IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE C.S.DIAS

TUESDAY, THE 24TH DAY OF NOVEMBER 2026 / 3RD AGRAHAYANA, 1948

ARB.A NO. 47 OF 2016

AGAINST THE ORDER DATED 03.06.2016 IN OP(ARB) NO.312 OF 2013

OF ADDITIONAL DISTRICT COURT- III, THALASSERY

APPELLANT/RESPONDENT:

BHARAT SANCHAR NIGAM LIMITED
KANNUR, REPRESENTED BY ITS GENERAL MANAGER, BSNL
BHAVAN , SOUTH BAZAR, KANNUR- 670 002.

BY ADV SRI.MATHEWS K.PHILIP, SC, BSNL

RESPONDENTS/PETITIONERS:

1 RAMACHANDRA PAI (DIED)
S/O KRISHNARAM PAI, PROPRIETOR, SREERAM AGENCIES,
BENGACHERY COMPLEX, OPP. VYAPARA BHAVAN,T.B ROAD
JUNCTION, KANHANGAD,KASARAGODE DISTRICT -671 315.

2 GEETHA R. PAI
W/O RAMACHANDRA PAI, ARYA NIVAS, GREEN VIEW COLONY,
TALIPOIKA ROAD, KOZHIKKODE DISTRICT.

3 H. OMKAR PAI
S/O RAMACHANDRA PAI, MINOR REPRESENTED BY HIS
MOTHER AND NEXT FRIEND GEETHA R. PAI,
W/O.RAMACHANDRA PAI, ARYA NIVAS, GREEN VIEW COLONY,
TALIPOIKA ROAD, KOZHIKKODE DISTRICT.

4 PREMA PAI
M/O. RAMACHANDRA PAI, ARYA NIVAS, GREEN VIEW COLONY, TALIPOIKA ROAD, KOZHIKKODE DISTRICT.

BY ADV SHRI.SRINATH GIRISH

THIS ARBITRATION APPEAL HAVING COME UP FOR FINAL HEARING ON 24.11.2026, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

C.S.DIAS,J.

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Arb.Appeal No.47 of 2016

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Dated this the 24th day of November, 2026

O R D E R

The appellant was the respondent in O.P.(Arb) No.312 of 2013 on the file of the Court of the District Judge-III, Thalassery ('District Court', for brevity). The respondents were the petitioners in the above original petition. The material facts necessary for the disposal of the appeal are summarised as follows:

(i) The 1st respondent (deceased) had entered into an agreement with the appellant for marketing and distribution of BSNL services for a period of three years from 11.06.2010. He had furnished a performance bank guarantee ('PBG', in short) for Rs.3,00,000/-.

(ii) When the appellant decided to deduct income tax from the commission payable to the deceased,

he invoked clause 7.2 of the agreement and requested to withdraw from the agreement.

(iii) Though the appellant accepted the resignation, they failed to return the PBG.

(iv) On the request made by the deceased, the appellant appointed its Divisional Engineer as the sole Arbitrator.

(v) The Arbitrator, by the impugned award, rejected the claim of the deceased.

(vi) Aggrieved by the said award, the deceased filed the original petition before the District Court.

(vii) During the pendency of the original petition, the deceased died and his legal representatives were impleaded as the petitioners 2 to 4, who are the respondents 2 to 4 in this appeal.

(viii) The District Court framed six points for consideration and, by the impugned award, confirmed all the points in favour of the appellant, except point No.4.

(ix) It is against on the finding on point No.4, the appellant has filed this appeal.

2. I have heard Sri.Mathews K.Philip, the learned counsel for the appellant and Sri.Srinath Girish, the learned counsel for the respondents.

3. The sole question that arises for consideration is whether the impugned order rejecting the appellant's claim for liquidated damages is correct or not.

4. The District Court, after analysing Section 74 of the Contract Act, the law laid down by the Hon'ble Supreme Court in **BSNL v. Reliance Communication Ltd.** [(2011) 1 SCC 394] and **Fateh Chand v. Balkishan Das** [AIR 1963 SC 1405] and the decision of this Court in **State of Kerala v. United Shippers & Dredgers** [1982 KLT 738], wherein it is held that duty of the court is not to enforce the penalty clause in the agreement, but only to award reasonable compensation, held that it has jurisdiction to award such sum only as it considers

reasonable, but not exceeding the amount specified in the contract. This Court in **United Shippers & Dredgers'** case (supra) has held that if no damage or loss is suffered because of the breach, the opposite party is not entitled to any compensation.

5. Based on the principles in the aforecited decisions, the District Court came to the conclusion that the appellant has not suffered any legal injury and therefore is not entitled to any penalty.

6. In **MMTC Ltd. v. Vedanta Ltd.** [(2019) 4 SCC 163], the Hon’ble Supreme Court held that an appellate court cannot undertake an independent reassessment of the merits of the arbitral award. Its examination is confined to determining whether the court exercising jurisdiction under Section 34 has acted within the bounds of that provision. The jurisdiction under Section 37, therefore, cannot extend beyond the limits governing interference under Section 34.

7. A Three-Judge Bench of the Hon’ble Supreme Court reiterated the above legal position in **Konkan Railway Corporation Ltd. v. Chenab Bridge Project Undertaking** [(2023) 9 SCC 85] by holding that the jurisdiction of courts under Sections 34 and 37 of the Act is not equivalent to ordinary appellate jurisdiction. Interference with an arbitral award is not warranted in a casual or cavalier manner; nor would the mere availability of another possible view of the facts or another interpretation of the contract justify setting aside the findings of the Arbitral Tribunal.

8. This Court, while exercising jurisdiction under Section 37 of the Arbitration Act, cannot re-appreciate the merits of the arbitral award or substitute a different view merely because another view may be possible.

9. After carefully analysing the pleadings and materials on record and the findings of the District Court, and further that the appellant has miserably failed

to prove the actual damages suffered by them due to the termination of the franchisee by the respondents, and the appellant has not produced any material to prove the alleged damages, I do not find any error, illegality or perversity in the impugned order passed by the District Court, that shocks the conscience of this Court to exercise its power under Section 37 of the Act. The appeal is meritless and is consequently dismissed.

Sd/-

C.S.DIAS, JUDGE

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