

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

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

**Friday, the 15<sup>th</sup> day of May, 2026.**

**E.P.No.150 /2025**

**in**

**Arb. No. 568/2018**

Manappuram Finance Ltd.,

Represented by its Area Manager, Authorised representative

Thiru. Rakesh Veerapur.

... Petitioner

Vs.

1. Benjamin Ruban

2. Guriz Michael

... Respondents

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This Petition having coming up for final hearing before me on 30.04.2026 in the presence of Thiru.Veludhas, Advocate for the Petitioner, Thiru.Michal Xavier, Advocate for the 1<sup>st</sup> Respondent, Thiru.Dayanandhan, Advocate for the 2<sup>nd</sup> Respondent 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 54 and 66 and Sec.151 of CPC., for attachment and sale of the respondent properties.

**2. The case of the petitioner in brief :**

The petitioner is the area Manager and authorized agent of the Manappuram Finance Ltd., and the 1<sup>st</sup> Respondent was the employee of the petitioner Company and the 2<sup>nd</sup> Respondent is his father and surety against whom a an award was passed by Arbitral Tribunal Trissur on 21.11.2018. The respondent failed to pay the amount as per the award. The respondents are jointly and severally liable to pay a sum of Rs.5,58,255/- as on 7.9.2023 but not yet paid the same. Hence the petitioner prays to

attach and sale the property belonging to the respondents or otherwise the petitioner will put into loss and hardship.

3. **Brief Averments of the Counter filed by the 1<sup>st</sup> respondent and adopted by 2<sup>nd</sup> respondent :**

The 1<sup>st</sup> respondent joined in the employment of the company during December 2012 and was appointed in Chennai, he worked as a Junior Assistant and the work that was assigned to him was to collect and issue cash through the counter. The respondent has never dealt with gold jewels and he was never involved in the appraisal of the gold jewels. He was transferred to Visakapattinam in Andhra Pradesh, during his service in Visakapattinam, he never had any chance to appraise the gold jewels and the assigned duty to him was to receive and issue cash through the counter under instructions from the higher officials of the company. Thereafter, Assistant Branch Head is empowered to sanction loans upto Rs.20,000/- to prospective customers of the company. Finally, the Branch Head is empowered to sanction loans above Rs.20,000/- after re-verification of gold and the GL1, GL2 Reports. He never worked as GL1 or GL2 or Assistant Branch Head or Branch Head to appraise the gold jewels and until his resignation he remained only as a Junior Assistant discharging the duties of receiving and issuing money through the counter maintained by the company. At that time of appointment in the petitioner's company a lot of signatures were obtained from this respondent and his father who stood as a surety for the good conduct of this respondent. Moreover the Arbitrator passed the exparte Arbitral award. The petitioner with the exparte award is trying to extract money from the respondents as the respondents have given a copy of the property documents. The action of the petitioner in trying to recover the money from this respondent is absolutely illegal and hence this execution petition is not at all maintainable against the respondent. 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 respondents 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 XXI, Rule 54 and 66 of C.P.C., for attachment and for sale of the properties belonging to the Respondent in realization and satisfaction of the E.P. amount to be paid by him. Further it has been stated that the 1<sup>st</sup> Respondent was the employee of the petitioner Company and the 2<sup>nd</sup> Respondent is his father and surety against whom a an award was passed by Arbitral Tribunal Trissur on 21.11.2018. On respondents side argued that the petitioner company got a frame work and guidelines with respect to the appraisal system of securities and gold will be appraised by an employee with a charge of GL1. On careful perusal of petition, there is no mention about the posting held by the 1<sup>st</sup> respondent in the petitioner company and whether the 1<sup>st</sup> respondent is eligible for appraisal of gold ornaments in the petitioner company.

6. Furthermore, on petitioner side stated that the 1<sup>st</sup> respondent while working in Visahapattinam, Andhra Pradesh he received the gold ornaments and cheated the petitioner company by falsely making appraisal of the gold. But on careful perusal of petitioner side documents there is no mention about whether the petitioner company gave complaint to the nearer police station regarding the cheating of the 1<sup>st</sup> respondent. Hence, considering the documents and plea of petitioner, on petitioner side failed prove that 1<sup>st</sup> respondent was in the work of appraising the gold and he falsely appraised the gold ornaments.

7. The respondents submitted that the Arbitral award passed by the Arbitral Tribunal, Trissur is not executable one and the petition is liable to be dismissed. Further on respondent side submitted the authority of the ***Hon'ble High Court of Judicature at Madras, in M/S.Prime Store, Represented by its Partner, Mr.S.Kaarthi and Anothers Vs. Sugam Vanijya Holdings Private Limited and Anothers in Arb.O.P.(Com.Div.)No.257 Of 2021 and Arb.O.P.(Com.Div.)No.209 Of 2022 Dated:20.4.2023.*** It was held that *it is incumbent upon the respondent while venturing to the appointment of the Arbitrator unilaterally, to aware of the relevant amended provision of law, i.e., Sec.12(5) of the Act and the law laid down by the Hon'ble Apex Court and he should have obtained the express agreement in writing from the other party for the unilateral appointment of the Arbitrator. The appointment itself is not in accordance with the amended Sec.12(5) of the Act and it is in contravention of the Arbitration Act and it would amount to patent illegality and hence, the present award passed by a disqualified Arbitrator, is liable to be set aside.*

8. On careful perusal of above authority it is necessary to *read section 12(5) of 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.

9. Now, the question arose that 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.”*

10. 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 21.11.2018 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 iudice, 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.*

11. 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 inexecutable 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.

**12. 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 15<sup>th</sup> day of May, 2026.

Special Judge,  
Nagercoil.

**Appendix:-**

**Petitioner side witnesses and documents – Nil**

**Respondents side witnesses and documents- Nil**

Special Judge,  
Nagercoil.