

**IN THE COURT OF THE SPECIAL JUDGE FOR FOREST OFFENCE CASES,
NAGERCOIL.**

PRESENT : Tmt. C.Kalaiyarasi Reena, M.L.,
Special Judge.

Wednesday, the 05th day of August, 2026.

E.P.No. 133 /2025
in
Arb. No. 189/2015
CNR.No.TNKK05-000244-2025

M/S. Shriram Finance Co. Ltd., (Formerly known as M/s.Shriram Transport Finance Company Ltd., Represented by its power of attorney, Thiru. K. Vinesh	... Petitioner/Claimant/ Decree Holder Vs.
1. Kanthaswamy 2. Vijayakumar	... Respondents/Judgment Debtors

This Petition having coming up for final hearing before me on 30.07.2026 in the presence of Thiru. Chandra Sekhar, Advocate for the Petitioner, Thiru. Raveendran, Advocate for the 1st respondent, the 2nd Respondent remains exparte and upon perusing the case records having stood over for consideration till this day, this court delivers the following ;

ORDER

This Execution Petition is filed by the petitioner, under Order 21 Rule 43, 66 and 77 of CPC., for attachment and sale of movable properties of the 1st respondent and realize the award amount.

2. The case of the petitioner in brief :

The petitioner is claimant in the Arbitration case, he is working as Assistant Business Manager in the petitioner company and power of attorney holder of the claimant. The petitioner/claimant filed the Arbitration Case for recovery of money against the respondents. Arbitration case was awarded on 12.03.2016. The respondents failed to pay the award amount of Rs.1,80,723/-. Hence the petitioner

prays to attach and sale the scheduled movable properties of the respondents/judgment debtors after giving due notice and realize the E.P. amount.

3. **Brief Averments of the Counter filed by the 1st respondent :**

The petitioner obtained a unilateral order against the 1st respondent from the consent Tribunal on 12.03.2016. No valid notice has been served on the 1st respondent for passing the arbitral award. The respondents bought a vehicle from the petitioner and the same was seized by the petitioner for not paying the amounts. The petitioner auctioned the vehicle for high price and did not inform to the respondents. Further the respondents are living in his son's house and the articles therein belongs to the son. Hence this petition is liable to be dismissed.

4. **Point for consideration:**

Whether the petitioner is entitled for the relief of realization of amount by attachment and sale of the 1st respondent's schedule mentioned movable properties ?

5. No Oral or Documentary Evidence let in on both sides. Both side contentions and Case Records carefully perused. Both sides heard. The Petitioner has filed the above Execution Petition under Order 21 Rule 43, 66 and 77 of CPC., to attachment and sale of the scheduled movable properties of the respondents and realize the award amount. Further it has been stated that Arbitration case was awarded on 12.03.2016. After the award the respondents failed to pay the award amount Rs.1,80,723 /- as per the award of the Arbitral Tribunal. On the 1st respondent side stated that the petitioner obtained a unilateral order against the 1st respondent from the consent Tribunal on 12.03.2016. No valid notice has been served on the 1st respondent for passing the arbitral award. The respondents bought a vehicle from the petitioner and the same was seized by the petitioner for not paying the amounts. The petitioner auctioned the vehicle for high price and did not inform to the 1st respondent. Further the 1st respondent is living in his son's house and the articles therein belongs to the son.

6. On careful perusal of section 12(5) of Arbitration and Conciliation Act as follows,

“Notwithstanding any prior agreement to the contrary, any person whose relationship, with the parties or counsel or the subject-matter of the dispute, falls under any of the categories specified in the Seventh Schedule shall be ineligible to be appointed as an arbitrator:

Provided that parties may, subsequent to disputes having arisen between them, waive the applicability of this sub-section by an express agreement in writing.

As per the Petitioner that the sole arbitrator was appointed as per section 11 of Act and who is eligible person. But the Respondents side raised questions that the sole Arbitrator cannot appointed unilaterally without knowledge of the Respondents in this Petition.

7. Now, the question arose whether the Arbitrator was appointed as per section 11 of Act.

“(3)Failing any agreement referred to in sub-section (2), in an arbitration with three arbitrators, each party shall appoint one arbitrator, and the two appointed arbitrators shall appoint the third arbitrator who shall act as the presiding arbitrator.

(3A) The Supreme Court and the High Court shall have the power to designate, arbitral institutions, from time to time, which have been graded by the Council under section 43-I, for the purposes of this Act:

Provided that in respect of those High Court jurisdictions, where no graded arbitral institution are available, then, the Chief Justice of the concerned High Court may maintain a panel of arbitrators for discharging the functions and duties of arbitral institution and any reference to the arbitrator shall be deemed to be an arbitral institution for the purposes of this section and the arbitrator appointed by a party shall be entitled to such fee at the rate as specified in the Fourth Schedule:

Provided further that the Chief Justice of the concerned High Court may, from time to time, review the panel of arbitrators.

(4) If the appointment procedure in sub-section (3) applies and (a) a party fails to appoint an arbitrator within thirty days from the receipt of a request to do so from the other party; or (b) the two appointed arbitrators fail to agree on the third arbitrator within thirty days from the date of their appointment, [the appointment shall be made, on an application of the party, by the arbitral institution designated by the Supreme Court, in case of international commercial arbitration, or by the High Court, in case of arbitrations other than international commercial arbitration, as the case may be.

(5) Failing any agreement referred to in sub-section (2), in an arbitration with a sole arbitrator, if the parties fail to agree on the arbitrator within thirty days from receipt of a request by one party from the other party to so agree [the appointment shall be made on an application of the party in accordance with the provisions contained in sub-section (4).]

*(6) Where, under an appointment procedure agreed upon by the parties. (a) a party fails to act as required under that procedure; or
(b) the parties, or the two appointed arbitrators, fail to reach an agreement expected of them under that procedure; or
(c) a person, including an institution, fails to perform any function entrusted to him or it under that procedure, a [the appointment shall be made, on an application of the party, by the arbitral institution designated by the Supreme Court, in case of international commercial arbitration, or by the High Court, in case of arbitrations other than international commercial arbitration, as the case may be] to take the necessary measure, unless the agreement on the appointment procedure provides other means for securing the appointment.”*

8. But as per the Respondents that without consent or knowledge, the sole arbitrator was appointed unilaterally, it is lack of jurisdiction and against procedure established under the Act. The Arbitration Award dated 12.03.2016 clearly shows that

the Respondents if fail to repay the amount, it will be referred to Arbitration Tribunal by mentioning the name of the Arbitrator. It is manifestly shows that the Arbitrator was appointed without any knowledge or not followed procedures of section 11 of Act. In this aspect, it is necessary to relay the following decisions,

Perkins Eastman Architects DPC & Another. v. HSCC (India) Ltd decided by Hon'ble Apex court reported in 2019 SCC online SC page 1517 as follows,

“16. But, in our view that has to be the logical deduction from TRF Limited. Paragraph 50 of the decision shows that this Court was concerned with the issue, “whether the Managing Director, after becoming ineligible by operation of law, is he still eligible to nominate an Arbitrator” The ineligibility referred to therein, was as a result of operation of law, in that a person having an interest in the dispute or in the outcome or decision thereof, must not only be ineligible to act as an arbitrator but must also not be eligible to appoint anyone else as an arbitrator and that such person cannot and should not have any role in charting out any course to the dispute resolution by having the power to appoint an arbitrator. The next sentences in the paragraph, further show that cases where both the parties could nominate respective arbitrators of their choice were found to be completely a different situation. 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 a 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. That has to be taken as the essence of the amendments brought in by the Arbitration and Conciliation (Amendment) Act, 2015 (Act 3 of 2016) and recognised by the decision of this Court in TRF Limited.”

Hindustan Zinc Ltd. v. Ajmer Vidyut Vitran Nigam Ltd. decided by Hon'ble Apex court reported in (2019) 17 SCC 82 as follows,

“16. Shri Vaidyanathan, learned Senior Counsel for the appellant, has argued that the challenge to the award was only on merits before the learned Commercial Court, and no challenge was raised stating that the arbitrator's appointment itself would be without jurisdiction, both the parties having agreed to the order dated 12-2-2007 to refer the matter to arbitration. However, the said issue was argued and taken up before the High Court in first appeal under Section 37 of the Arbitration Act.

We are of the view that it is settled law that if there is an inherent lack of jurisdiction, the plea can be taken up at any stage and also in collateral proceedings.”

Kiran singh -vs- Chaman Paswan by Hon’ble Apex court reported in AIR 1954 SC 340] as follows,

“6. ... It is a fundamental principle well-established that a decree passed by a court without jurisdiction is a nullity, and that its invalidity could be set up whenever and wherever it is sought to be enforced or relied upon, even at the stage of execution and even in collateral proceedings. A defect of jurisdiction, whether it is pecuniary or territorial, or whether it is in respect of the subject-matter of the action, strikes at the very authority of the Court to pass any decree, and such a defect cannot be cured even by consent of parties. If the question now under consideration fell to be determined only on the application of general principles governing the matter, there can be no doubt that the District Court of Monghyr was coram non judice, and that its judgment and decree would be nullities.”

N.Nanjappa -vs- M/s. Shriram city union finance ltd and 2 others decided by Hon’ble Madras High Court in Arb.O.P.No. 198 of 2024 dated 18.07.2024 as follows,

“3. Challenging the Award passed by the learned Arbitrator, the learned counsel appearing for the petitioners would submit that the respondent has appointed the Sole Arbitrator unilaterally without the consent of the petitioners. After issuing the notice, dated 16.09.2020, the respondent has immediately appointed the Arbitrator, without approaching the Court under Section 11 of the Act, which cannot be sustained. He would submit that it

is settled law that a party cannot nominate a Sole Arbitrator without recourse to the Court. Any interested party cannot be given the liberty to either appoint or nominate a sole arbitrator and hence, the award passed by the learned Arbitrator, who was appointed unilaterally, cannot be sustained and it is liable to be set aside.

And in the present case, without any intimation, the respondent proceeded with the arbitration and appointed the Arbitrator unilaterally. The petitioners neither received the notices of hearing nor appeared before the Tribunal. The learned Arbitrator did not afforded any opportunity to the petitioners to E.P.No.105 of 2022 order¹⁰ contest the matter. Therefore, the petitioners did not have any opportunity to file the counter and contest the matter. Even if the petitioners had filed the counter and contested the matter, the present award is still liable to be set aside for violation of the provision under Section 12(5) of the Act. But the learned Arbitrator has proceeded with the matter and passed the ex parte award. Further, admittedly, in writing, the petitioner had not expressly waived the applicability of Section 12(5) of the Act. Taking all the above points into consideration, this Court is of the considered view that the present award is liable to be set aside for violation of the provision under Section 12(5) of the Act. Further in the present case, it appears that the award has been passed without giving any opportunity to the petitioners and therefore, the award is suffered with the violation of principles of natural justice also.

For all the reasons assigned above, this Court is of the view that the present award is not sustainable under law and the same is liable to be set aside as it is against the public policy of India and violates the principles of natural justice.

In the result, this Arbitration Original Petition is allowed and the Award dated 26.12.2022 passed by the learned Arbitrator is set aside. No costs. Consequently, the connected application is also closed. The parties are granted liberty to file a fresh application and initiate arbitration proceedings in accordance with law.

9. The said dictum of the Hon'ble Apex Court and Hon'ble High Court of Madras, it makes clear that the unilateral appointment of sole Arbitrator by one of the parties would be ineligible by operation of law. Therefore, in this Petition, the Petitioner not followed the provisions of Act and also appointed the Arbitrator unilaterally against

arbitration proceedings are liable to be vitiated from the stage of the appointment of the Arbitrator when the appointment of the Arbitrator is improper and impermissible by virtue of Section 12(5) of the Act. Further, it is hereby known that the Arbitral award passed by the sole Arbitrator is violation of law and also, it is in executable one. Hence, this execution court can go beyond the award where the decree sought to be executed is a nullity for lack of inherent jurisdiction then its invalidity can be set up in an execution proceeding. Hence, the Award of the Arbitrator passed in this case is void and it cannot be executed. Therefore, this Execution Petition is liable to be dismissed and the parties are at liberty to re-agitate their issue before a new Arbitral Tribunal, constituted in accordance with law.

10. In the result, this Execution petition is dismissed. No costs.

Dictated to the steno-typist and typed by her directly, corrected and pronounced by me in open court, this the 05th day of August, 2026.

Special Judge,
Nagercoil.

Appendix:-

Petitioner side witnesses and documents – Nil

Respondents side witnesses and documents – Nil

Special Judge,
Nagercoil.