



2026:KER:36551

Arb.A.No.15 of 2026

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE S.MANU

TUESDAY, THE 26<sup>TH</sup> DAY OF MAY 2026 / 5TH JYAISHTA, 1948

ARB.A NO. 15 OF 2026

AGAINST THE ORDER DATED 28.04.2026 IN IA IA 7/2026 IN IA 4/2026 & IA 8/2026 IN IA.4/2026 IN MA(Arbitration)NO.921 OF 2026 OF DISTRICT COURT (VACATION COURT), ERNAKULAM

APPELLANT/1<sup>st</sup> RESPONDENT IN IA/APPLICANT:

M.J. THOMAS  
AGED 73 YEARS  
S/O. LATE M.C JOHN, RESIDING AT MALIYAKKAL HOUSE,  
EDAKOCHI, KOCHI, PIN - 682010

BY ADVS.ELVIN PETER P J(SR)  
SRI.K.R.GANESH

RESPONDENTS/APPLICANT & RESPONDENT No.2 IN IA/RESPONDENTS:

- 1 V.P ABDUL AZEEZ  
AGED 71 YEARS  
S/O. LATE PAREEDKUTTY, RESIDING AT VADAPPILLY HOUSE,  
AMBATTUKAVU, ALUVA, ERNAKULAM, PIN - 683106.
- 2 THE EXECUTIVE ENGINEER  
PROJECT DIVISION, KERALA WATER AUTHORITY,  
KOCHI, PIN - 682011.

BY ADVS.SRI.K.C.SANTHOSHKUMAR  
SRI.GEORGIE JOHNY, SC KERALA WATER AUTHORITY  
SRI.SUJITH MATHEW JOSE, ADDITIONAL STANDING COUNSEL,  
KERALA WATER AUTHORITY  
SMT.K.K.CHANDRALEKHA

THIS ARBITRATION APPEAL HAVING COME UP FOR ADMISSION ON  
26.05.2026, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



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**S.MANU, J.**

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Dated this the 26<sup>th</sup> day of May, 2026

**JUDGMENT**

Applicant in M.A.(Arbitration)No.921/2026 of the District Court, Ernakulam is the appellant herein. Contest is against a common order passed by the learned Additional District and Sessions Judge-V, (Vacation Court), Ernakulam on 28.4.2026 in I.A.No.7/2026 in I.A.No.4/2026 and I.A.No.8/2026 in I.A.No.4/2026 in the M.A.(Arbitration). Operative part of the interim provisional order under challenge reads as under:-

“(1) The respondent No.2 in MA (Arb) 921/2026 is restrained from making payment of Rs.98,50,365/- to the 1<sup>st</sup> respondent out of Rs.1,97,00,730/- to his SB Account No.57027664380 in the State Bank of India, Thaikkattukara branch and the 1<sup>st</sup> respondent is hereby restrained from claiming Rs.98,50,365/- from the 2<sup>nd</sup> respondent out of the final bill amount of Rs.1,97,00,730/- on account of



completion of the work under Annexure A1 agreement till 18.05.2026.

(2) The petitions are allowed to that extent.”

2. Essential facts to be noted are as follows:-

According to the Appellant, he and the 1<sup>st</sup> respondent are registered 'A' class contractors of the Kerala Water Authority. The 1<sup>st</sup> respondent was awarded a contract for the construction of an overhead reservoir at Chellanam by the KWA and Annexure-A1 agreement was executed on 11.2.2011. The 1<sup>st</sup> respondent, on the same day, executed Annexure-A2 partnership agreement with the appellant for jointly executing the work awarded by KWA. Paragraph 5 of Annexure-A2 shows that the main object of the partnership arrangement was for execution of two civil works including the overhead reservoir at Chellanam. Paragraph 6 shows that the total capital of the firm, Rs.50,00,000/-, was contributed by the appellant and the 1<sup>st</sup> respondent equally by pooling Rs.25,00,000/- each. Paragraph



12 shows that they had agreed to operate a joint account for receiving all payments from the Water Authority. Paragraph 9 shows that they had agreed to divide among themselves and appropriate half of the total book profit/net profit. Paragraph 25 stipulates that in case of any dispute or difference between the parties with regard to the construction, meaning or effect of the deed or any part thereof or respecting the accounts, profits and losses of the business or rights and liabilities of the partnership under the deed or dissolution or winding up of the partnership or any matters relating to the firm shall be referred to arbitration.

3. As per the version of the appellant, the work was successfully finished in the year 2016. A total amount of Rs.8,76,74,270/- was credited in the joint account in 13-part bill payments. The final bill amount is Rs.1,97,00,730/-. The appellant expected that the said amount also will be credited to the joint account. However, he was astounded to know from the authorities of the KWA that the 1<sup>st</sup> respondent, on 20.8.2020,



issued a letter to the 2<sup>nd</sup> respondent, requesting that the remaining amounts shall be deposited in the account maintained by the 1<sup>st</sup> respondent in SBI, Thaikkattukara branch. Though the appellant remonstrated, the 1<sup>st</sup> respondent did not withdraw the letter.

4. On coming to know that the final bill amount was received in the office of the 2<sup>nd</sup> respondent on 10.3.2026 and the same will be deposited in the account of the 1<sup>st</sup> respondent, contemplating arbitration proceedings, the appellant filed M.A. (Arbitration)No.2/2026 before the Commercial Court, Kochi to restrain the KWA from disbursing the final bill amount to the 1<sup>st</sup> respondent. The Principal Sub Judge, Ernakulam, holding charge of the Commercial Court, Kochi, on 13.03.2026, passed an order restraining the KWA from disbursing the amount to the 1<sup>st</sup> respondent. On receiving notice, the 1<sup>st</sup> respondent entered appearance before the Principal Sub Court and filed counter affidavit. Various contentions were raised. It was also contended that the partnership agreement relied on by the appellant was a



concocted document. The 1<sup>st</sup> respondent also contended that the appellant was a financier and he had no role in execution of the work. I.A.No.4/2026 was filed by the 1<sup>st</sup> respondent to vacate the interim order. A reply was filed by the appellant to the counter affidavit of the 1<sup>st</sup> respondent.

5. In view of gazette notification dated 5.3.2026 and O.M. dated 17.3.2026 issued by this Court, the learned Principal Sub Judge transferred M.A.(Arb.)No.2/2026 to the District Court, Ernakulam wherein it was renumbered as M.A. (Arbitration)No.921/2026. On 8.4.2026, the case was heard by the learned Additional District Judge and was posted on 10.4.2026. According to the appellant, it was adjourned to 10.4.2026 for pronouncing orders. But on 10.4.2026 the case was adjourned to 18.5.2026 for further hearing.

6. The 1<sup>st</sup> respondent filed I.A.Nos.7/2026 and 8/2026 before the vacation court to advance the case and for passing urgent orders. The learned vacation Judge heard the parties on 28.4.2026 and passed the impugned order. The learned Judge



held that the initial interim order passed by the learned Sub Judge was void on account of inherent lack of jurisdiction and passed the impugned order restraining the 2<sup>nd</sup> respondent KWA from disbursing Rs.98,50,365/- to the 1<sup>st</sup> respondent out of the final bill amount of Rs.1,97,00,730/- on the assumption that 50% of the final bill amount would be preserved as the partnership agreement provided for sharing of profit equally between the appellant and the 1<sup>st</sup> respondent. Deeply aggrieved by the order passed by the learned vacation judge this appeal was filed.

7. Heard Senior Advocate Elvin Peter for the appellant and Advocate K.C.Santhoshkumar for the 1<sup>st</sup> respondent.

8. The learned Senior Counsel for the appellant assailed the impugned order on various grounds. The learned Senior Counsel argued that the power under Section 9 of the Arbitration and Conciliation Act, 1996 is primarily intended to protect the subject matter of the dispute and to pass appropriate interim orders in order to facilitate effective arbitral



proceedings. The learned Senior Counsel submitted that by permitting the KWA to release half of the final bill amount to the 1<sup>st</sup> respondent, the learned Additional District Judge has exceeded the jurisdiction under Section 9. He further contended that the learned Judge omitted to note that the matter was heard by the regular court and was posted to 18.5.2026 for further hearing. Under such circumstances, the vacation court ought not to have taken up the matter and passed the impugned order. He also submitted that the learned vacation Judge proceeded on a totally erroneous premise that the final bill amount is the net profit. He submitted that the learned Judge facilitated release of 50% of the final bill amount to the 1<sup>st</sup> respondent under the mistaken impression that the said amount is the share of the 1<sup>st</sup> respondent in net profit. He also submitted that the relief granted was not interim in nature. He also submitted that the apportionment of profit is a matter which can be decided only by the arbitrator. The learned counsel contended that the dispute squarely falls within the definition of



commercial dispute under the Commercial Courts Act. Further, he submitted that though the partnership agreement is not registered, the appellant is entitled to invoke the arbitration clause. So also, it is open to the appellant to invoke Section 9 of the Arbitration and Conciliation Act. He refuted the contention of the 1<sup>st</sup> respondent that Annexure A2 partnership agreement is a concocted document. He pointed out that the stamp paper for executing the agreement was purchased by the 1<sup>st</sup> respondent. He also pointed out that a joint account was operated by the appellant and the 1<sup>st</sup> respondent and amounts under 13 part bills were credited to the said account by the KWA. He therefore submitted that the denial of arbitration agreement by the 1<sup>st</sup> respondent is without bonafides. He submitted that the intention of the 1<sup>st</sup> respondent was to appropriate the entire final bill amount for himself and to deny the due share of profit to the appellant. He submitted that the impugned order cannot be sustained and it is liable to be set aside. He relied on the following judgments:-



- 1) **Dev Prakash and Another v. Indra and Others** [(2018) 14 SCC 292].
- 2) **Hari Kumar v. M/s. Shriram Transport Finance Company Ltd.** [2018 SCC OnLine Ker 325].

9. Adv.K.C.Santhoshkumar, on the other hand, submitted that the M.A.(Arbitration) as well as the instant appeal are misconceived. He submitted that the alleged partnership agreement is not valid. He pointed out that the stamp paper used for preparing the alleged agreement was purchased on 12.11.2010 and the date of agreement is 11.2.2011. He submitted that the same is suspicious. He also submitted that the appellant is a financier and the 1<sup>st</sup> respondent had availed amounts from him for the purpose of executing the work. There was no partnership as claimed. He submitted that the proceedings before the Commercial Court is thoroughly misconceived as reliefs are sought against the KWA which is not a party to the arbitration agreement. He also



contended that the learned Sub Judge seriously erred in passing the order restraining KWA from disbursing amounts for the reason that even before the M.A.(Arbitration) was filed, the Government had issued notification amending the notification dated 24.2.2020. With the issuing of the notification dated 5.3.2026, commercial disputes under the Arbitration and Conciliation Act fell exclusively within the jurisdiction of the District Court. Therefore, the order dated 13.3.2026 by the Principal Sub Court Ernakulam in I.A.No.1/2026 restraining the 2<sup>nd</sup> respondent KWA from making payment of Rs.1,97,00,730/- to the 1<sup>st</sup> respondent was without jurisdiction. Though I.A.No.4/2026 was filed by the 1<sup>st</sup> respondent to vacate the interim order, so far, no orders have been passed in the I.A. He contended that the learned vacation Judge passed the impugned order in the interest of justice and the same is well within the scope of Section 9 of the Arbitration and Conciliation Act, 1996. He submitted that no interference is warranted in the instant appeal and it is only to be rejected.



10. On appreciation of the contentions raised by both sides, I am of the view that the learned Vacation Judge transgressed the jurisdiction under Section 9 of the Arbitration and Conciliation Act while passing the impugned order. The object of conferring jurisdiction on civil courts under Section 9 is for passing appropriate interim orders and to take interim measures of protection for the purposes mentioned under Section 9 including securing the amount in dispute in the arbitration. In the instant case, the precise dispute between the appellant and the 1<sup>st</sup> respondent is regarding the entitlement of the appellant for sharing the profit obtained by executing the work under Annexure A1 agreement. The final bill amount has been sanctioned. It is also discernible that the 1<sup>st</sup> respondent requested KWA to pay the said amount to his account and not to the joint account to which all previous payments were credited to. The disputes raised as to the validity of the arbitration agreement, genuineness of the partnership agreement, etc. are



matters of evidence. The impact of the impugned order is that the court has virtually permitted payment of 50% of the final bill amount to the 1<sup>st</sup> respondent. I find considerable merit in the contention of the appellant that the learned Judge proceeded under the impression that the final bill amount is the net profit. In my view by permitting release of 50% of the final bill amount to the 1<sup>st</sup> respondent, the learned Judge slipped into the realm of adjudication of the dispute on merits reserved for the arbitrator. The said order can be considered only as one passed exceeding the jurisdiction under Section 9 of the Act. The learned Judge ought to have noted that the case was already posted to 18.5.2026 for further hearing and it was therefore not appropriate to pass an order permitting release of a substantial portion of the final bill amount in the vacation sitting.

11. In view of the foregoing discussion, I allow the appeal. The impugned order is set aside. The learned Additional District Judge shall endeavour to dispose the M.A. (Arbitration) as early as possible. The learned counsel for the 1<sup>st</sup>



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respondent had submitted that the application for vacating the interim order is pending and that may be directed to be considered expeditiously. It will be open to the 1<sup>st</sup> respondent to request the court to pass orders in I.A.No.4/2026 expeditiously if it may take further time to pass final order in the M.A.(Arbitration). In such an event the court shall take up I.A.No.4/2026 and pass orders on the same expeditiously.

Appeal is allowed. No costs.

Sd/-

**S.MANU  
JUDGE**

skj



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APPENDIX OF ARB.A NO. 15 OF 2026

**PETITIONER'S ANNEXURES**

<b>ANNEXURE A1</b>	<b>TRUE PHOTOCOPY OF THE AGREEMENT DATED 11.02.2011</b>
<b>ANNEXURE A2</b>	<b>TRUE PHOTOCOPY OF THE PARTNERSHIP DEED DATED 11.02.2011 ENTERED INTO BETWEEN THE APPELLANT AND THE 1ST RESPONDENT</b>
<b>ANNEXURE A3</b>	<b>TRUE COPY OF THE STATEMENT OF ACCOUNT OF THE JOINT ACCOUNT OPERATED BY THE APPELLANT AND THE 1ST RESPONDENT IN THE BANK OF INDIA, M.G. ROAD BRANCH</b>
<b>ANNEXURE A4</b>	<b>TRUE COPY OF THE LETTER DATED 20.08.2020 ISSUED BY THE 1ST RESPONDENT TO THE 2ND RESPONDENT</b>