



2021/KER/35694

"CR"

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE V.G.ARUN

MONDAY, THE 20<sup>TH</sup> DAY OF SEPTEMBER 2021 / 29TH BHADRA, 1943

OP(C) NO. 472 OF 2021

EA 14/2021 OF DISTRICT COURT & SESSIONS COURT, THODUPUZHA,  
IDUKKI

PETITIONER/S:

SHAJI AUGUSTINE,  
AGED 50 YEARS  
S/O.AUGUSTINE, MANNOOR HOUSE, POTTANKADU KARA,  
BISON VALLEY VILLAGE, UDUMBANCHOLA TALUK, IDUKKI  
DISTRICT, PIN-685 565.

BY ADVS.  
S.RENJITH  
K.R.PRATHISH  
R.LAKSHMI NARAYAN

RESPONDENT/S:

M/S CHITHRA WOODS MANORS WELFARE ASSOCIATION,  
HAVING ITS REGISTERED OFFICE AT CHITHIRA WOODS,  
MUNNAR, KALLARKARA, PALLIVASAL VILLAGE, DEVIKULAM  
TALUK, PIN-685 613, REPRESENTED BY ITS SECRETARY  
BINDU RAJEEV.

BY ADVS.  
SRI.BABU KARUKAPADATH  
SMT.M.A.VAHEEDA BABU  
SHRI.P.U.VINOD KUMAR  
SMT.ARYA RAGHUNATH  
SMT.VAISAKHI V.  
SRI.T.M.MUHAMMED MUSTHAQ  
SHRI.UNAIS K.P.  
SHRI.MOHAMED HISHAM P

THIS OPC HAVING BEEN FINALLY HEARD ON 22.07.2021  
ALONG WITH OPC 967/2021, THE COURT ON 20.09.2021,  
DELIVERED THE FOLLOWING:



OPC 472 & 967 of 2021

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**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT**

**THE HONOURABLE MR.JUSTICE V.G.ARUN**

**MONDAY, THE 20<sup>TH</sup> DAY OF SEPTEMBER 2021 / 29TH BHADRA, 1943**

**OP(C) NO. 967 OF 2021**

**EP 58/2020 OF DISTRICT COURT& SESSIONS COURT,THODUPUZZHA,**

**IDUKKI**

**PETITIONER/S:**

M/S CHITHRA WOODS MANOR OWNERS WELFARE  
ASSOCIATION  
(REGISTRATION NO. IDK/TC/288/14) WITH ITS REGD,  
OFFICE AT CHITHIRA WOODS, MUNNAR, KALLARKKARA,  
PALLIVASAL VILLAGE, DEVIKULAM TALUK, REPRESENTED  
BY ITS SECRETARY MS. BINDU RAJEEV, AGED 50 YEARS,  
W/O.RAJEEV, RESIDING AT 43/218, SOUPARNIKA,  
KALAVATH ROAD, PALARIVATTOM, KOCHI - 682025.

BY ADVS.

BABU KARUKAPADATH

M.A.VAHEEDA BABU

P.U.VINOD KUMAR

ARYA RAGHUNATH

VAISAKHI V.

T.M.MUHAMMED MUSTHAQ

MOHAMED HISHAM P

KARUKAPADATH WAZIM BABU

**RESPONDENT/S:**

SHAJI AUGUSTINE

AGED 51 YEARS

S/O. SRI. AUGUSTINE, RESIDING AT MANNOOR HOUSE,  
POTTANKADAKARA, BISON VALLEY VILLAGE,



OPC 472 & 967 of 2021

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UDUMBANCHOLA TALUK, IDUKKI DISTRICT, PIN -  
685565,  
NOW RUNNING BUSINESS UNDER NAME AND STYLE, M/S.  
MUNNAR BLACK FOREST, MUNNAR ROAD, KALLAR,  
VATTIYAR P.O, IDUKKI DISTRICT, PIN - 685565.  
BY ADVS.  
K.R.PRATHISH  
S.RENJITH

**THIS OPC HAVING BEEN FINALLY HEARD ON 22.07.2021 ALONG  
WITH OPC 472/2021, THE COURT ON 20.09.2021, DELIVERED  
THE FOLLOWING:**



"CR"

**JUDGMENT****Dated this the 20<sup>th</sup> day of September, 2021**

The petitioner in OP(C) No.472 of 2021 is the judgment debtor and the petitioner in OP(C) No.967 of 2021 is the decree holder in E.P.No.58 of 2020 on the files of the District Court, Thoduppuzha. *[for convenience, the parties and documents are referred to, as described in OP(C) No.472 of 2021]*. The brief facts, leading up to the filing of the Execution Petition, are as under;

The petitioner and the respondent had entered into Ext.P3 Memorandum of Agreement with respect to the conduct of hospitality business in 96 studio apartments constructed by the respondent in Pallivasal Village in Idukki District. Under the terms of the agreement, the petitioner was permitted to occupy the property along with



movables on condition of payment of licence fees, at the rate of Rs.12,00,000/- per mensem. Alleging persistent default in payment of licence fees, the respondent filed a suit for realisation of arrears of licence fees and other ancillary reliefs. As the Memorandum of Agreement contained an arbitration clause, the dispute was referred to a single member Arbitral Tribunal. In the arbitral proceedings, the respondent filed an interlocutory application under Section 17 of the Arbitration and Conciliation Act, 1996, seeking an order directing the petitioner to deposit an amount of Rs.1,65,73,439/- towards arrears of licence fees. By Ext.P6 order, the Arbitral Tribunal directed the petitioner to furnish bank guarantee for Rs.1,36,49,439/-, valid for a period of six months, and to pay the licence fees of Rs.12,00,000/- per mensem from June 2016 onwards.



It was also indicated that non-compliance of the order will result in the appointment of a receiver to manage the assets involved. Aggrieved by the order, the petitioner preferred arbitration appeal before the District Court, Ernakulam. In the interregnum, the respondent had moved interlocutory applications before the Arbitrator, seeking review of Ext.P6 order, to the extent it directed furnishing of bank guarantee instead of depositing the arrears. The said applications were dismissed and the respondent also preferred an arbitration appeal. By a common order in the arbitration appeals, the District Court stayed further proceedings in the arbitration, subject to the petitioner continuing to pay Rs.12,00,000/- per mensem and the entire arrears from 08.09.2016, calculated at the rate of Rs.12,00,000/-. The petitioner challenged the common order before this



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Court in O.P.(C) No.552 of 2017. Pending the original petition, the parties were referred to mediation and the disputes were amicably settled. Based on the mediator's report and Ext.P11(a) compromise petition, the original petition was disposed of vide Ext.P11 judgment, making the settlement part of the judgment. In terms of the settlement, the petitioner executed Ext.P12 promissory note, promising to repay an amount of Rs.54,26,531/- before 10<sup>th</sup> January, 2020. As the repayment was defaulted, the respondent filed E.P.No.58 of 2020 before the District Court, Thodupuzha seeking delivery of the decree schedule property after evicting the petitioner, for attachment and sale of the petitioner's properties or his arrest and detention in civil prison and appointment of Receiver for the management of the decree schedule property and the apartments. The



petitioner filed counter affidavit alleging that the respondent had violated the terms of the agreement and that the default in paying the arrears of licence fees is not wilful and that, being a statutory tenant, he can be evicted only by due process of law. Thereafter, the petitioner filed E.A.No.14 of 2021, challenging the maintainability of the execution petition, mainly contending that Ext.P11 Judgement is neither an award under the Arbitration and Conciliation Act, 1996 nor a decree under Section 2(2) of the Civil Procedure Code. The challenge having been repelled under Ext.P16 order, the petitioner has filed O.P. (C) No.472 of 2021 seeking to set aside the order.

3. The decree holder/ respondent has filed O.P.(C) No. 967 of 2021 aggrieved by the order dated 23.03.2021 in E.P.No.58 of 2020 whereby the execution court granted the judgment debtor,



opportunity to pay the arrears of licence fees in instalments. The decree holder is also aggrieved by the delay in evicting the petitioner from the decree schedule property.

4. Heard Sri.Lakshmi Narayan, learned Counsel for the petitioner and Sri.Babu Karukapadath, learned Counsel for the respondent.

5. Assailing Ext.P16 order, Sri. Lakshmi Narayan raised the following contentions;

Ext.P11 judgment, by which this Court disposed of the original petition challenging the interim order of the District Court, is neither an award under the Arbitration and Conciliation Act nor a decree under the Code of Civil Procedure. The dispute was referred to mediation under Section 89 of CPC and therefore the settlement ought to have been recorded and a decree passed as mandated under the Civil Procedure (Alternative Dispute



Resolution) Rules, 2008. Ext.P11 can be considered as an award based on settlement, only if the requirements under Sections 30 and 31 of the Arbitration and Conciliation Act are complied with. Even otherwise, the award can be executed only if it is stamped in the manner provided under Section 12 of the Kerala Stamp Act. The terms of settlement will evidently show that the original agreement has been replaced by the settlement. Hence, there is novation under Section 62 of the Contract Act and the disputes arising from the novated contract ought to be sorted out before the competent civil court. The petitioner being a statutory tenant, cannot be evicted in execution of an alleged arbitral award. Even if Ext.P11 is treated as either a deemed decree or an award, the dispute involved being a commercial dispute and the specified value being above Rs.3,00,000/-, the



jurisdiction to execute the decree/award is vested with the Commercial Court and not the District Court.

6. In elaboration, the learned Counsel referred to the definition of 'decree' under Section 2(2) and the procedure prescribed under Section 89 of CPC read with Rules 24 and 25 of the Civil Procedure (Alternative Dispute Resolution) Rules, 2008. It is argued that a judgment rendered by the High Court in exercise of the supervisory jurisdiction under Article 227 of the Constitution cannot be deemed to be a decree under Section 2(2) of the Code. Moreover, as per Rule 25 of the Civil Procedure (Alternative Dispute Resolution) Rules, 2008, the court should record the settlement and thereafter, pass a decree in accordance with the settlement so recorded. Further, the decree should be drawn up in the form prescribed under



Rule 182 of the Civil Rules of Practice. Section 30 of the Arbitration and Conciliation Act mandates that an arbitral award on agreed terms shall be made in accordance with Section 31 and shall state that it is an arbitral award, which procedure was also not followed. Hence, Ext.P11 is neither a decree nor an award.

7. As per Article 12 of the Schedule to the Kerala Stamp Act, stamp duty is liable to be paid on an arbitral award. Under Section 34 of the Stamp Act, no instrument chargeable with duty shall be admitted in evidence or acted upon, unless such instrument is duly stamped. Hence, even if Ext.P11 is taken to be an arbitral award, the execution court cannot act upon it, since the requisite stamp duty is not paid.

8. The terms of settlement, particularly Clause 15, providing for execution of documents



like promissory note and reciprocal obligations reveal that the parties have voluntarily substituted the terms of the original agreement and hence, Ext.P3 agreement stands novated by Ext. P11(a) compromise petition. Being so, the violation or non-compliance of Ext.P11 will only give rise to a fresh cause of action.

9. The words 'petitioner will voluntarily vacate' and 'respondent will be free to enter the premises' indicate that the settlement cannot be executed as a decree. The respondent having failed to abide by the terms of the settlement, cannot seek to execute the judgment. Moreover the petitioner being a tenant is entitled to the protection provided under Sections 114 and 114A of the Transfer of Property Act.

10. Even if, for the sake of argument, Ext.P11 is admitted to be an award or a decree, its



execution can only be through the jurisdictional commercial court and not the District Court. As per Section 10(3) of the Commercial Courts Act, jurisdiction in respect of an arbitration pertaining to a commercial dispute of a specified value would ordinarily lie before any principal civil court of original jurisdiction and has to be heard and disposed of by the Commercial Court exercising territorial jurisdiction over such arbitration. Section 15(2) of the Commercial Courts Act makes the transfer of all suits and applications, including applications under the Arbitration and Conciliation Act relating to a commercial dispute of a specified value pending in any civil court in any District or area, mandatory. The Government of Kerala has, in consultation with the High Court, designated the Principal Sub Judge, Ernakulam, as the Commercial



Court and hence, from the date of such notification (24.02.2020) only the commercial court is vested with the jurisdiction to execute the award/decreed. In support of the contention, reliance is placed on the decision of the High Court of Delhi in Jagmohan Bel v. State Bank of Indore [judgment dated 27.04.2018 in FAO (OS) No.166 of 2016] and that of the High Court of Gujarat in Vijay Cotton and Fiber Company v. Agarwal Cotton Spinning Pvt. Ltd. [Judgment dated 11.02.2019 in Appeal Order No. 216 of 2018]

11. Yet again, if Ext. P11 is to be considered as an award of the Lok Adalat under the Legal Services Authorities Act, 1987, and as such, a deemed decree, only the civil court of competent jurisdiction can execute the decree. In support of this contention, reliance is placed on the decision of the Apex Court in Afcons



*Infrastructure Ltd v. Cherian Varkey Construction Co. (P) Ltd [(2010) 8 SCC 24].*

12. Per contra, Sri.Babu Karukapadath, learned Counsel for the respondent contended that the entire proceedings culminating in Ext.P11 judgment had originated and continued under the Arbitration and Conciliation Act. As such, Ext.P11(a) settlement, which has merged with Ext.P11 judgment, has all the trappings of an award under Section 30 of the Arbitration and Conciliation Act and is executable under Section 36 of the Act. An award based on settlement, is also binding and executable/enforceable as if it is a decree of a court and the property being at Pallivasal, the District Court, Thoduppuzha is the jurisdictional court.

13. It is contended that as per Section 2(e) of the Arbitration and Conciliation Act, 'Court'



means the Principal Civil Court of original jurisdiction in a District and does not include any civil court of a grade inferior to such Principal Civil Court. As such, the District Court alone is competent to execute the award. This position has been explicitly levied down by the Apex Court in **Executive Engineer, Road Development Division, Panvel v. Atlanta Limited [(2014) 11 SCC 619]**. According to the learned Counsel, there is no complete ouster of jurisdiction of the District Court, since even going by Section 10(3) of the Commercial Courts Act, appeals arising from arbitration disputes, wherein the specified value is below Rs.3,00,000/-, has to be decided by the District Court itself.

14. As regards the mandate under Section 15 of the Commercial Courts Act, attention is drawn to the proviso to Section 15(2), as per which no suit



or application, where the final judgment had been reserved by the court prior to the constitution of the commercial court, is liable to be transferred. The absence of any provision in the Commercial Courts Act dealing with execution of an arbitration award and the conscious omission to amend Order XXI CPC dealing with execution, despite the series of amendments brought about to the Code of Civil Procedure in its application to commercial disputes *vide* Section 16 of the Commercial Courts Act are also highlighted. According to the learned Counsel, the mandate of Section 10(3) of the Commercial Courts Act is only to the effect that 'applications and appeals arising out of an arbitration, that would ordinarily lie before the principal Civil Court of original jurisdiction in a district, shall be filed in, heard and disposed of by the Commercial



Court. The provision does not mandate or even indicate that execution of awards passed under the Arbitration and Conciliation Act can only be through the Commercial Court. Reliance is placed on the Division Bench decision in **Josekutty Joseph v. Aniamma Thomas [2006 (3) KLT 114]**, to contend that the commercial court is empowered to hear and decide only suits or applications pertaining to commercial disputes either filed before it or transferred to it and has no jurisdiction to execute an award passed in accordance with the provisions of the Arbitration and Conciliation Act. It is contended that the objection regarding non-payment of stamp duty was never raised before the execution court and is therefore not open for consideration. On the contention based on the terms of the settlement, which, according to the petitioner, indicates that the petitioner is a



tenant, reliance is placed on the decision in **Konchada Ramamurthy Subudhi v. Gopinath Naik [AIR 1968 SC 919]** to contend that a compromise decree giving time for eviction and providing for eviction in the event of default in paying rent, will not create a new lease of life and hence, the decree is executable.

15. In conclusion, learned Counsel argued that, having entered into a settlement and having caused this Court to render a judgment, the petitioner is estopped from challenging the executability of the judgment. Referring to the observations of the Honourable Supreme Court in **Dhannalal v. Kalawatibai and others [(2002) 6 SCC 161]**, it is submitted that a wrong must not be left unredeemed and a right, not left unenforced.

16. The erudite and ingenious arguments put forth by the Counsel on either side has given rise



to certain interesting questions, the first being whether Ext.P11 is a decree under Section 2(2) of CPC or an arbitral award within the meaning of Section 2(c) of the Arbitration and Conciliation Act. It is pertinent to note that Ext. P11 judgment was rendered on the basis of Ext.P11(a) settlement arrived at in a mediation conducted in accordance with the provisions of Section 89 of CPC. Interpreting Section 89 of CPC, the Honourable Supreme Court in **Afcons Infrastructure Ltd** (*supra*) observed that the definitions of 'judicial settlement' and 'mediation' in clauses (c) and (d) of Section 89 (2) shall have to be interchanged to correct the draftsman's error. When the two terms are interchanged Section 89(2) (c) will have to be read as under;

For mediation, the court shall refer the same to a suitable institution or person and such



institution or person shall be deemed to be a Lok Adalat and all the provisions of the Legal Services Authorities Act, 1987 shall apply as if the dispute were referred to Lok Adalat under the provisions of that Act.

17. Ext.P11(a) settlement is hence, akin to an award under the Legal Services Authorities Act. As per Section 21 of that Act, every award of the Lok Adalat shall be deemed to be a decree of a civil court. In this context it may also be profitable to refer to the decision of the Apex Court in **K.N. Govindan Kutty Menon v. C.D. Shaji [(2012) 2 SCC 511]** cited by the learned Counsel for the petitioner. Therein, after elaborately considering the scope and ambit of an award under the Legal Services Authorities Act and whether the award passed in a criminal case can be executed through the civil court, it was held as under;



"26. From the above discussion, the following propositions emerge:

(1) In view of the unambiguous language of Section 21 of the Act, every award of the Lok Adalat shall be deemed to be a decree of a civil court and as such it is executable by that court.

(2) The Act does not make out any such distinction between the reference made by a civil court and a criminal court.

(3) There is no restriction on the power of the Lok Adalat to pass an award based on the compromise arrived at between the parties in respect of cases referred to by various courts (both civil and criminal), tribunals, Family Court, Rent Control Court, Consumer Redressal Forum, Motor Accidents Claims Tribunal and other forums of similar nature.

(4) Even if a matter is referred by a criminal court under Section 138 of the Negotiable Instruments Act, 1881 and by virtue of the deeming provisions, the award passed by the Lok Adalat based on a compromise has to be treated as a decree capable of execution by a civil court."

The legal position being as above, it will be preposterous to hold that, while an award *per se* is executable, it becomes un-executable on being approved and made part of the judgment of a competent court.

18. On the question whether Ext. P11 is an



award, I find substantial force in the contention that the proceedings up to Ext. P11(a) compromise petition having originated, continued and culminated under the Arbitration and Conciliation Act and the settlement having got subsumed in the judgment of this Court, Ext.P11 has all the trappings of an award under Section 30 of the Arbitration and Conciliation Act. Being contextually relevant Section 30 is extracted here under;

*"30. Settlement.—(1) It is not incompatible with an arbitration agreement for an arbitral tribunal to encourage settlement of the dispute and, with the agreement of the parties, the arbitral tribunal may use mediation, conciliation or other procedures at any time during the arbitral proceedings to encourage settlement.*

*(2) If, during arbitral proceedings, the parties settle the dispute, the arbitral tribunal shall terminate the proceedings and, if requested by the parties and not objected to by the arbitral tribunal, record the settlement in the form of an arbitral award on agreed terms.*

*(3) An arbitral award on agreed terms shall be made in accordance with Section 31 and shall*



*state that it is an arbitral award.*

*(4) An arbitral award on agreed terms shall have the same status and effect as any other arbitral award on the substance of the dispute."*

A perusal of Ext. P11 (a) shows that the parties had settled their disputes fully and finally and had prayed for allowing the original petition recording the terms and conditions in the settlement and to make it part of the judgment. Being so, this Court, after hearing the parties, disposed the original petition recording the settlement and making the compromise petition part of the judgment, the petitioner cannot turn around and contend that the settlement, which has merged with the judgment, is not executable as an award as it is not in conformity with Section 31 of the Arbitration and Conciliation Act.

19. The next interesting question is whether the District Court is divested of its power to



execute arbitral awards after the introduction of the Commercial Courts Act. Section 2(e) of the Arbitration Act defines 'Court' to be the principal Civil Court of original jurisdiction in the District and excludes civil courts of grade inferior to such Principal Civil Court. Interpreting the provision the Honourable Supreme Court in **Atlanta Limited** (supra) held as follows;

*"24.2. Secondly, the provisions of the Arbitration Act, leave no room for any doubt, that it is the superior-most court exercising original civil jurisdiction, which had been chosen to adjudicate disputes arising out of arbitration agreements, arbitral proceedings and arbitral awards. Undoubtedly, a "Principal Civil Court of Original Jurisdiction in a district", is the superior-most court exercising original civil jurisdiction in the district over which its jurisdiction extends. It is clear that Section 2(1)(e) of the Arbitration Act having vested jurisdiction in the "Principal Civil Court of Original Jurisdiction in a district", did not rest the choice of jurisdiction on courts subordinate to that of the District Judge. Likewise, "the High Court in exercise of its ordinary original jurisdiction", is the superior-most court exercising original civil jurisdiction,*



*within the ambit of its original civil jurisdiction. On the same analogy and for the same reasons, the choice of jurisdiction will clearly fall in the realm of the High Court, wherever a High Court exercises "ordinary original civil jurisdiction".*

Inasmuch as the High Court of Kerala is not vested with ordinary original civil jurisdiction, the District Court is the jurisdictional court to deal with matters arising out of arbitration. As per Section 10(3) of the Commercial Courts Act, applications or appeal arising out of an arbitration under the provisions of the Arbitration and Conciliation Act would ordinarily lie before any Principal Civil Court of original jurisdiction in a District and shall be filed and heard and disposed of by the Commercial Court exercising territorial jurisdiction over such arbitration. Section 15(2) stipulates that all suits and applications, including applications under the Arbitration and Conciliation Act



relating to a commercial dispute of a specified value pending in any civil court in any District or area in respect of which a commercial court has been constituted, shall be transferred to such commercial court. For easy reference, Section 15 is extracted below;

*"15. Transfer of pending cases.—(1) All suits and applications, including applications under the Arbitration and Conciliation Act, 1996 (26 of 1996), relating to a commercial dispute of a Specified Value pending in a High Court where a Commercial Division has been constituted, shall be transferred to the Commercial Division.*

*(2) All suits and applications, including applications under the Arbitration and Conciliation Act, 1996 (26 of 1996), relating to a commercial dispute of a specified value pending in any civil court in any district or area in respect of which a Commercial Court has been constituted, shall be transferred to such Commercial Court:*

*Provided that no suit or application where the final judgment has been reserved by the court prior to the constitution of the Commercial Division or the Commercial Court shall be transferred either under sub-section (1) or sub-section (2).*

*(3) Where any suit or application, including an application under the Arbitration and Conciliation Act, 1996 (26 of 1996), relating*



to a commercial dispute of specified value shall stand transferred to the Commercial Division or Commercial Court under sub-section (1) or sub-section (2), the provisions of this Act shall apply to those procedures that were not complete at the time of transfer.

(4) The Commercial Division or Commercial Court, as the case may be, may hold case management hearings in respect of such transferred suit or application in order to prescribe new timelines or issue such further directions as may be necessary for a speedy and efficacious disposal of such suit or application in accordance 22[with Order XV-A] of the Code of Civil Procedure, 1908 (5 of 1908):

Provided that the proviso to sub-rule (1) of Rule 1 of Order V of the Code of Civil Procedure, 1908 (5 of 1908) shall not apply to such transferred suit or application and the court may, in its discretion, prescribe a new time period within which the written statement shall be filed.

(5) In the event that such suit or application is not transferred in the manner specified in sub-section (1), sub-section (2) or sub-section (3), the Commercial Appellate Division of the High Court may, on the application of any of the parties to the suit, withdraw such suit or application from the court before which it is pending and transfer the same for trial or disposal to the Commercial Division or Commercial Court, as the case may be, having territorial jurisdiction over such suit, and such order of transfer shall be final and binding."



The proviso to Section 15(2) makes it clear that no suit or application, where the final judgment has been reserved by the civil court prior to the constitution of a commercial court, need be transferred. As per sub-section (3) of Section 15, once a suit or application is transferred to the commercial court, the provisions of the Commercial Courts Act will apply to the procedures that are incomplete. To understand the relevance of this provision reference ought to be made to Section 16 of the Act, which reads as under;

*"16. Amendments to the Code of Civil Procedure, 1908 in its application to commercial disputes.-(1) The provisions of the Code of Civil Procedure, 1908 (5 of 1908) shall, in their application to any suit in respect of a commercial dispute of a Specified Value, stand amended in the manner as specified in the Schedule.*

*(2) The Commercial Division and Commercial Court shall follow the provisions of the Code of Civil Procedure, 1908 (5 of 1908), as amended by this Act, in the trial of a suit in respect of a commercial dispute of a specified value.*

*(3) Where any provision of any Rule of*



*the jurisdictional High Court or any amendment to the Code of Civil Procedure, 1908, by the State Government is in conflict with the provisions of the Code of Civil Procedure, 1908 (5 of 1908), as amended by this Act, the provisions of the Code of Civil Procedure as amended by this Act shall prevail."*

Thus, the provisions of the Code of Civil Procedure have been amended in its application to suits in respect of commercial disputes, with the objective of speedy disposal of cases by the commercial courts. Interestingly, there is no amendment to the provisions under Order XXI CPC, dealing with execution of decrees. Therefore, as far as execution is concerned, litigants still have to resort to the cumbersome and time consuming process under Order XXI CPC.

20. In **Josekutty Joseph** (supra) the Division Bench interpreted the meaning, scope and ambit of Sections 8 and 18 of the Family Courts Act, Section 8 excludes the jurisdiction of all other



courts in respect of suits or proceedings falling within the jurisdiction of Family Courts under Section 7, and Section 18 stipulates that a decree or an order passed by a Family Court shall have the same force and effect as a decree or order of a civil court. The relevant paragraph of the judgment is extracted hereunder;

*“7. It is true that by virtue of the provisions contained in Sec. 7(1)(a) of the Act, the Family Court shall have the power to exercise all the jurisdiction that was hitherto exercised by the Civil Court in respect of suits and proceedings of the nature referred to in the Explanation. This means that whatever powers (including execution) which the Civil Court could have exercised in respect of such suits or proceedings stand vested in the Family Court upon its establishment. But the Family Court can exercise such powers (including execution) only in respect of a suit or proceeding which comes before it either by way of a statutory transfer or by way of fresh institution as contemplated by Sec. 8 of the Act. When the suit or proceeding referred to in the Explanation to Section 7(1) of the Act can only be a suit or proceeding of an original nature instituted for the purpose of getting a decree, order or declaration as envisaged therein and which*



cannot necessarily include an execution petition, there cannot be a transfer under Section 8(c)(i) of the Act of a petition for executing a decree pending before the Civil Court on the date of establishment of the Family Court. It is one thing to say that the Family Court can exercise all the powers including execution in respect of such suit or proceeding by virtue of Section 7(1)(a) of the Act, but it is another thing to say that the statutory transfer under Sec. 8(c) of the Act takes within its sweep even petitions for execution of decrees already passed by the Civil Court and pending before such Civil Court on the date of establishment of the Family Court for the area concerned. Section 18 of the Act pertains only to decrees or orders passed by the Family Court and subsection (1) thereof only enacts a fiction by which a decree or order passed by the Family Court is deemed to be one passed by the Civil Court for the purpose of execution. It is significant in this context to note that there is no corresponding provision in the Act treating the decree passed by the Civil Court as one passed by the Family Court. We are unable, in this connection, to accept the petitioner's contention that the deeming provision under Section 7(1)(b) of the Act is to treat the Civil Courts' decrees as one passed by the Family Court. In our view, the deeming provision thereunder is only to enable the Family Court to exercise the jurisdiction in such manner as the Civil Court would have exercised in a suit or other proceeding of such nature. The deeming provision is intended to indicate the procedure to be followed while dealing with such suit or proceeding and nothing else. As



along as the decree passed by the Civil Court prior to the establishment of the Family Court is not deemed to be one passed by the Family Court, Section 18 of the Act which only deals with the execution of the decrees and orders passed by the Family Court, cannot have any application. If so, the only provision which can be applied to such a decree passed by the Civil Court is Order 21, Rule 10, C.P.C. which reads as under:-

*“Application for execution – Where the holder of a decree desires to execute it, he shall apply to the Court which passed the decree or to the officer (if any) appointed in this behalf, or if the decree has been sent under the provisions hereinbefore contained to another Court, then to such Court or to the proper officer thereof.*

*Thus, it is the Court which passed the decree which is to be approached for executing the decree. Indisputably, the Court which passed the decree in this case is the Subordinate Judges' Court. Pala where the execution petition (E.P. 19/1997) was pending on the date of establishment of the Family Court for the area. E.P. 19/1997 not being an original proceeding-does not attract the statutory transfer under Sec. 8(c) of the Act. Resultantly, the Sub Court, Pala continues to have jurisdiction to deal with E.P. 19/1997 and bring it to a logical conclusion, notwithstanding the establishment of the Family Court for the area.”*

As observed earlier, the procedure for execution is not mentioned anywhere in the Commercial Courts



Act and there is nothing to indicate that the jurisdiction of other courts with respect to pending execution matters stands excluded. The absence of provision regarding execution or specific exclusion of jurisdiction of other courts with respect to execution procedures and the conscious omission to amend Order XXI CPC for hastening the process of execution can only lead to the conclusion that the word "application" in Section 15(1) does not include an 'execution application/petition' and the words, 'those procedures that are not complete at the time of transfer' in Section 15(3) of the Commercial Courts Act does not take in procedure relating to execution of decrees/awards. For the aforementioned reasons, I respectfully disagree with the dictum laid down by the Gujarat High Court in **Jagmohan Bel** (*supra*), insofar as it holds



that the commercial court at the District level constituted under sub-section (1) of Section 3 of the Commercial Courts Act would be the court competent to execute awards declared under Section 34 of the Arbitration Act.

21. The decision of the Delhi High Court, in **Vijay Cotton and Fiber Company (supra)** is with respect to the definition of 'commercial dispute' under section 2(c) of the Commercial Courts Act. As no argument was advanced by either side on the question whether the dispute based on Ext.P3 agreement falls within the meaning of commercial dispute under Section 2(c) of the Commercial Courts Act, I am not venturing to answer that question.

22. Indisputably, the property, which is the subject matter of the dispute, is situated within the jurisdictional limits of the District Court,



Thodupuzha. In *Sundaram Finance Ltd. v. Abdul Samad and Another [(2018) 3 SCC 622]*, it has been categorically held that the enforcement of an award through its execution can be filed anywhere in the country where such decree can be executed and it is not necessary to obtain a transfer of the decree from the court which would have jurisdiction over the arbitral proceedings.

23. Being contextually relevant, the following observations of the Honourable Supreme Court in *Dhannalal* is extracted;

*“Both the learned Senior Counsel for the parties stated that there is no specific statutory provision nor a binding precedent available providing resolution to the problem posed. Procedural law cannot betray the substantive law by submitting to subordination of complexity. Courts equipped with power to interpret law are often posed with queries which may be ultimate. The judicial steps of the Judge then do stir to solve novel problems by neat innovations. When the statute does not provide the path and precedents abstain to lead, then they are the sound logic, rational reasoning, common sense and urge for public good which play as*



*guides of those who decide. Wrong must not be left unredeemed and right not left unenforced. Forum ought to be revealed when it does not clearly exist or when it is doubted where it exists. When the law – procedural or substantive – does not debar any two seekers of justice from joining hands and moving together, they must have a common path. Multiplicity of proceedings should be avoided and same cause of action available to two at a time must not be forced to split and tried in two different fora as far as practicable and permissible.”*

24. The contention that the terms of the compromise agreement arrived at in a mediation under Section 89 of CPC, which was affirmed by the court and made part of the judgement have novated the original agreement and that, violation of the settlement terms can only give rise to cause of action for initiation of fresh proceedings, being against law, logic and reasoning, is discarded. The claim for benefits under Sections 114 and 114 A of the Transfer of Property Act, based on certain usages in Ext. P11(a) is liable to be rejected in the light of the decision in **Konchada Ramamurthy**



Subudhi (supra). The contention based on the insufficiency of stamp duty was never raised before the execution court and therefore, cannot be entertained for the first time in this original petition filed under Article 227 of the Constitution of India. Moreover, even in cases where the award is not engrossed in stamp paper, it can be validated with retrospective effect by payment of the duty and penalty (see, **State of Kerala v. Muraleedharan Nair [1990 (1) KLT 486]**).

For the reasons aforementioned, the challenge against Ext.P16 order fails. Accordingly, O.P.(C) No.472 of 2021 is dismissed.

As far as O.P.(C) No.967 of 2021 is concerned, the execution court having exercised its discretion, after taking into consideration all relevant factors, I find no reason to interfere with the impugned order (order dated 23.03.2021 in



OPC 472 & 967 of 2021

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E.P.No.58 of 2020), in exercise of supervisory jurisdiction under Article 227. In the result O.P. (C) No.967 of 2021 is dismissed.

The time for payment fixed by the execution court having expired, it is for the parties to approach the execution court for appropriate orders.

Sd/-

**V.G.ARUN**  
**JUDGE**

scl/

**APPENDIX OF OP(C) 472/2021**

## PETITIONER EXHIBITS

- EXHIBIT P1 TRUE COPY OF THE CLAIM PETITION FILED BEFORE THE ARBITRATOR ON 23.03.2016.
- EXHIBIT P2 TRUE COPY OF THE OBJECTION DATED 15.04.2016 FILED BY THE PETITIONER TO EXT.P1 CLAIM PETITION.
- EXHIBIT P3 TRUE COPY OF THE MEMORANDUM OF AGREEMENT DATED 26.01.2014 ENTERED INTO BETWEEN THE PETITIONER AND THE RESPONDENT.
- EXHIBIT P4 TRUE COPY OF THE AFFIDAVIT AND PETITION DATED 14.03.2016 FILED AS IA NO.1/2016 BY THE RESPONDENT HEREIN BEFORE THE HONOURABLE ARBITRATOR.
- EXHIBIT P5 TRUE COPY OF THE OBJECTION FILED BY THE PETITIONER HEREIN DATED 15.04.2016 BEFORE THE HON'BLE ARBITRATOR.
- EXHIBIT P6 TRUE COPY OF THE ORDER DATED 23.06.2016 PASSED BY THE HONOURABLE ARBITRATOR IN IA NO.1/2016.
- EXHIBIT P7 TRUE COPY OF THE ARBITRATION APPEAL NO.15/2016 FILED BEFORE THE 1ST ADDITIONAL DISTRICT COURT, ERNAKULAM DATED 03.09.2016.
- EXHIBIT P8 TRUE COPY OF THE AFFIDAVIT AND PETITION DATED 20.12.2016 FILED BY THE PETITIONER HEREIN BEFORE THE HON'BLE 1ST ADDITIONAL DISTRICT COURT, ERNAKULAM AS IA NO.8456/2016 IN ARBITRATION APPEAL NO.15/2016.
- EXHIBIT P9 TRUE COPY OF THE OBJECTION DATED 6/2017 FILED BY THE RESPONDENT HEREIN IN IA NO.8456/2016 IN ARBITRATION APPEAL NO.15/2016.
- EXHIBIT P10 TRUE COPY OF THE ORDER DATED 21.1.2017 OF THE 1ST ADDITIONAL DISTRICT COURT,



ERNAKULAM IA NO.8456/2016 IN  
ARBITRATION APPEAL NO.15 OF 2016.

EXHIBIT P11 TRUE COPY OF THE JUDGMENT DATED  
11.04.2017 IN OPC NO.552 OF 2017 ALONG  
WITH THE COMPROMISE PETITION.

EXHIBIT P11 A TRUE COPY OF THE COMPROMISE PETITION  
DATED 03.04.2017.

EXHIBIT P12 TRUE COPY OF THE UNDERTAKING DATE  
07.08.2019 EXECUTED BY THE PETITIONER.

EXHIBIT P13 TRUE COPY OF THE EP 58/2020 DATED  
11.3.20 FILED BY THE RESPONDENT TO  
EXECUTE THE EXT.P1 JUDGMENT.

EXHIBIT P14 TRUE COPY OF THE COUNTER AFFIDAVIT  
DATED 14.12.2020.

EXHIBIT P15 TRUE COPY OF THE EA NO.14 OF 2021 IN EP  
NO.58 OF 2020 DATED 27.02.2021.

EXHIBIT P16 TRUE COPY OF THE ORDER DATED 15.02.2021  
IN EA 14/2021.



**APPENDIX OF OP(C) 967/2021**

PETITIONER EXHIBITS

- EXHIBIT P1                    A TRUE COPY OF THE EXECUTION PETITION  
IN E.P NO. 58/2020 ON THE FILE OF THE  
HON'BLE DISTRICT COURT, THODUPUZHA.
- EXHIBIT P2                    A TRUE COPY OF THE JUDGMENT DATED  
11.04.2017 IN OP(C) NO. 552/2017.
- EXHIBIT P3                    A TRUE COPY OF THE DOCUMENT DATED  
07.08.2019 EXECUTED BY THE RESPONDENT  
IN FAVOUR OF THE PETITIONER.
- EXHIBIT P4                    A TRUE COPY OF THE COUNTER AFFIDAVIT  
DATED 14.12.2020 FILED BY THE  
RESPONDENT IN EP.NO. 58/2020 ON THE  
FILE OF THE HON'BLE DISTRICT COURT,  
THODUPUZHA.
- EXHIBIT P5                    A TRUE COPY OF THE ORDER DATED  
23.03.2021 IN E.P NO. 58/2020 OF THE  
HON'BLE DISTRICT COURT, THODUPUZHA.