



2026:KER:9171

Arb.A. 24 of 2025

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR. SOUMEN SEN

&

THE HONOURABLE MR. JUSTICE SYAM KUMAR V.M.

TUESDAY, THE 3RD DAY OF FEBRUARY 2026 / 14TH MAGHA, 1947

ARB.A NO. 24 OF 2025

AGAINST THE ORDER/JUDGMENT DATED 24.10.2024 IN AOP
NO.30 OF 2023 OF ASSISTANT SESSIONS COURT/PRINCIPAL SUB COURT
/ COMMERCIAL COURT, ERNAKULAM

APPELLANT/PETITIONER:

JIMMY ELIAS
AGED 64 YEARS, PATTASSERIL (H) , BHS ROAD,
THRIPPUNITHURA., PIN - 682 301

BY ADVS.
SRI.E.M.MURUGAN
SMT.K.R.LEKSHMI
SHRI.P.R.PRATEESH
SHRI.P.RAKESH (VAIKOM)
SMT.NILEENA V.P.
SHRI.ANIL XAVIER (SR.)

RESPONDENTS/RESPONDENTS:

- 1 SMT. ELIZABETH JASMINE
AGED 52 YEARS, 497, PEREPARAMBIL,
42,THRIKKANARVATTOM, KOCHI CORPORATION,
ERNAKULAM, RESIDING AT PEREPARAMBIL(H), PUSHPAK
ROAD, FR.LOUIS LINE, VADUTHALA, COCHIN-682 023
- 2 MRS.K.E.RACHEL
AGED 47 YEARS, MELEPEEDIKAYIL, THEKKEMALA,



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KOZHENCHERY, PATHANAMTHITTA.NOW RESIDING AT
ELANJIMOOTIL KANDAYATHIL, PALLIKURUP P.O,
THACHAMPARA, PALAKKAD, PIN - 678 593

- 3 SAM.K.E
AGED 41 YEARS, ELANJIMOOTIL KANDATHIL,
THANCHANPARA, PALLIKURUKU P.O,
PALAKKAD DISTRICT REP BY HIS POA HOLDER
MRS K.E.RACHEL, PIN - 678 582
- 4 PATTASSERIL BUISNESS ASSOCIATES LLP
40/81 47 A, NARAKATHARA ROAD, ERNAKULAM
REP BY ITS MANAGING PARTNER, JIMMY ELIAS,
S/O CN ELIAS, AGED 58, PATTASSERIL HOUSE,
BHS ROAD, TRIPUNITHURA, PIN - 682 035
- 5 THOMAS KOSHY
PALANIKUNNATHIL (H) AYROOR , NORTH P.O,
PATHANAMTHITTA, PIN - 689 612
- 6 MATHEW PAUL
PATTASSERIL (H), THRIIPUNITHURA,
KOCHI, PIN - 682 019
- 7 JAYASANKAR N K
S/O KRISHNA MENON, 600B,
NARAKKAT PARAMESWARA VIHAR, 8, VELYATHAMPARAMBU,
NAYARAMBALAM, ERNAKULAM, PIN - 682 509
- 8 SASIDHARAN M V
106, GOPALANILAYAM, PATTAMBI,
PALAKKAD, PIN - 679 303

BY ADVS.
SRI.LIJU.V.STEPHEN
SMT.INDU SUSAN JACOB
SHRI.TAJ K. TOM

THIS ARBITRATION APPEALS HAVING COME UP FOR ADMISSION ON
03.02.2026, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

**JUDGMENT**

Dated this the 3rd day of February, 2026

Soumen Sen, C.J.

We have heard Mr. Anil Xavier, learned Senior Advocate instructed by Mr. E.M. Murugan, learned counsel for the appellant and Mr. Liju V. Stephen, learned counsel for the respondents.

2. The partners of the 4th respondent are at loggerheads and this litigation seem to be a second round of litigation after the award passed in the first reference was set aside. In fact the award passed by the Arbitrator in the earlier proceedings was challenged by both the sides that has resulted in an order being passed under Section 34 of the Arbitration and Conciliation Act, 1996 (the Act of 1996) by the Commercial Court at Ernakulam. Thereafter the award holders filed a fresh reference in which an Arbitrator was initially appointed and thereafter he was substituted by an order dated 24th August 2022. In the fresh reference, an award was passed in favour of respondents 1 to 3. This award has been challenged in proceedings under Section



34 of the Act of 1996. The learned Commercial Court refused to interfere with the award on the ground that it is no longer open to a court exercising jurisdiction under Section 34 of the Act of 1996 to re-appreciate the evidence and arrive at a different finding.

3. The learned counsel for the appellant has submitted that the impugned order passed by the learned Commercial Court is unreasoned. He submitted that a Court deciding an application for setting aside an arbitral award must indicate even in brief the reasons for not accepting the argument put forth by the present appellant, as a fundamental issue was raised in the said proceedings with regard to the jurisdiction of the Arbitrator in applying the principles of res judicata in deciding the fresh reference, notwithstanding the fact that earlier award was set aside.

4. The learned counsel for the appellant has drawn our attention to the various portions of the award to show that in the present reference the learned Arbitrator had mechanically applied his mind to the facts and arrived at a finding based on



the findings in the earlier proceedings, that was set aside by the learned Commercial Court and the appeal preferred by the award holders in the instant case was not pursued, thereby giving rise to the fresh reference.

5. The learned counsel for the award holders has submitted that the procedure laid down under Section 19 of the Act of 1996 has been scrupulously followed. The learned counsel has referred to the order passed by the learned Arbitrator on 16th December 2022 in connection with the I.A. filed by the present respondents. The learned counsel for the award holders has submitted that the chronology of events forming part of the proceedings would show that, on 3rd March 2023, the parties agreed to the procedure based on which the Arbitral Tribunal has proceeded and therefore it is not open for the present appellant to assail the said award on the ground of any procedural irregularities or defects. For the sake of convenience and brevity, the procedure as agreed and emanate from the order forming part of the award and claimed to have been decided on 3rd March 2023 is reproduced as follows:



“03.03.2023:- Both sides represented. Additional issues raised on the counter claim. Copy served on both sides. Both sides conceded that a full-fledged argument can be held covering all the issues involved, particularly additional issues 19 to 22 and in case if these additional issues are found against the respondent, a final award can be passed whereas if those additional issues are found in favour of the respondent, the question of further evidence may arise and further proceedings can be had. This is recorded. Remit balance share in arbitrator’s fee. Arguments and IAs to 18.03.2023 and 19.03.2023.”

6. The learned counsel, relying upon the said procedure, has submitted that the Arbitrator on interpretation of the various pleadings, arrived at a finding and in that context the finding of the learned Commercial Court in dismissing the application under Section 34 of the Act of 1996 needs to be appreciated.

7. We have carefully gone through the award. We find that there is a jurisdictional error committed by the learned Arbitrator which is reflected from the order dated 31st December 2022 in which it has been recorded that the findings in the



award of the previous Arbitrator, which had not been interfered with by the learned District Judge in exercising jurisdiction under Section 34 of the Act of 1996, are all alive and final. This reasoning is fundamentally flawed and suffers from a serious misconception, as the earlier award was set aside and the matter required a de novo consideration. A similar misconception arises from the observation that the findings in the earlier proceedings shall operate as res judicata. There has been no independent assessment of the pleadings or re-appreciation of the evidence which in the context of the present proceedings, the learned Arbitrator is expected and supposed to do before arriving at a finding.

8. The situation would have been different if the Arbitrator, on the basis of the submission made on behalf of the parties and on appreciation of the evidence afresh, had arrived at an independent finding. It appears, however, that the Arbitrator had the findings of the earlier proceedings in the back of his mind and seems to have followed them blindly, without applying his mind to the facts of the case. The learned



Commercial Court in deciding the said matter has also not properly exercised jurisdiction under Section 34 of the Act of 1996.

9. The learned counsel for the award holders would argue that insofar as the issue nos. 1 to 12 are concerned, there has been in fact an adjudication with proper and fresh application of mind. However, it has been fairly conceded that the counter claim has not been considered on the basis of the evidence already on record. It is trite law that if the Arbitrator failed to decide the counter claim in accordance with law it will vitiate the award. It falls within the jurisdiction of the Arbitrator to decide both the claim and counter claim and as the very fact of the counter claim has not been decided, we are constrained to hold that the Arbitrator has failed to exercise the jurisdiction in accordance with the provisions of the Act of 1996.

10. At this juncture, an oral submission is made in unison by the learned counsel appearing on both sides that this Court may appoint an Arbitrator to resolve the subject dispute and they pray that the joint submission may be formally recorded.



11. In terms of the ratio in **Gayatri Balasamy v. M/s ISG Novasoft Technologies Limited**¹, the said joint oral request for appointment of an Arbitrator is hereby recorded.

12. By consent of the parties and following oral request, we appoint Mr. Justice V.G. Arun (former Judge of this Court) as the Arbitrator to decide the disputes between the parties. The learned counsel appearing for the parties have agreed that no further pleadings shall be filed before the Arbitrator. The record of the earlier proceedings shall form part of the present arbitral proceedings and the matter shall be decided on the basis of the existing materials. The parties have also agreed that no fresh evidence shall be adduced in the said proceedings.

13. In view thereof, the parties are directed to file compilations of all pleadings and documents forming part of the earlier reference before the Arbitrator, as may be directed by the Arbitrator after entering upon the reference. The parties have further agreed that the Arbitrator shall fix his Lordship's remuneration, commensurate with his position at the first sitting of the arbitral proceedings, taking guidance from the

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Fourth Schedule to the Arbitration and Conciliation Act, 1996, without there being any embargo with regard to the fees contemplated therein.

14. The Arbitrator shall be entitled to all necessary secretarial services and assistance. The remuneration of the Arbitrator and all the costs, charges and expenses of the arbitration shall be borne by the parties equally. In view of the long pendency of the matter, we request the learned Arbitrator to dispose of the matter as expeditiously as possible. The learned counsel for the parties have submitted that they shall render full co-operation in the conduct of the arbitration. The award and the impugned order are accordingly set aside. We make it clear that we have not gone into the merits of the award.

Sd/-
Soumen Sen
Chief Justice

Sd/-
Syam Kumar V.M.
Judge



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APPENDIX OF ARB.A NO. 24 OF 2025

PETITIONER ANNEXURES

Annexure A1	TRUE COPY OF THE LLP AGREEMENT DATED 07/04/2011
Annexure A2	TRUE COPY OF THE ARBITRAL AWARD DATED 27/02/2019 IN AC NO. 1/2019
Annexure A3	TRUE COPY OF THE COMMON ORDER DATED 05/01/2022 IN OP (ARB) NO. 101/2020 AND OP (ARB) NO. 233/2020
Annexure A4	TRUE COPY OF THE ORDER DATED 24/08/2022 IN AR NO. 101/2022
Annexure A5	TRUE COPY OF THE ARBITRAL AWARD DATED 18/04/2023 IN AR NO. 101/2022

RESPONDENT ANNEXURES

Annexure R1	A TRUE COPY OF THE GAYATRI BALASAMY V. M/S ISG NOVASOFT TECHNOLOGIES LIMITED (5 BENCH) REPORTED IN 2025 KHC ONLINE 6421 CASE
Annexure R2	A TRUE COPY OF THE DYNA TECHNOLOGIES PRIVATE LIMITED V. CROMPTON GREAVES LIMITED REPORTED IN (2019) 20 SCC
Annexure R3	A TRUE COPY OF THE DELHI AIRPORT METRO EXPRESS PVT.LTD V.S DELHI METRO RAIL CORPORATION LTD REPORTED IN KHC 6440