

IN THE COURT OF III ADDITIONAL DISTRICT JUDGE, THRISSUR
Present: Sri. Anyas Thayyil, III Additional District Judge, Thrissur
Saturday, the 18th day of October 2025/26th Aswina 1947 SE

E.P. 199/2025 in ACP 74/2025

Plaintiff /Decree Holder:-

Maben Nidhi Ltd., IV/709 B, 1st floor, J.P. Mart, Nr. High School Junction, Valappad P.O., Thrissur -680567, Rep by Legal Officer, Aathira K.R.

(By Adv. T.K. Seema)

Respondent/Judgment Debtors:-

1. Jisha, Aged 41 Yrs., W/o Raju, Chenchery House, Pariyaram, Thrippappilly, Pariyaram.P.O., Thrissur P.O., Pin 680721.
2. Raju, Aged 50 Yrs., S/o Velayudhan, Chenchery House, Pariyaram, Thrippappilly, Pariyaram.P.O., Thrissur P.O., Pin 680721.
3. Ammini, Aged 76 Yrs., W/o Velayudhan, Chenchery House, pariaram, Thrippappilly, Pariyaram.P.O., Thrissur, Pin 680721.

This petition is coming on this day, the court passed the following:-

ORDER

This is an execution petition filed by the decree holder for the execution of the award passed by the sole arbitrator on 29.05.2025.

2. According to the decree holder, the judgment debtors are liable to pay Rs.3,14,539/- together with interest and costs to the Decree Holder. The prayer sought against the judgment debtors is for realisation of the amount from the judgment debtors as well as their assets.

3. Judgment debtors not entered appearance.

4. Heard the learned counsel for the decree holder regarding the maintainability.

5. The learned counsel for the decree holder argued that the judgment debtors were fully aware of the Arbitration proceedings and they had received the signed copy of the award and hence the award is enforceable.

6. In the decision in ***Hedge Finance Pvt Ltd Ernakulam Vs. Bijesh Joseph (2022 KHC 591)*** the Hon'ble High Court has held that If the Arbitrator is appointed not in compliance of section 11 or the proviso to section 12(5) of the Arbitration and Conciliation Act it goes to the very root of the case and the award passed by the Arbitrator is not enforceable. The Hon'ble High Court directed the Registry to forward copy of the judgment to all courts in the State dealing with the applications under the Act. In the above decision the Hon'ble Court has observed that :

“On an analysis of the amended provisions of the Arbitration and Conciliation Act, 1996 and the exposition of law laid down by the Hon'ble Supreme Court in the afore-cited decisions, it is abundantly clear that the law mandates that there should be neutrality not only for the Arbitrator but also in the arbitrator selection process as well. Thus, in the post – 2015 amendment era, there are only two modes of appointment of a sole Arbitrator (I) by express agreement in writing between the parties, post the dispute, agreeing to waive the applicability of Section 12 of the Act or (ii) by order of appointment by the High Court under Sec.11 of the Act. If the appointment of a sole arbitrator is made other than by the above two methods, the appointment is ex facie bad and is in contravention of the provisions of the Act, which goes to the roots of

the matter, and the Arbitrator becomes de jure ineligible to act as an arbitrator by the operation of law”.

The Hon'ble Court further observed that : *“The law laid down in Chiranjilal Shrilal Goenka, TRF Ltd (supra) and Mantoo Sarkar Vs. Oriental Insurance Co. Ltd and others [(2009) 2 SCC 244] and Sneh Lata Goel Vs. Pushplata and others [(2019) 3 SCC 594] is sufficient to fortify the elementary principle that a decree passed by the court without jurisdiction goes to the very roots of the matter and the decree is a nullity. Thus, I have no doubt in my mind that an interim award passed by an arbitrator who was appointed in contravention of the provisions of the Act and the law laid down by the Hon'ble Supreme Court extracted above, is bad in law and as a corollary to the same, the award is unenforcible. It should be borne in mind that the enforceability of an award is a serious matter and the court is case with the responsibility to ascertain whether the interim award is passed by an arbitrator who is competent to be appointed in accordance with law. As observed in TRF Ltd, once the infrastructure collapses, the superstructure is bound to collapse. One cannot have a building without the plinth. Therefore, the interim award becomes worthless”.*

7. Here the decree holder did not produce the document to show that the Arbitrator was appointed before the amendment of the Act. On the other hand on a perusal of the award would show that the petitioner decided to start the Arbitration proceedings as per Arbitration Notice dated 28.12.2024. That would show that the Arbitrator was appointed after the amendment (23.10.2015). In the light of the above observation made by the Hon'ble High Court after the amendment of the Act, if the appointment is not u/s. 11 of the Act or on the basis of an express agreement, the same goes to the root of the case. As the very appointment of the Arbitrator is illegal the award passed by the Arbitrator is also

unenforcible. So, it is to be found that the award sought to be enforced is unenforcible and the petition is liable to be dismissed.

In the result, the execution petition is dismissed.

(Dictated to the Confidential Assistant, transcribed by him, corrected and pronounced by me in open court this the 18th day of October, 2025).

Sd/-
ANYAS THAYYIL
III Additional District Judge,
Thrissur

Appendix- Nil

Sd/-
ANYAS THAYYIL
III Additional District Judge,
Thrissur
By Order

copied :cp
compared : csm

//True copy//

Sheristadar