



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 7TH DAY OF MARCH, 2025

BEFORE

THE HON'BLE MR JUSTICE HANCHATE SANJEEVKUMAR

MISCELLANEOUS FIRST APPEAL NO. 11925 OF 2012 (AA)

BETWEEN:

M/S. MAHA RASHTRA APEX CORPORATION LTD
A COMPANY INCORPORATED UNDER
INDIAN COMPANIES ACT 1913
HAVING ITS REGISTERED OFFICE AT MANIPAL,
UDUPI DISTRICT
REP BY ITS GPA HOLDER
SRI SUDHA SHANKAR

...APPELLANT

(BY SRI. PUNDIKAI ISHWARA BHAT, ADVOCATE)

AND:

1. SRI. P.K.MOHAMMED,
SINCE DEAD BY LRS

1A) MR. AFSAL, MAJOR,
S/O P K MOHAMMED
PK HOUSE,
NEAR BADRIYA PRIMARY HIGH SCHOOL
KALLUBANE,
ARJI VILLAGE, VIRAJPET,
KODAGU DISTRICT - 571218

1B) MR. ISMAIL, MAJOR,
S/O P K MOHAMMED PKM SOUNDS,
MALABAR ROAD VIRAJPET 571218

1C) MR. SHAMSHEER,
MAJOR, S/O P K MOHAMMED
P K HOUSE, KALLUBANE,
ARJI VILLAGE, VIRAJPET TALUK,
KODAGU DISTRICT- 571218

1D) MR. FAISAL, MAJOR,
S/O P K MOHAMMED





P K HOUSE, KALLUBANE,
ARJI VILLAGE, VIRAJPET TALUK,
KODAGU DISTRICT- 571218

1E) MR. HANEEFA, MAJOR,
S/O P K MOHAMMED
P K HOUSE, KALLUBANE,
ARJI VILLAGE, VIRAJPET TALUK,
KODAGU DISTRICT- 571218

1F) MR. MIDHILAJ, MAJOR,
S/O P K MOHAMMED
P K HOUSE, KALLUBANE,
ARJI VILLAGE, VIRAJPET TALUK,
KODAGU DISTRICT- 571218

1G) MRS.FATHIMA, MAJOR,
D/O. P K MOHAMMED
P K HOUSE, KALLUBANE,
ARJI VILLAGE, VIRAJPET TALUK,
KODAGU DISTRICT- 571218

2. SRI K HASSAN MAJOR
S/O MOHAMMED
R/AT P K HOUSE, NEAR VIRAJPET
POST OFFICE, VIRAJPET 571 218
KODAGU DISTRICT
3. SRI K A AGUSTINE MAJOR
S/O AGUSTY
R/AT KOLLAPILLY HOUSE
CHITTARIKAL, NILESHWARAM
HOSADURGA 670 326
KERALA STATE

...RESPONDENTS

(BY SRI. M H HANEEF, ADVOCATE FOR R1
NOTICE TO R2 AND R3 IS DISPENSED WITH)

THIS MFA IS FILED U/S 37(1)(b) OF THE ARBITRATION AND
CONCILIATION ACT, 1996, AGAINST THE ORDER DATED 17.7.2012
PASSED IN A.C.NO.1/2005 ON THE FILE OF THE DISTRICT JUDGE,
KODAGU, MADIKERI, ALLOWING THE APPLICATION U/SEC 34 OF
ARBITRATION AND CONCILIATION ACT AND ETC.

THIS APPEAL, COMING ON FOR FURTHER HEARING, THIS DAY,
JUDGMENT WAS DELIVERED THEREIN AS UNDER:



CORAM: HON'BLE MR JUSTICE HANCHATE SANJEEVKUMAR

ORAL JUDGMENT

1. The present appeal is filed by the appellant against the order dated 17.7.2012 passed in Arbitration case No.1/2005 by the District Judge at Madikeri thereby the District Court has set aside the Arbitral award so far as against respondent No.1 borrower is concerned. It is submitted that now respondent No.1 is no more and his legal heirs have come on record.

2. It is stated that respondent No.1 has borrowed loan from the appellant and with allegation that respondent No.1 become defaulter, therefore, arbitration proceedings were initiated as per clause 22 (a) of Hire Purchase Agreement. Accordingly, the Arbitrator conducted arbitral proceedings at Manipal and passed the award in A.P. No.246/1999. Against the said arbitration award, respondent No.1 herein has preferred Arbitration suit under Section 34 of the Arbitration and Conciliation Act, 1996¹ before the Court of District Judge, Madikeri.

¹ Hereinafter referred to as 'the Act, 1996'



3. The District Judge, Madikeri has set aside the arbitral award so far as against respondent No.1 is concerned. Against this, the appellant has preferred the present appeal.

4. Learned counsel for the appellant submitted that the District Judge, Madikeri does not have jurisdiction to entertain the Arbitration suit under Section 34 of the Act, 1996 as the entire transaction was in Udupi District and as per the clause of Arbitration Agreement, the Arbitration sitting would be within Udupi District only. But on the other hand, learned counsel for respondents submitted that since respondent No.1 is a resident of Kodagu-Madikeri District therefore, the District Judge has jurisdiction and further submitted that no notice has been served on respondent No.1. Hence, respondent No.1 could not have knowledge regarding the arbitration proceedings. Further it is submitted that if notice has been served on respondent No.1, then respondent No.1 would have been in a position to participate in the arbitration proceedings. Further submitted that the appointment of sole arbitrator is not in accordance with law. Therefore, justified the impugned order.



5. Learned counsel for the appellant placed arbitration records of the Arbitrator before this Court in this appeal.

6. Upon perusing the impugned order passed by the learned District Judge, there is no mention that the District Judge has summoned the arbitration records to find out whether notice was served on respondent No.1 or not.

7. Learned District Judge before considering the arbitration suit filed under Section 34 of the Act, 1996 ought to have summoned the arbitration records since notice of reference sent was returned with an endorsement as addressee left and the notice of enquiry sent was returned unserved with an endorsement as addressee refused. Since the same was essential for the purpose of adjudication of the matter, the District Judge ought to have summoned the arbitration records and ought to have considered whether the notice was served or not.

8. Therefore, without expressing any opinion on the merits of the case, matter is remanded to the learned District Judge for fresh consideration in accordance with law. After perusal of the arbitration records, the learned District Judge is directed to



decide whether he is having jurisdiction to entertain the Arbitration Suit under Section 34 of the Act, 1996 filed before the District Court in Kodagu Madikeri District and whether the appointment of sole Arbitrator is in accordance with law.

9. Learned District Judge is directed to summon the entire records in this regard and pass appropriate orders in accordance with law. Therefore, by remanding case to the learned District Judge, the impugned order is set aside. Hence, the following:

ORDER

- i) Appeal is allowed.
- ii) Order dated 17.7.2012 is set aside by remanding the matter to the District Court, Kodagu Madikeri for fresh consideration in accordance with law.
- iii) The concerned District Judge is directed to dispose of the matter within a period of six months from the date of receipt of a copy of this order.



iv) The records submitted by the appellant shall be returned to the appellant so as to submit before the District Court, Kodagu Madikeri.

v) Both parties are directed to appear before District Court, Kodagu Madikeri on 07.04.2025 and concerned District Judge shall dispose of the matter within a period of six months from 07.04.2025.

SD/-
(HANCHATE SANJEEVKUMAR)
JUDGE

BS
List No.: 1 SI No.: 26