

CNR No: HRNR0100-1510-2025

CIS No: EXE-32-2025

M/s Manappuram Finance Ltd Vs. Dharamveer Nathuram and another

Present: Ms. Suman Kumari, Advocate for DH with Sh. Vinod Kumar, Legal Manager.

Today case was fixed for arguments on the point whether the present execution is maintainable being award passed by Sole Arbitrator as per law laid down by Hon'ble Supreme Court of India in **Kotak Mahindra Bank Ltd. Vs. Narendra Kumar Prajpat SLP (C) Diary No(s). 47322/2023, decided on 12.12.2023.**

2. Learned counsel for the decree holder has contended that the execution petition is maintainable and the proper procedure has been adopted for appointment of Arbitral Tribunal. However, learned counsel for decree holder has not produced any judgment in contrary to the law laid down by the Hon'ble Apex Court.

3. In the instant case, admittedly, nomination of the Sole Arbitrator was done by the decree holder on its own without any concurrence from the judgment debtors. Perusal of exparte award dated 29.02.2024 shows that it has been passed by Arbitral Tribunal of Shri K.M. Smijosh, Sole Arbitrator, who was unilaterally appointed.

4. Such Unilateral Appointment of Sole Arbitral is non-est and void ab-initio. Award passed by such a Tribunal is Non-Executable. The statutory provision of Section 12(5) read with Schedule 7 of the Arbitration and Conciliation Act, 1996, duly explained by Hon'ble Supreme Court in **TRF Limited Vs. Energo Engineering Projects Ltd. (2017) 8 SCC 377** wherein it is found that as per the legal position as it exists as on date, the unilateral

appointment of Sole Arbitrator was void ab initio, non-est and a nullity. The proceedings carried out by such unilaterally appointed Arbitrator exparte and the award sought to be executed is found to have been passed with inherent lack of jurisdiction. As such, this Court is of the firm view that the Award under execution is rendered Non-Executable.

5. The Hon'ble Supreme Court's decision in **Perkins Eastman Architects DPC and Ors Vs. HSSC (India) Ltd., (2020) 20 SCC 760** discusses the equal power of parties to appoint the arbitrator and has held that if one party was the exclusive right to appoint the arbitrator, then his choice will always have an element of bias.

6. Relevant portion of the Court's observation is as under:-

The reason is clear that whatever advantage a party may derive by nominating an arbitrator of its choice would get counter balanced by equal power with the other party. But, in a case where only one party has a right to appoint Sole Arbitrator, its choice will always have an element of exclusivity in determining or charting the course for dispute resolution. Naturally, the person who has an interest in the outcome or decision of the dispute must not have the power to appoint a Sole Arbitrator.

7. The Hon'ble Supreme Court of India in **Kotak Mahindra Bank Ltd. Vs. Narendra Kumar Prajpat SLP (supra)** has also held that an award passed by a unilaterally appointed arbitrator is not executable.

8. Keeping in the law laid down by the Hon'ble Supreme Court, the instant execution petition for execution of an exparte award dated 29.02.2024

passed by unilaterally appointed Sole Arbitrator is not maintainable and the same is hereby dismissed. File be consigned to the record room after due compliance.

Date of Order: 15.05.2025

(K.P.Singh)
Addl. District Judge,
Narnaul. (UID No.HR0160)

(Sunil Kumar SG-III)