

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE EASWARAN S.

MONDAY, THE 13TH DAY OF JULY 2026 / 22ND ASHADHA, 1948

OP(C) NO. 1315 OF 2025

PETITIONER/S:

ASSET HOMES PVT.LTD.
HAVING ITS REGISTERED OFFICE AT XV/246C, ASSET
CENTRALE', NH BYE PASS, KUNDANOR JUNCTION,
MARADU P.O., KOCHI REPRESENTED BY THE MANAGING
DIRECTOR, PIN - 682304

BY ADVS.
SHRI.PHILIP MATHEW
SRI.VINAY MATHEW JOSEPH

RESPONDENT/S:

KAUSER FATHIMA
AGED 62 YEARS
D/O RUKIYA BAI, RESIDING AT HOUSE NO.VII/284,
RAFIQ MANSION DARUL SALAM ROAD, MATTANCHERY
P.O., KOCHI, PIN - 682002

BY ADVS.
SRI.ASWIN GOPAKUMAR
SRI.ANWIN GOPAKUMAR
SHRI.ADITYA VENUGOPALAN
SHRI.MAHESH CHANDRAN
SMT.SARANYA BABU
SHRI.ABHISHEK S.
SMT.GOPIKA B.S.
SHRI.ROHIT P.

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THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON
13.07.2026, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

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EASWARAN S., J.

OP(C) No. 1315 of 2025

Dated this the 13th day of July, 2026

JUDGMENT

This Original Petition is filed impugning the order dated 23.05.2025 issued by the Arbitration Tribunal, Ernakulam in I.A.No.4 of 2025 in ARC No.1 of 2025. The dispute between the petitioner and the respondent was referred to the Arbitrator pursuant to the arbitration clause contained in Ext.P1 agreement. After the filing of the statement of claim, the respondent delivered the statement of defence, and once the statement of defence was delivered, the claimant filed an application for amendment, which was allowed, and the amended claim statement was also filed. At this point of time, the respondent realised that the claim sought to be raised by

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way of amendment does not fall within the arbitrable dispute and, accordingly, filed an application under Section 16(3) of the Arbitration and Conciliation Act, 1996, raising an issue regarding the arbitrability of the dispute as well as the jurisdiction of the Arbitral Tribunal. This application was ordered by Ext. P7, holding that the Arbitration Act does not provide for any stipulation that the Arbitral Tribunal should decide the dispute regarding jurisdiction as a preliminary issue and, therefore, the Arbitral Tribunal felt that this is a matter which has to be decided after the parties have adduced evidence in the arbitration proceedings.

2. Heard Sri. Philip Mathew, the learned counsel appearing for the petitioner and Sri. Aditya Venugopalan, the learned counsel appearing for the respondent.

3. Section 16(3) of the Arbitration and Reconciliation Act reads as under:-

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“16. Competence of arbitral tribunal to rule on its jurisdiction

(1)****

(2)*****

(3) A plea that the arbitral tribunal is exceeding the scope of its authority shall be raised as soon as the matter alleged to be beyond the scope of its authority is raised during the arbitral proceedings.”

4. Section 16(3) enables the parties to raise a dispute regarding the scope of the authority of the Arbitral Tribunal in deciding the issue and is intended to alert the Tribunal that it is exceeding the scope of its authority in respect of the matters falling within its domain. Sub-section (5) of Section 16 provides that the Arbitral Tribunal shall decide on the plea referred to in sub-section (3) and, based on such decision, continue with the arbitral proceedings and make an Award. A reading of sub-section (5) of Section 16 shows that the decision on an application under sub-section (3) of Section 16 is not to be postponed until the

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evidence is over. As soon as an application is filed raising the authority of the Tribunal to proceed in respect of certain claims on the ground that it is beyond the scope of reference, necessarily the Tribunal is expected to decide the same before it renders a final decision on the Award.

5. In view of the above, this Court is unable to subscribe to the findings of the Arbitral Tribunal under Ext.P7. The petitioner cannot be expected to wait till an order is passed finally in the Award. Further, the finding of the Tribunal that the question of its authority need not be decided as a preliminary issue does not appear to be sound to this Court in the light of the purpose of sub-section (3) and sub-section (5) of Section 16. Accordingly, Ext.P7 order to the extent it postpones the decision on Ext.P6 application is interfered with. The Arbitral Tribunal is directed to decide and pass appropriate

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orders on Ext. P6 as expeditiously as possible, at any rate, within a period of two months from the date of receipt of a copy of this judgment, and, depending upon such decision, proceed with the arbitration accordingly.

The Original Petition is disposed of accordingly.

Sd/-

**EASWARAN S.
JUDGE**

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APPENDIX OF OP(C) NO. 1315 OF 2025

PETITIONER EXHIBITS

Exhibit P1	THE TRUE COPY OF THE CO-DEVELOPMENT/ CONSTRUCTION AGREEMENT DATED 31.05.2017 EXECUTED BETWEEN THE PETITIONER AND THE RESPONDENT
Exhibit P2	THE TRUE COPY OF THE IA NO. 3/2025 DATED 06.05.2025 FILED BY THE CLAIMANT
Exhibit P3	THE TRUE COPY OF THE COUNTER AFFIDAVIT DATED 14.05.2025 FILED BY THE PETITIONER-RESPONDENT IN ARC
Exhibit P4	THE TRUE COPY OF THE ORDER PASSED ON 14.05.2025 BY THE ARBITRAL TRIBUNAL
Exhibit P5	THE TRUE COPY OF THE AMENDED STATEMENT OF CLAIM DATED 14.05.2025 FILED BY THE RESPONDENT CLAIMANT
Exhibit P6	THE TRUE COPY OF THE IA NO.4/2025 IN ARC 1 OF 2025 FILED BY THE PETITIONER, DATED 22.05.2025
Exhibit P7	THE TRUE COPY OF THE ORDER PASSED BY THE ARBITRAL TRIBUNAL DATED 23.05.2025 IN IA NO.4/2025 IN ARC NO.1/2025
Exhibit P8	THE TRUE COPY OF THE ADDITIONAL STATEMENT FILED BY THE PETITIONER IN ARC NO. 1/2025