

**IN THE COURT OF THE ADDL. DISTRICT JUDGE-V,
KOTTAYAM**

Present:- Sri. Ranjith Krishnan N.,
Additional District Judge-V, Kottayam

Monday the 16th day of March, 2026
25th day of Phalgun, 1947

EP.No.111/2023 in (Arb.Ref.No.27/2018)

Decree Holder:-

Muthoot Vehicle and Asset Finance Limited,
Muthoot Chambers, Kurian Towers, Banerji Road,
Ernakulam, Kochi-18, represented by its
Power of Attorney Holder and Liaison Officer-
Pushpan P.V, aged 57 years, S/o. Vasu,
Chinnu Bhavan, Pallom Kara, Nattakom Village,
Kottayam Taluk.

By Adv. R.Ajith

Judgment Debtors:-

1. Derin K.Jacob, aged 27 years, S/o. K.V.Jacob,
Kadaplackal, Theekoy P.O., Theekoy Kara,
Theekoy Village, Meenachil Taluk.
2. Jacob K.V, aged 72 years, S/o. Varkey
Kadaplackal, Theekoy P.O., Theekoy Kara,
Theekoy Village, Meenachil Taluk.
3. Lillikutty Jacob, aged 68 years, W/o. K.V.Jacob,
Kadaplackal, Theekoy P.O., Theekoy Kara,
Theekoy Village, Meenachil Taluk.

JD1 by Adv. Bobby John K.A
JD2 & JD3 Vakalath not seen filed

This Execution Petition having been finally heard on 16.03.2026 and the court on the same day passed the following:-

ORDER

In the above petition, the Judgment Debtors (JDs) have objected to the maintainability of the above Execution Petition, wherein the Decree Holder (DH) seeks to enforce an ex-parte arbitral award dated 10.04.2019, passed in A.R No. 27/2018.

2. The factual matrix necessary for the adjudication of this dispute centers on the loan transaction between the parties. While the Decree Holder claims that the arbitration was conducted pursuant to an agreement containing an arbitration clause, the DH failed to produce the original or a copy of the said arbitration agreement before this Court. It is evident from the arbitral award that the Decree Holder unilaterally appointed the Sole Arbitrator. The arbitration proceedings were conducted in the absence of the Judgment Debtors, who were set ex-parte. The Judgment Debtors have challenged the execution of this award, contending that the appointment of arbitrator was illegal and the resulting award is a nullity and void ab initio.

3. The points arised for consideration are:-

1. Whether the arbitral award passed by a sole arbitrator in this case is a nullity and, if so, whether such an objection to nullity is maintainable at the execution stage under Section 47 of the Code of Civil Procedure, 1908.

2. Order to be passed?

4. **Point No.1:-** The primary contention of the Judgment Debtors is grounded in the mandate of Section 12(5) of the Arbitration and Conciliation Act, 1996, read with the Seventh Schedule, introduced by the 2015 Amendment. The argument of JDs are that the unilateral appointment of the arbitrator by the Decree Holder, an interested party, without the express written consent of the Judgment Debtors, constitutes a violation of the Act. In support of this plea, the Judgment Debtors rely on the settled legal position of the Hon'ble High Court of Kerala in **M/s Hedge Finance Private Limited v. Bijish Joseph [2022 (4) KLT 456]** wherein it was held that a unilateral appointment of an arbitrator by a party interested in the outcome is impermissible in law and renders the resulting award non-est. It was further argued that such an appointment goes to the root

of the jurisdiction, making the proceedings illegal and the award unenforceable.

5. On the question of validity of the arbitrator's appointment, it is seen that the arbitration proceedings commenced well after the 2015 Amendment to the Arbitration and Conciliation Act. The legal position regarding unilateral appointments has been settled by the Hon'ble Supreme Court in **Perkins Eastman Architects DPC v. HSCC (India) Ltd. [(2020) 20 SCC 760]**, and reiterated by the Hon'ble Kerala High Court in **M/s Hedge Finance Private Limited (Supra)**. These judgments held that a person who has an interest in the outcome of the dispute is ineligible to act as an arbitrator and consequently, is also ineligible to unilaterally appoint a sole arbitrator. In the present case, the Decree Holder, being a party to the dispute, unilaterally appointed the Sole Arbitrator. There is no material on record, nor did the DH produce any agreement, to suggest that the Judgment Debtors waived this ineligibility by an express agreement in writing after the dispute arose, as required under the proviso to Section 12(5). Therefore, the appointment of the Sole Arbitrator was void ab

initio, rendering the tribunal without inherent jurisdiction to adjudicate the dispute.

6. The subsequent question is whether this defect renders the execution petition not maintainable and if such a plea can be adjudicated under Section 47 of the Code of Civil Procedure. The settled principle is that the executing court cannot go behind the decree. However, this principle is subject to the exception that the validity of a decree may be challenged in execution proceedings if the decree is a nullity for want of inherent jurisdiction. This legal position has been reaffirmed by the Hon'ble Supreme Court in **MMTC Limited v. Anglo American Metallurgical Coal Pvt. Limited [2025 INSC 1279]**. In this judgment, the Apex Court, relying on its earlier decision in **Electrosteel Steel Limited v. ISPAT Carrier Private Limited [(2022) 1 SCC 731]**, held that a plea of nullity qua an Arbitral Award can indeed be raised in a proceeding under Section 47 of the CPC.

7. While the scope of interference under Section 47 is narrow, the Hon'ble Supreme Court in **MMTC Limited (Supra)** clarified that an objection as to the executability of the decree is permissible when it is limited to the ground of jurisdictional

infirmary or voidness. The Court reiterated the proposition that a decree which is a nullity can be the subject matter of objection under Section 47 of the CPC. Applying this ratio to the case at hand, the unilateral appointment of the arbitrator by the Decree Holder was in direct contravention of the statutory prohibition under Section 12(5) of the Act. This violation stripped the arbitrator of the jurisdiction to act, thereby rendering the award passed a nullity in the eyes of the law. Since the award suffers from such a fundamental jurisdictional defect, it is legally non-est and incapable of execution.

8. Accordingly, strictly adhering to the principles laid down in *MMTC Limited v. Anglo American Metallurgical Coal Pvt. Limited*, *Perkins Eastman Architects DPC v. HSCC (India) Ltd.*, and *M/s Hedge Finance Private Limited v. Bijish Joseph (Supra)*, this Court finds that the Execution Petition is not maintainable. The objection raised by the Judgment Debtors regarding the nullity of the award is sustained. Point No.1 is found against the Decree Holder.

9. Point No.2:- Vide discussions on point No.1, the Execution Petition No. 111/2023 is hereby dismissed as not maintainable.

However, considering the rival contentions of the parties, there is no order as to costs.

Dictated to the Confidential Assistant, typed by her, corrected and pronounced by me in open Court this the 26th day of March, 2026.

Sd/-
Ranjith Krishnan N.,
Addl. District Judge-V, Kottayam

APPENDIX : NIL

Copied by:
Compd by:

Sd/-
Ranjith Krishnan N.,
Addl. District Judge-V, Kottayam