



2026:KER:52944

OP(C) NO. 2182 OF 2024

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE T.R.RAVI

WEDNESDAY, THE 15TH DAY OF JULY 2026 / 24TH ASHADHA, 1948

OP(C) NO. 2182 OF 2024

ORDER DATED 09.09.2024 IN EP 54/2024 IN CMA(Arb) NO.28
OF 2023 OF I ADDITIONAL DISTRICT COURT, THIRUVANANTHAPURAM

PETITIONER/5TH RESPONDENT:

INVIS PRIVATE LIMITED
FORMERLY KNOWN AS
INVIS MULTIMEDIA PRIVATE LIMITED,
HAVING ITS REGISTERED OFFICE AT PANDITS COLONY,
KOWDIAR, THIRUVANANTHAPURAM DISTRICT,
PIN 695 003
REPRESENTED BY ITS MANAGING DIRECTOR
HARIKRISHNAN P V,
AGED 66 YEARS,
S/O VELAYUDHAN NAIR
RESIDING AT P V BUNGALOW,
PERUKAVU P O,
THIRUVANANTHAPURAM DISTRICT,
PIN - 695573

BY ADVS.
SHRI.M.UNNIKRISHNAN
SRI.S.SREEKUMAR (SR.)

RESPONDENTS/PETITIONER & RESPONDENTS 1 TO 4:

1 AJITH M R
AGED 60 YEARS



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S/O M.E.RAVINDRAN NAIR,
PARTNER, INVIS MULTIMEDIA,
FORMERLY KNOWN AS INDIAVISION INTERNATIONAL,
PANDITS COLONY, KAWDIAR,
THIRUVANANTHAPURAM DISTRICT,
PIN 695 003,
RESIDING AT MADATHIL HOUSE,
KUTTOOR P O, THIRUVALLA,
PATHANAMTHITTA DISTRICT,
PIN - 689106

2 INVIS MULTIMEDIA
FORMERLY KNOWN AS INDIAVISION INTERNATIONAL,
PANDITS COLONY, KAWDIAR,
THIRUVANANTHAPURAM DISTRICT,
REPRESENTED BY ITS MANAGING PARTNER
HARI MADATHILPARAMBIL RAJAPPAN NAIR.,
PIN - 695003

3 HARI MADATHILPARAMBIL RAJAPPAN NAIR
S/O RAJAPPAN NAIR,
INVIS MULTIMEDIA, PANDITS COLONY,
KOWDIAR, THIRUVANANTHAPURAM DISTRICT,,
PIN - 695003

4 SREEKANTHA LAL
PARTNER, INVIS MULTIMEDIA,
PANDITS COLONY, KOWDIAR,
THIRUVANANTHAPURAM DISTRICT,,
PIN - 695003

5 NRS BABU
S/O V.K.RAGAVAN,
PARTNER, INVIS MULTIMEDIA,
PANDITS COLONY, KOWDIAR,
THIRUVANANTHAPURAM DISTRICT,
PIN - 695003

BY ADVS.
SRI.VIJAY V. PAUL
SRI.T.K.ANANDA KRISHNAN
SMT.M.SHIMSMA
SMT.SAMAH ABDUL MAJID
SMT.ANGELA ELSA JOHN



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SMT.SHILPA SOMAN
SHRI.ROJIT ZACHARIAH
SHRI.ASHIS A.
SMT.JANAKI KRISHNAN A

THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 15.07.2026,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP(C) NO. 2182 OF 20244**“CR”****T.R. RAVI, J.**-----
O.P.(C). No.2182 of 2024
-----Dated this the 15th day of July, 2026**JUDGMENT**

This original petition has been filed challenging an order dated 09.09.2024 in E.P.No.54/2024 in CMA(Arb).No.28/2023 passed by the 1st Additional District Court, Thiruvananthapuram. The short facts required for deciding the issue are as follows;

2. The 1st respondent filed CMA(Arb).No.28/2023 before the Commercial Court, Thiruvananthapuram praying to pass an order restraining the respondents 3 to 5 herein and the Department of Tourism from utilising the assets of the 2nd respondent herein for the benefit of the petitioner. There was also a prayer for directing the Department of Tourism not to release any payment to the petitioner in pursuance of contract entered into with ICT Selection Provider for the Department. The 1st respondent is a partner of the 2nd respondent as well as a shareholder and Director of the petitioner herein. The 2nd respondent firm was constituted in 1995 and reconstituted on several occasions and finally on



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01.07.2015 and its partners were the respondents 1 & 3 to 5. The petitioner company was incorporated on 26.07.2000. The firm as well as the company were having similar businesses. In 2017, a consortium agreement was executed between the petitioner and the 2nd respondent (represented by the petitioner) for the purpose of undertaking work under the Tourism Department. According to the 1st respondent, since the 3rd respondent herein was the authorised signatory of the petitioner as well as the 2nd respondent, the consortium agreement was signed by him in that capacity on behalf of both the entities without getting the consent from the other partners or shareholders. The petition under Section 9 of the Arbitration and Conciliation Act, 1996 ('the 1996 Act' for short) was filed in the above circumstances. It is specifically stated in the application that the issue relates to the dispute between the partners and hence going by the arbitration clause contained in the partnership agreement, the petition is being filed despite the fact that the petitioner and the Department of Tourism are not party to the arbitration. An *ad interim* injunction was granted by the court below. The respondents entered appearance in the arbitration and thereafter a compromise was arrived at between the parties. The



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compromise was signed by all the parties and an application under Order XXIII Rule 3 of the Code of Civil Procedure was filed before the court and the court by Ext.P2 order dated 01.11.2023 recorded the compromise and closed the CMA (Arbitration) in terms of the compromise. It was specifically ordered that the compromise agreement shall form part of the order. Pursuant to Ext.P2 order, the 1st respondent performed his obligations and withdrew O.S.No.149/2023 filed before the Munsiff Court, Thiruvalla and also resigned from the directorship of the petitioner. However, the amounts to be paid to the 1st respondent was not paid. The 1st respondent filed execution petition to execute the compromise order Ext.P2. A contention was taken by the petitioner that Ext.P2 is not an executable order. By Ext.P5 order dated 09.09.2024, the 1st Additional Commercial Court, Thiruvananthapuram rejected the prayer and held that the execution petition is maintainable. In arriving at the said conclusion, the court held that the very purpose of Section 9 of the 1996 Act is to preserve the subject matter of the dispute and when orders are passed for that purpose, necessarily such orders are executable. The court found that any other interpretation would render the settlement or agreement based on



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which a Section 9 order was passed, futile. The court also noted that the jurisdiction of the court in entertaining the CMA(Arbitration) was not challenged by any party and even after taking a contention before the court that there is no arbitration agreement, the petitioner willingly participated in the compromise and also submitted an application before the court based on the compromise for an order in terms of the compromise. The court further held that the executing court cannot go behind the decree and question its correctness. Reference was also made to the judgment in **Brakewell Automotive Components (India) Ltd., (M/s.) v. P. R. Selvam Alagappan (2017 KHC 6211)** for the proposition that only in cases where a decree is passed by a court lacking inherent jurisdiction or where a decree is a nullity, can it be rendered *non est* and inexecutable. The said order is challenged by the petitioner, who was the 5th respondent in the CMA(Arbitration).

3. Heard Senior counsel Sri.S.Sreekumar, instructed by Sri M. Unnikrishnan on behalf of the petitioner, Sri.Vijay V.Paul appearing for the 1st respondent, Sri.T.K.Anandakrishnan appearing for respondents 2 & 3 and Sri.M.Shimsma appearing for the 4th respondent.



4. The Senior Counsel argued that unless the settlement is arrived at based on a reference under Section 89 of the Code of Civil Procedure or the settlement is under Section 30 of the 1996 Act, there can be no execution. It is contended that in all other cases it cannot be treated as an executable order or decree and can only be enforced by a separate suit. Section 89 of the Code of Civil Procedure reads thus:

“89. Settlement of disputes outside the Court.—

Where it appears to the Court that the dispute between the parties may be settled and there exists elements of settlement which may be acceptable to the parties, the Court may-

(a) refer the dispute to arbitration, and thereafter, the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply as if the proceedings for arbitration were referred for settlement under the provisions of that Act; or

(b) refer the parties to mediation, to the court-annexed mediation center or any other mediation service provider or any mediator, as per the option of the parties, and thereafter the provisions of the Mediation Act, 2023 shall apply as if the proceedings for mediation were referred for settlement under the provisions of that Act; or

(c) refer the dispute to Lok Adalath, in accordance with the provision of sub-section (1) of Section 20 of Legal Services Authorities Act, 1987 (39 of 1987) and



thereafter, all other provisions of that Act shall apply in respect of the dispute;

(d) effect compromise between the parties and shall follow such procedure as deemed fit for judicial settlement.

It is clear from a mere reading of the provision that it enables the court to refer parties for Alternate Dispute Resolution methods like arbitration, conciliation, judicial settlement including settlement through Lok Adalath or mediation. Section 89 of the Code of Civil Procedure does not take in a settlement arrived at by the parties on their own volition without recourse to any of the identified alternate dispute resolution methods stated therein. This does not mean that such settlements have no value in the eye of law. The five methods which have been recognised in Section 89 cannot be treated as exhaustive. Section 30 of the 1996 Act deals with settlements which are arrived at during the course of arbitration proceedings and hence will not apply to the facts of this case. As such, neither Section 89 of the Code of Civil Procedure nor Section 30 of the 1996 Act can have any relevance on the facts in issue.

5. In the case on hand, admittedly, the parties have entered into a settlement when the matter was pending before the court under Section 9 to the Arbitration Act. A reading of the

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compromise which was arrived at, would clearly show that all the parties to the dispute participated in the compromise and signed the agreement. The petitioner does not dispute the existence of the compromise agreement. It is seen from the agreement that two disputes were pending, one as CMA(Arbitration) No.28/2023 before the Commercial Court, Thiruvananthapuram and the other as OS No.149/2023 before the Munsiff Court, Thiruvalla, both initiated at the instance of the 1st respondent. The parties wanted a settlement of the disputes involved in the above two cases. The purpose itself was to vacate the injunction order dated 18.08.2023 passed in IA No. 3/2023 in CMA(Arbitration) No.28/2023. It is hence clear that the agreement was for a settlement of the disputes involved in a suit as well as in CMA(Arbitration). After arriving at the settlement, the parties consciously filed an application under Order XXIII Rule 3 of the Code of Civil Procedure. Order XXIII Rule 3 reads thus:

3. Compromise of suit.—Where it is proved to the satisfaction of the Court that a suit has been adjusted wholly or in part by any lawful agreement or compromise in writing and signed by the parties or where the defendant satisfies the plaintiff in respect of the whole or any part of the subject-matter of the suit, the Court shall



order such agreement, compromise or satisfaction to be recorded, and shall pass a decree in accordance therewith so far as it relates to the parties to the suit, whether or not the subject-matter of the agreement, compromise or satisfaction is the same as the subject-matter of the suit

Provided that where it is alleged by one party and denied by the other that an adjustment or satisfaction has been arrived at, the Court shall decide the question; but not adjournment shall be granted for the purpose of deciding the question, unless the Court, for reasons to be recorded, thinks fit to grant such adjournment.

Explanation.— An agreement or compromise which is void or voidable under the Indian Contract Act, 1872 (9 of 1872), shall not be deemed to be lawful within the meaning of this rule.

3A. **Bar to suit.**—No suit shall lie to set aside a decree on the ground that the compromise on which the decree is based was not lawful.

3B. No agreement or compromise to be entered in a representative suit without leave of Court.—(1) No agreement or compromise in a representative suit shall be entered into without the leave of the Court expressly recorded in the proceedings; and any such agreement or compromise entered into without the leave of the Court as recorded shall be void.

(2) Before granting such leave, the Court shall give notice in such manner as it may think fit to such persons as may appear to it to be interested in the suit.

Explanation.—In this rule, “representative suit” means,—

- (a) a suit under Section 91 or Section 92,
- (b) a suit under rule 8 of Order I,



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(c) a suit in which the manager of an undivided Hindu family sues or is sued as representing the other members of the family,

(d) any other suit in which the decree passed may, by virtue of the provisions of this Code or of any other law for the time being in force, bind any person who is not named as party to the suit.

It can be seen from a reading of the provision that it is applicable in a case where a lawful agreement or compromise in writing and signed by the parties regarding the whole or any part of the subject matter of the suit is placed before the court and the court is satisfied about the legality of the agreement. In the case on hand, the parties had a dispute and those disputes were settled by means of the compromise agreement. The court was satisfied about the legality of the agreement and it was accepted and the case was closed making the agreement a part of the order.

6. The contention of the Senior Counsel is that in such cases there is a requirement for drawing up a decree and it is only when an executable decree is drawn up, the parties can file an execution petition. The counsel for the 1st respondent submitted that having entered into a compromise pursuant to which the 1st respondent has performed his part of the agreement, it was not open to the petitioner to take a stand that they were not liable to

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perform their part. It is submitted that having approached the court with an Order XXIII Rule 3 petition, the petitioner was estopped from contending otherwise. Reliance is placed on the judgment of the Hon'ble Supreme Court in **Pushpa Devi Bhagat (Dead) Through Lr. Sadhna Rai (Smt) V. Rajinder Singh and Others (2006 KHC 833)** to submit that a consent decree under Order XXIII Rule 3 operates as an estoppel and is valid and binding unless it is set aside by the court which passed the consent decree, by an order on an application under the proviso to Rule 3 of Order XXIII. In the said judgment, the Hon'ble Supreme Court had considered the position prior to the Amendment Act 1976 and the position subsequent to the amendment and held that if it is alleged by one party and denied by the other that an adjustment or satisfaction has been arrived at, it is for the court which passed the decree to decide the position. Reliance is also placed on the judgment of a learned Single Judge of the High Court of Delhi in **Anand Gupta and Another V. Almond Infrabuild Private Limited and Another (2024 SCC Online Delhi 6184)** to submit that in a similar issue, the High Court of Delhi had held that the order passed in a petition under Section 9 of the Arbitration and



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Conciliation Act is executable. In **Anand Gupta (supra)**, pending an application under Section 9 of the 1996 Act, the parties had arrived at a settlement through the intervention of the Mediation Center attached to the Delhi High Court. The Section 9 application was disposed of in terms of the settlement and making the settlement as part of the record. When there was non-compliance with the terms of the settlement, execution was taken out for enforcement of the settlement agreement. A contention similar to that taken in this case was taken before the Delhi High Court stating that the order is not executable. The learned Single Judge relied on the decision of a Division Bench of the Delhi High Court in **Angle Infrastructure Pvt. Ltd. V. Ashok Manchanda & Others (2016 SCC OnLine Del 1534)** and held that the order is executable. In arriving at the decision, the court relied on Section 36 of the 1996 Act, which said that an arbitral award can be enforced in accordance with the provisions of the Code of Civil Procedure in the same manner as if it were a decree of the Court. The Court also held that in view of Section 36 of the Code of Civil Procedure, which equates orders with decrees, an order which is passed in terms of a settlement agreement will be executable under

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Section 36 of the Code of Civil Procedure in the same manner as a decree.

7. I find considerable force in the contentions raised by the counsel for the 1st respondent. After having arrived at a settlement and having invited the court to pass an order in terms of the settlement, it is not open to the petitioner to claim at a later point of time, that the said order cannot be enforced. The claim itself is preposterous particularly since the benefit of the said settlement has already been earned by the petitioner by having procured the compliance of the obligations of the 1st respondent. The contention that the order is not executable cannot be sustained in view of the law laid down in the decisions referred above. To hold otherwise will violate the sanctity of settlement arrived at which is an alternate dispute resolution method. The order of the court below does not call for any interference.

Original petition fails and is dismissed.

Sd/-

T.R. RAVI
JUDGE



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APPENDIX OF OP(C) NO. 2182 OF 2024

PETITIONER'S EXHIBITS

- | | |
|------------|--|
| Exhibit P1 | TRUE COPY OF THE PETITION IN CMA (ARB) CASE NO. 28/2023 FILED BY THE 1ST RESPONDENT BEFORE THE COMMERCIAL COURT, THIRUVANANTHAPURAM DATED 15.07.2023 |
| Exhibit P2 | TRUE COPY OF THE ORDER DATED 01.11.2023 OF THE 1ST ADDITIONAL COMMERCIAL JUDGE IN CMA (ARB) NO. 28/2023 |
| Exhibit P3 | TRUE COPY OF THE EXECUTION PETITION NO.54/2024 FILED BY THE 1ST RESPONDENT BEFORE THE COMMERCIAL COURT DATED 06.04.2024 IN CMA (ARB) 28/2023 |
| Exhibit P4 | TRUE COPY OF THE OBJECTION FILED BY THE PETITIONER BEFORE THE COMMERCIAL COURT IN EP 54/2024 IN CMA (ARB) NO. 28/2023 DATED 29.07.2024 |
| Exhibit P5 | TRUE COPY OF THE ORDER DATED 09.09.2024 IN EP 54/2024 IN CMA (ARB) CASE NO. 28/23 OF THE 1ST ADDITIONAL COMMERCIAL JUDGE, THIRUVANANTHAPURAM |
| Exhibit P6 | TRUE COPY OF THE REVIEW REPORT OF THE CHARTERED ACCOUNTANT S. SURESH BABU |
| Exhibit P7 | TRUE COPY OF THE RESOLUTION ITEM NO 7 OF THE BOARD OF DIRECTORS OF THE PETITIONER IN THE MEETING HELD ON 23.09.2024 DATED 23.09.2024 |
| Exhibit P8 | TRUE COPY OF THE OBJECTION FILED BY THE 1ST RESPONDENT IN EP 54/2024 IN CMA 28/2023 BEFORE THE COMMERCIAL COURT, THIRUVANANTHAPURAM. |