



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE SYAM KUMAR V.M.

MONDAY, THE 17TH DAY OF FEBRUARY 2025 / 28TH MAGHA, 1946

AR NO. 156 OF 2024

PETITIONER:

SABU JOSEPH
AGED 48 YEARS
S/O. JOSEPH
ANGADIPPURAM VILLAGE, PARIYAPURAM DESOM,
PERINTHALMANNA TALUK, ANGADIPPURAM P.O.,
MALAPPURAM DISTRICT, PIN - 679321

BY ADV C.DINESH

RESPONDENTS:

1 RAJESH
AGED 41 YEARS
S/O. RAMACHANDRAN NAIR,
ALAUATH HOUSE, PATTITHARA VILLAGE,
PATTITHARA DESOM, OTTAPALAM TALUK, PATTITHARA P.O.,
PALAKKAD DISTRICT-, PIN - 679534

2 ABBAS
AGED 39 YEARS
KUNNATHUPEEDIYEKKAL HOUSE, CHERUPLASSERI AMSOM
DESOM, OTTAPALAM TALUK, CHERUPLASSERI P.O.,
PALAKKAD DISTRICT, PIN - 679503

BY ADV.SRI.P.Jayaram, R1 & R2

THIS ARBITRATION REQUEST HAVING COME UP FOR ADMISSION ON
12.02.2025, THE COURT ON 17.02.2025 DELIVERED THE FOLLOWING:



ORDER

Dated this the 17th day of February, 2025

Petitioner has filed this Arbitration Request invoking Section 11 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as “the Act”), seeking to appoint an Arbitrator to resolve the disputes that have arisen between the petitioner and the respondents.

2. Petitioner and the respondents had entered into Annexure1 partnership deed dated 13.06.2023 for carrying on business under the name and style “Lintas Beauty Salon & Bridal Studio”. The said partnership deed contains an arbitration clause as clause 18, which reads as follows :

“18. That if any dispute shall arise between the partners in respect of the conduct of the business of the partnership or in respect of the interpretation, operation or enforcement of any of the terms and conditions of this deed or in respect of any other matters, clause, or things whatsoever or not herein provided for the same shall be settled by arbitration.”

3. It is stated that Annexure1 deed envisaged the petitioner to be the Managing Partner of the partnership firm and that the petitioner had taken steps towards furthering business of the firm like entering into a



licence agreement with the owner of the building wherein the parlour was to be based, furnishing the same, obtaining a licence from Cherpulassery Municipality in the name of the firm etc. Subsequently, various disputes arose between the petitioner and the respondents concerning running of the firm, the intricate details whereof may not be of relevance for the disposal of this Arbitration Request. Suffice it to say that a legal notice dated 19.04.2024 invoking the arbitration clause was issued by the petitioner to the respondents. Since the respondents did not reply favourably to the request for appointment of Arbitrator, the petitioner has moved this Arbitration Request invoking the jurisdiction vested in this Court under Section 11 of the Act.

4. The respondents entered appearance and filed a detailed counter affidavit producing therewith Annexures R1 (a) to R1 (d). They admitted in the counter affidavit that Annexure 1 partnership deed dated 13.06.2023 had been executed between the parties, and the firm had started functioning. However, they denied knowledge regarding the registration of the firm and contended that the firm had already been dissolved in the year 2023 itself. The contentions put forth by the petitioner in the Arbitration Request regarding him expending money



and furnishing the building are denied and they put forth a different version regarding the events leading to the creation of the partnership. It is stated that the respondents had contributed substantially to the partnership and had put in more money than the petitioner. All the allegations made by the petitioner in the Arbitration Request as against the respondents including those concerning the alleged transferring of money to the personal account, removing staff of the firm etc. are denied. After elaborating on their version of facts, the respondents primarily contend that reference to arbitration as sought in the Arbitration Request is not maintainable as the partnership had already been dissolved as evidenced by a deed of dissolution produced as Annexure R1(d). The counter affidavit also placed reliance on Annexure R1(a), the M.A.(Arbitration) No.1 of 2024 filed by the petitioner before the before the Commercial Court, Ottappalam, and Annexure R1(b) written statement filed therein by the respondents therein. The reply notice dated 04.05.2024 caused to be issued by the respondents is also produced and relied upon.

5. The petitioner filed a reply affidavit dated 18.01.2025 *inter alia*, stating that he has no knowledge of the alleged execution of Annexure



1(d) deed of dissolution. He denied signing such a dissolution deed and stated that the same was a forged document. All statements regarding the dissolution of the firm are denied by him and state that he has never issued a cheque for withdrawing any amounts as alleged in paragraph 6 of the counter affidavit. He states that the respondents had forged his signature on the cheque and had withdrawn amounts from the account of the firm and that the money had been re-deposited after the petitioner raised a complaint. He claims that he has witnesses and documents to prove the alleged forgery committed by the respondents

6. Heard Sri.C.Dinesh, Advocate appearing for the petitioner and Sri.P.Jayaram, Advocate on behalf of respondents 1 and 2.

7. While the learned counsel appearing for the petitioner would contend that since the existence of the arbitration clause in Annexure 1 partnership deed is admitted by the respondents and as they also admit the receipt of the notice of invocation of the arbitration clause, the primary mandate for referring the matter to arbitration stands satisfied. On the other hand, it is vehemently contended by the counsel appearing for the respondents that in so far as the petitioner has alleged that the execution of Annexure R1(d) deed of dissolution is a



result of forgery and that the petitioner's signatures had been forged by the respondents on the dissolution deed as well as on the cheque and that he has witnesses and documents to prove forgery allegedly committed by the respondents, the request that the matter should be referred to arbitration does not subsist as forgery and fraud falls beyond the competence of the Arbitrator to arbitrate. It is further submitted by the learned counsel for the respondents that in so far as the partnership deed has already been dissolved, there is no question of referring the parties to arbitration as nothing actually survives to arbitrate.

8. The learned counsel appearing for the petitioner, relies on the dictum laid down by the Hon'ble Supreme Court in **SBI General Insurance Co. Ltd. v. Krish Spinning** [(2024) SCC OnLine SC 1754) and submits that dissolution of the partnership deed will not by itself operate as a bar to arbitration merely because of the fact that execution of the said deed of dissolution is challenged on the grounds of forgery and fraud. He points to the dictum laid down by this Court in **C. Assiamma v. State Bank of Mysore and others** [AIR 1990 Ker. 157] and submits that notwithstanding the retirement of a partner from a firm, he and the partners continue to be liable as partners to third



parties for any act done by any of them which would have been an act of the firm if done before the retirement until public notice is given of the retirement. No such public notice has been given and the document of dissolution is forged. Hence the subject matter of dispute continues to be arbitrable contends the learned counsel. As regards fraud not being an arbitrable matter, the learned counsel for the petitioner relying on the dictum laid down by the Hon'ble Supreme Court in **Ayyasamy A. v. Paramasivam and others** [2016 KHC 6663] submits that a mere allegation of fraud simpliciter does not by itself constitute a ground to nullify the effect of the arbitration agreement between the parties. It is further submitted that in so far as the outstanding disputes between the parties are under Annexure1 partnership deed and the existence of such a deed including the arbitration clause therein is not disputed by the parties, the said arbitration clause would continue to govern the parties. The alleged subsequent dissolution does not impact the arbitration clause in Annexure1 at all. Further, it is submitted that M.A. (Arb.) No.1 of 2024 had been filed before the Commercial Court, Ottappalam, by the petitioner and a written statement had already been filed therein by the respondents. All these steps were initiated pursuant



to the arbitration clause.

9. After hearing both parties and on perusal of the pleadings and documents, I note that the question to be considered is whether a valid arbitration agreement subsists between the parties meriting reference of the disputes between them to arbitration. I note that the execution of Annexure 1 partnership deed between the parties stands admitted. The parties agree that there was an arbitration clause in Annexure 1 partnership deed. The principal dispute is only whether the said deed had been dissolved subsequently. It is trite that the arbitration clause would outlive the principal agreement and will continue to bind the parties to arbitrate their disputes and differences arising under the mother contract. Hence the dissolution, if any, of the partnership deed does not by itself obliterate the arbitration clause nor nullify its impact. It would, like the proverbial 'smile on the face of the cat in Alice in Wonderland', continue to linger on in the air even after the cat has moved out from the scene. Annexure 4 notice of of invocation had been issued *inter alia* raising disputes on various counts including the refusal to settle the accounts of the firm. As long as the said disputes remain outstanding, the petitioner has a right to seek resolution for the same by



recourse of the arbitration clause in the partnership deed. Merely because the contention regarding the dissolution of the firm has been refuted stating that the purported deed of dissolution is a forged one, does not by itself lead to categorise the subject matter of the dispute as non-arbitrable and shift it into the realm of criminal adjudication.

Ayyasamy (supra) *inter alia* stipulates that arbitration could be out of the question, if fraud is alleged against the arbitration provision itself or is of such nature that permeates the entire contract, including the agreement to arbitrate, meaning thereby in those cases where fraud goes to the validity of the contract itself or the entire contract which contains the arbitration clause or the validity of the arbitration clause itself. I note that the allegations raised herein, as alluded in **Ayyasamy** (supra) are rather simple allegations of fraud touching upon the affairs of the parties *inter se* and it has no implications in the public domain. Hence the arbitration clause need not be avoided and the parties can be relegated to arbitration.

10. The essential elements to constitute an arbitration agreement viz., (1) The presence of a present or a future difference in connection with some contemplated affair. (2) Intention of the parties to settle such



differences by a private Tribunal. (3) Agreement in writing to be bound by the decision of such Tribunal, and (4) the parties being in *ad idem* regarding same, are found satisfied. [See **Babanrao Rajaram Pund v. Samarth Builders & Developers and another** (2022) 9 SCC 691]. It is trite that the Arbitrator can decide on questions regarding jurisdiction/arbitrability/maintainability and limitation, if any, in the arbitration proceedings.

11. In view of the above, I find it fit and appropriate to allow the Arbitration Request and to appoint a lawyer from the panel of Arbitrators maintained by this Court, as the sole Arbitrator.

Accordingly, this Arbitration Request stands allowed and it is ordered as follows :

(i) Advocate Sri.T.Giri, "Sakthi", Venketesapuram Colony, Puthur, Palakkad-1, is nominated as the sole Arbitrator to resolve the disputes that have arisen between the petitioner and the respondents under Annexure-1 partnership deed.

(ii) The learned Arbitrator may entertain all disputes/issues between the parties in connection with the said partnership deed, including questions of jurisdiction, arbitrability and limitation, if



any, raised by the parties.

(iii) The Registry shall communicate a copy of this order to the learned Arbitrator within ten days from today and obtain a Statement of Disclosure from the learned Arbitrator as stipulated under Section 11(8) read with Section 12(1) of the Act.

(iv) Upon receipt of the Disclosure Statement, the Registry shall issue to the learned Arbitrator a certified copy of this order with a copy of the Disclosure Statement appended. The original of the Disclosure Statement shall be retained in Court.

(v) The fees of the learned Arbitrator shall be governed by the Fourth Schedule of the Act.

Sd/-

**SYAM KUMAR V.M.
JUDGE**



APPENDIX OF AR 156/2024

PETITIONER'S ANNEXURES

- | | |
|-------------------|--|
| Annexure 1 | THE TRUE COPY OF THE PARTNERSHIP DEED
EXECUTED BETWEEN THE PETITIONER AND THE
RESPONDENTS HEREIN DATED 13.06.2023 |
| Annexure 2 | TRUE COPY OF THE REGISTRATION CERTIFICATE
DATED 29.01.2024 |
| Annexure 3 | TRUE COPY OF THE LICENSE AGREEMENT DATED
01.05.2023 |
| Annexure 4 | TRUE COPY OF THE LAWYER NOTICE DATED
19.04.2024 |
| Annexure 5 | TRUE COPY OF THE POSTAL RECEIPTS ALONG
WITH ACKNOWLEDGMENT CARDS |

RESPONDENTS' ANNEXURES

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|------------------------|---|
| Annexure R1 (c) | A true copy of the reply notice dated
04/05/2024 issued by our counsel in reply
to Annexure 4 lawyer notice sent by the
petitioner |
| Annexure R1 (d) | True copy of the deed of dissolution
dissolving the partnership among the
petitioner and respondents |
| Annexure R1 (a) | A true copy of the M.A., Arbitration No.
1 of 2024 |
| Annexure R1 (b) | A true copy of the written statement
filed by the respondents in M.A.,
Arbitration No. 1 of 2024 |