CNR : KLHC010536292026

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE S.MANU

WEDNESDAY, THE 19TH DAY OF AUGUST 2026 / 28TH SRAVANA, 1948

RP NO. 837 OF 2026

AGAINST THE ORDER DATED 08.07.2026 IN AR NO.292 OF 2025 OF HIGH COURT OF KERALA

REVIEW PETITIONER/RESPONDENT IN ARBITRATION REQUEST:

SMT.RUPA PRAVEEN ASHER
AGED 74 YEARS
RESIDING AT CENTURY TERRACE, FLAT NO. 41,
YUVAJANA SAMAJAM ROAD, KADAVANTHRA, PIN - 682020

BY ADVS.
SHRI.MOHAN JACOB GEORGE
SMT.P.V.PARVATHY (P-41)
SMT.REENA THOMAS
SMT.NIGI GEORGE
SHRI.ANANTHU V.LAL
SMT.SHERIN VARGHESE
SRI.ANTONY THOMAS
SMT.FABI ABDUL LATHEEF

RESPONDENTS/PETITIONERS IN ARBITRATION REQUEST:

1 **BHARAT SURSINGH ASHER**
AGED 72 YEARS
S/O.LATE SURSINGH JAIRAM ASHER, RESIDING AT FLAT NO.13G, CHAKOLAS WATERSCAPES, THEVARA, KOCHI, PIN - 682013

2 **RAJESH GIRDHARDAS ASHER**
AGED 70 YEARS

CNR : KLHC010536292026

S/O.LATE GIRDHARDAS JAIRAM ASHER, RESIDING AT FLAT NO.22, CENTURY TERRACE, KADAVANTHARA, KOCHI, PIN - 682020

3 HEMANGI B. ASHER
AGED 65 YEARS
W/O.BHARAT S ASHER, RESIDING AT APARTMENT NO.13G, CHACKOLAS, WATERSCAPES, THEVARA, KOCHI, PIN - 682013

ADV S SREEKUMAR (SR)

THIS REVIEW PETITION HAVING COME UP FOR ADMISSION ON 03.08.2026, THE COURT ON 19.08.2026 PASSED THE FOLLOWING:

CNR : KLHC010536292026

S.MANU, J.

RP No.837 of 2026
in
AR No.292 of 2025

Dated this the 19th day of August, 2026

ORDER

Respondent in AR No.292 of 2025 has filed this review petition stating that the order dated 08.07.2026 rendered in the arbitration request is liable to be reviewed as various errors are apparent in the order.

2. Learned counsel for the petitioner submitted that this Court omitted to take note of some of the contentions of the respondent in the arbitration request and also mistook certain contentions advanced on her behalf as that of the respondents in the review petition. Further, the learned counsel submitted that though he cited a judgment of the Hon'ble Supreme Court

in **M.M.T.C. Ltd. v. Sterlite Industries (India) Ltd.** [(1996) 6 SCC 716] only the submissions made by the learned Senior Counsel for the respondents herein pertaining to the said judgment were taken note of while passing the order. He elaborated the submissions with reference to various paragraphs of the order sought to be reviewed. He relied on the following judgments to contend that it is open to this Court to review an order passed in an application under Section 11 of the Arbitration and Conciliation Act 1996.

1. **Shailesh Ranka and others v. Windsor Machines Limited and another** [2024 SCC OnLine Bom 3540]
2. **A.R.Antulay v. R.S.Nayak and Anothers** [(1988) 2 SCC 602]
3. **Jain Studios Ltd.Through its President v. Shin Satellite Public Co. Ltd.** [(2006) 5 SCC 501]
4. **M.M.Thomas v. State of Kerala and Another** [(2000) 1 SCC 666]
5. **Shivdeo Singh and Others v. State of Punjab and Others** [1963 KHC 694]
6. **Mohd. Anwar and Others v. Pushpalata Jain and Others** [2021 SCC OnLine SC 3760]

3. Learned Senior Counsel for the respondents per contra submitted that in view of the judgment of the Hon'ble Supreme Court in **Hindustan Construction Company Limited. Through its Authorised Signatory Yogesh Dalal v. Bihar Rajya Pul Nirman Nigam Limited and Others** [(2026) 3 SCC 264] and of this Court in **Koshy Phillip v. Thomas P. Mathew and Others** [2026 (3) KLT 383] petitions for substantive review against orders issued under Section 11 of the Arbitration and Conciliation Act are not maintainable. Further, it was submitted that there are no errors in the order sought to be reviewed. It was also submitted by the learned Senior Counsel that it is clear from Paragraph No.11 of the order sought to be reviewed that this Court omitted discussion on some of the contentions raised during the course of arguments as they were beyond the scope of the constricted inquiry under Section 11 of the Act. He referred to the opening

sentences in Paragraph No.11 which reads as under:

> *"11. I have carefully appreciated the contentions of both sides. I am of the view that serious disputes have arisen between the parties and many of the contentions raised during the course of arguments and also in the pleadings are beyond the perimeter of the restricted inquiry under Section 11 of the Arbitration and Conciliation Act. The task of the Court exercising the power under Section 11 of the Act is guided by Section 11(6A).*

4. It was pointed out by the learned counsel for the petitioner that in **Mohd. Anwar and Others** (Supra) the Hon'ble Supreme Court affirmed an order passed by the Indoor Bench of the High Court of Madhya Pradesh in a review against an order passed under Section 11 of the Act. It was also pointed out by the learned counsel that the Hon'ble Supreme Court in **Jain Studios Ltd.** (Supra) allowed a petition for review against an order passed in an arbitration petition. The learned counsel also submitted that the Mumbai High Court in **Shailesh Ranka and others** (Supra) allowed a review petition filed against an order passed under Section 11 of the Act after rejecting the contention

that no review would lie. Pertaining to the general power of review availed to the High Court, the learned counsel referred to relevant paragraphs of the judgments in **Shivdeo Singh and Others** (Supra), **A.R.Antulay** (Supra) and **M.M.Thomas** (Supra). He therefore contended that this Court is vested with the jurisdiction to review an order passed under Section 11 of the Arbitration and Conciliation Act also. He argued that for the grounds raised in the memorandum of review petition, it is necessary to review the order passed in the arbitration request as errors are apparent on the face of it.

5. In **Hindustan Construction Company Ltd.** (Supra), the Hon'ble Supreme Court specifically addressed the question as to whether High Court had jurisdiction to review its earlier order passed under Section 11(6) of the Arbitration and Conciliation Act and whether such exercise of power was valid in law. After

elaborate reference to various precedents, particularly the Seven Judge Bench decision in **IN RE Interplay Between Arbitration Agreements Under Arbitration and Conciliation Act, 1996 And The Indian Stamp Act 1899 [(2024) 6 SCC 1],** it was concluded as under:

> *"47. Once the Section 11 order had attained finality, the only remedies available to the respondents were to approach this Court under Article 136 or to raise objections under Section 16 before the Arbitral Tribunal. Having chosen neither route, and having participated in the arbitral proceedings, including joint applications under Section 29-A, they were estopped from reopening the matter through review. A later judgment cannot revive a concluded cause of action.*
> *48. As emphasized in BSNL v. Nortel Networks (India) (P) Ltd. (2021) 5 SCC 738 : (2021) 3 SCC (Civ) 352], courts must resist "attempts to re-enter through the back door what the statute has shut through the front door". Section 11 is intended to trigger arbitration, not to create multiple stages of judicial reconsideration.*
> *49. For the reasons discussed above, this Court is of the considered view that the High Court did not have the jurisdiction to reopen or review its earlier order passed under Section 11(6) of the A&C Act. Once the appointment was made, the court became functus officio and could not sit in judgment over the very issue it had already settled. The review order cuts against the grain of the Act, undermines the principle of minimal judicial interference, and effectively converts the review into an appeal in disguise. Such an exercise cannot*

stand. Accordingly, this issue is answered in the negative."

6. This Court followed the judgment in **Hindustan Construction Company Ltd.** (Supra) in **Koshy phillip** (supra) and held as under:

> *"20. In the light of the judgment of the Hon'ble Apex Court in Hindustan Construction Company Ltd. (supra), the legal position regarding maintainability of review is no longer res integra. Though the Hon'ble Supreme Court was considering a case arising from a review from an order appointing an arbitrator, the principles would definitely apply in case of rejection of an arbitration request also.*
> *21. The concept of limited judicial engagement with arbitration is adequately addressed in IN RE Interplay (supra) judgment of the seven-judge bench of the Hon'ble Supreme Court. The Arbitration and Conciliation Act is a self-contained code, according to the Hon'ble Supreme Court. The highest court in the land has made it plain that anything beyond what is explicitly stated in the Arbitration Act is not permissible. The principles of modern arbitration were highlighted by the Hon'ble Supreme Court in IN RE Interplay (supra). The legislature has made it a policy to limit the role of courts in arbitration. This policy is reflected in Section 5 of the Act. In addition, the legislature reaffirmed the same policy by adding sub-section (6A) to Section 11. The legislative goal of limiting judicial involvement would be plainly undermined if the proposition that every order issued under Section 11 of the Act is subject to substantive review is accepted. Nevertheless, power for limited procedural review on the basis of well settled principles would be inherently available to the High Court with*

> *respect to every order passed. Hence it can be firmly concluded that this Court, even though has inherent plenary powers, would not be justified in Entertaining Petitions for substantive review against orders issued under Section 11 of the Act for want of any enabling provision for review under the Act. Judgment of the Hon'ble Apex Court in Hindustan Construction Company Ltd. (supra) makes the proposition abundantly clear."*

7. It is to be noted that the observations of the Hon'ble Supreme Court relied on by the learned counsel for the petitioner with reference to the judgments in **Shivdeo Singh** (Supra)**, A.R.Antulay** (Supra) and **M.M.Thomas** (Supra) are regarding the general power of review. It is true that in **Jain Studios Ltd** (Supra), the Hon'ble Supreme Court allowed a review petition filed against an order passed under Section 11 of the Arbitration and Conciliation Act. Nevertheless, perusal of the said judgment would reveal that the Apex Court exercised its special power of review under Article 137 of the Constitution of India. Hence the said judgment is not helpful for the

petitioner to advance her case. In **Mohd. Anwar and Others** (Supra) an order passed by the High Court allowing a review petition against an order under Section 11 of the Arbitration and Conciliation Act was affirmed. However, the said judgment was rendered before the judgment of the Seven Judge Bench in **IN RE Interplay**(Supra). It is relevant to note that the judgment in **Hindustan Construction Company Ltd.** (Supra) was pronounced in the light of the principles laid down by the Seven Judge Bench in In **IN RE Interplay** (Supra). Judgment of the Bombay High Court relied on by the learned counsel for the petitioner was passed on 12.11.2024 before the judgment in **Hindustan Construction Company Ltd.** (Supra) was rendered by the Apex Court on 28.11.2025. Therefore, the principles laid down by the Bombay High Court cannot be accepted as good law.

CNR : KLHC010536292026

In the light of the foregoing discussions, I am of the firm view that a petition seeking substantive review of an order passed under Section 11 of the Arbitration and Conciliation Act is not maintainable as clarified by the Hon'ble Supreme Court in **Hindustan Construction Company Ltd.** (Supra). I have perused the grounds raised in the memorandum of review petition. I find that even if the grounds raised in the petition for review are assumed as acceptable in their entirety, same would not be sufficient to prompt the Court to vacate the ultimate conclusions in the order sought to be reviewed. For these reasons I dismiss the review petition.

Sd/-

S.MANU
JUDGE

MC