



2025:KER:15976

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE SYAM KUMAR V.M.

MONDAY, THE 24TH DAY OF FEBRUARY 2025 / 5TH PHALGUNA, 1946AR NO. 249 OF 2024**PETITIONER:**

ABIN JOSE
AGED 36 YEARS
S/O. JOSE, RESIDING AT KONUKKUDY HOUSE,
NEELESWARAM, KALADY, MALAYATTOOR,
ERNAKULAM DISTRICT, PIN - 683574

BY ADVS.
G.HARIHARAN
PRAVEEN.H.
K.S.SMITHA
B.R.SINDU
V.R.SANJEEV KUMAR
AFNA V.P.
REMYA MURALI

RESPONDENT:

M/S. TATA MOTOR FINANCE LTD
3RD FLOOR, KUSUMAGIRI P.O., KAKKANAD,
ERNAKULAM DISTRICT
REPRESENTED BY ITS BRANCH MANAGER.,
PIN - 682030

BY ADVS.
FAZIL P
SAJU THALIATH(K/429/1995)
JITHIN PAUL VARGHESE(K/940/2009)
C.PRABITHA(K/528/2009)
FADIL FAZIL(K/1842/2021)
ASWATHY JAYACHANDRAN(K/994/2022)
ALVIN MATHEW(K/000492/2024)

THIS ARBITRATION REQUEST HAVING COME UP FOR ADMISSION ON
24.02.2025, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



SYAM KUMAR V.M., J.

A.R. No. 249 of 2024

Dated this the 24th day of February, 2025

ORDER

This is an Arbitration Request filed under Section 11 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as "the Act") seeking to appoint an Arbitrator to adjudicate on the differences and disputes between the petitioner and the respondent.

2. The petitioner is the owner of a vehicle, which was purchased by him after availing a loan from the respondent Company for an amount of Rs. 47,00,000/-. A TMFL Loan cum hypothecation cum guarantee agreement dated 28.05.2022 was also entered into between the parties in the said respect. The loan was repayable within a period of 58 monthly installments. However, the petitioner failed to remit the loan amounts as agreed. Alleging breach the respondent invoked the arbitration clause and nominated an Arbitrator. The Arbitrator proceeding with the matter and has rendered Annexure-IV award.



3. The petitioner has filed this Arbitration Request invoking Section 11, seeking to appoint an Arbitrator *inter alia* contending that, in view of the dictum laid down by the Hon'ble Supreme Court in ***Central Organisation for Railway Electrification v. M/s ECI Spic SMO MCML (JV) A Joint Venture Company*** [(2024 SCC OnLine SC 3219)] the respondent cannot unilaterally appoint an Arbitrator and the award rendered by the Arbitrator is unsustainable in law. It is relevant to note that the Arbitration Request is not accompanied by the Original or certified copy of the relevant loan agreement containing the arbitration clause for the purported reason that the respondent had not supplied a copy of the same to the petitioner.

4. The respondent entered in appearance and filed a counter affidavit producing therewith, a copy of the relevant loan agreement. The learned counsel appearing for the respondent, pointing to Clause 23 and Clause 24 of the agreement, pertaining to arbitration, jurisdiction and governing law respectively, submits that in view of the specific choice of venue as well as the forum chosen by the parties in the said clauses only the Courts and Tribunals in Mumbai have jurisdiction to entertain petitions and applications arising from the agreement. This Court does not have the jurisdiction to



entertain the application under Section 11 of the Act since exclusive jurisdiction has been vested in the courts in Mumbai.

5. I note that the Loan agreement confers exclusive jurisdiction on Courts and Tribunals in Mumbai, Maharashtra. In view of the express clause incorporated by the parties in the arbitration agreement, this Court does not have jurisdiction to entertain the matter. The Hon'ble Supreme Court has in **Central Organisation for Railway Electrification v. M/s ECI SPIC SMO MCML (JV) A Joint Venture Company** (supra) has termed party autonomy as the “brooding and guiding spirit” and “backbone” of arbitrations. Following the said dictum and in deference to the express choice of the parties, it is found that this Court does not have jurisdiction to entertain this application.

6. In light of the above, I conclude that this court does not have the jurisdiction to entertain this Arbitration Request. This Arbitration Request is hence dismissed reserving the right of the petitioner to move the competent court. To facilitate the same, all questions on merits are left open.

Sd/-

**SYAM KUMAR V. M.
JUDGE**

NJ



AR NO. 249 OF 2024

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APPENDIX OF AR 249/2024**PETITIONER ANNEXURES**

- Annexure I** **A TRUE COPY OF THE RC STATUS OF VEHICLE BEARING REGISTRATION NO. KL-63H-9227**
- Annexure II** **A TRUE COPY OF THE COMMUNICATION DATED 16.02.2024 SENT BY THE SRI. SANTOSH B PATIL ADVOCATE INFORMING THE PETITIONER ABOUT HIS APPOINTMENT AS THE SOLE ARBITRATOR BY THE RESPONDENT AND DIRECTING THE PETITIONER TO APPEAR BEFORE HIM ON 14.03.2024**
- Annexure III** **A TRUE COPY OF THE OBJECTION DATED 25.02.2024 SENT BY THE PETITIONER ADDRESSED TO THE RESPONDENT**
- Annexure IV** **A TRUE COPY OF THE AWARD PASSED BY THE SOLE ARBITRATOR ON 15.04.2024**

RESPONDENT EXHIBITS

- R (a)** **The true copy of the loan agreement No. 5004355365 dated 28.05.2022**