the provisions of the Arbitration and Conciliation Act, 1996 as it may be amended from time to time.” In the light of the said provision plaintiff is legally prevented from instituting a suit before the civil court. The petitioners herein have not been provided with an opportunity to raise issue regarding maintainability in the written statement or any later stage since the Agreement dated 12/10/2017 which contains the Arbitration Clause is produced before the court only on 10/03/2025, even without serving a copy to the petitioners and without stating any valid cause for non

production of this document earlier. Hearing on maintainability is necessary in this case. Hence the petition.

3. Respondent filed objection vehemently disputing the averments in the petition. The respondent is the plaintiff in the suit. The respondent contended that both the parties involved in the agreement have the full knowledge about the Arbitration agreement. Both the parties signed the said agreement. However the defendants already filed written statements denying the transaction and agreements between the parties. The present application is filed raising an arbitration clause from an agreement, where its existence itself is denied by the petitioners/defendants. It is submitted that a party who willingly participates in the proceedings in the suit and subjects himself to the jurisdiction of this court cannot be directed to arbitration in view of mere existence of an arbitration clause especially when the parties have already filed their statement to the civil court. The petitioner was very well known to the existence of an arbitration agreement and the petitioners have not preferred to file any petition under Section 8 of Arbitration and Conciliation Act before this Hon'ble Court. The petitioners have no contention about the

primary issue of maintainability even in the written statement. This court framed issues consequently gave enough opportunities to both the parties at the stage of pre-trial. The present petition is against the dictum laid down by the Hon'ble Supreme Court in Mahesh Kumar v Rajasthan state Road Transport Corporation AIR 2006 RAJ 56. The petitioners are not challenging the existence or the content or even the signature of the parties in the agreement. The respondent submitted that the petitioner's allegations are frivolous and without merit and no valid or sufficient reason has been demonstrated regarding the maintainability of the petition and hence the petition deserves to be dismissed.

4. Following issues were settled for determination:-

- (i) Whether the petition can be allowed?
- (ii) Reliefs and Costs?

5. Issue No.(i):- The petitioner is the defendant in the suit. The suit is filed by the respondent for realization of money. Admittedly, the defendants filed their written statements at their earliest opportunity. But the agreement pertaining to the existence of the arbitration clause was filed by the respondent only on 10.03.2025,

when the case is listed for trial. The arbitration clause in the said agreement is stated as follows, “ All disputes and differences arising out of this Agreement between the parties relating to this Agreement or its implementation or to the rights and obligation of the parties shall be preferred to a single Arbitrator to be agreed upon by the parties, and the parties will share the cost of such Arbitrator equally. In the event that the parties are unable to agree on a single Arbitrator each party shall appoint one Arbitrator and the two appointed Arbitrator shall appoint a third Arbitrator who shall act as the presiding Arbitrator in accordance with and subject to the provisions of the Arbitration and Conciliation Act, 1996 as it may be amended from time to time.” So from the recitals in the agreement, it is undoubtedly clear upon the intention of the parties to appoint an arbitrator for resolving the disputes and differences between the parties based upon this agreement. According to the respondent, the present agreement forms the basis of the evidence regarding his claim for realization of money. On a perusal of the plaint it is crystal clear that the plaint is silent regarding the existence of this agreement. Hence, this court cannot expect the petitioners/defendants to incorporate their averments regarding this agreement in the written statement filed by them at the earlier stage of

the suit, as the agreement was produced only on 10.03.2025, at the time of trial. It is also equally important to note that the respondent is also admitting the validity and existence of such an arbitration clause in the agreement and the intention of the parties to appoint an arbitrator to resolve the issue is very well evident from clause 16 of the agreement produced by the respondent himself. There is no ambiguity in the said recital of the agreement. In **HINDUSTAN PETROLEUM CORPORATION LTD vs PINKCITY MIDWAY PETROLEUMS (2003 KHC 1492, 2003 (6) SCC 503)**, the Honourable Supreme Court in Paragraph 14, specifically and categorically stated after referring to its earlier judgement in *P. Anand Gajapathi Raju and others vs P.V.G Raju (Dead) and others (2000(4) SCC 539, 2000 KHC 1157)*, “ *The language of Section 8 is peremptory in nature. Therefore, in cases where there is an arbitration clause in the agreement, it is obligatory for the court to refer the parties to arbitration in terms of their arbitration agreement and nothing remains to be decided in the original action after such an application is made except to refer the dispute to an arbitrator.*” In view of the mandatory nature of the Section 8 of the Arbitration and Conciliation Act, 1996, and the absence of any

material to show that the arbitration agreement is null and void, inoperative, or incapable of being performed, this court is satisfied that the present matter must be referred to arbitration and this court has no jurisdiction to entertain the matter. Accordingly issue No.(i) is found in favour of the petitioner.

6. Issue No.(ii):- In the light of above findings, the petition is liable to be allowed without costs.

In the result, I.A No.14/2025 is allowed. The question of maintainability is upheld in favour of the petitioners. The suit is not maintainable before this court in view of the binding arbitration clause, and the matter is referred to arbitration under Section 8 of the Arbitration and Conciliation Act,1996.

Dictated to the Confdl.Asst, typed by her corrected and pronounced by me in open Court on this the 6th day of August 2025.

Sd/-
Simi P Siju
Additional Munsiff

APPENDIX : Nil

Id/-
Additional Munsiff

//True Copy//

Additional Munsiff

O R D E R

I.A. No.14/2025 in

O.S. No.332/2018

Dated : 06.08.2025