

IN THE COURT OF THE DISTRICT MUNSIF AT SRIPERUMBUDUR

Present: Mrs.I.Vino., B.Sc., L.L.M.,
District Munsif,
Sriperumbudur.

On Monday, this the 2nd day of December, 2024

E.P. No.4/2024
in
Arbitration No.78/2015

A.Shadab

.....Petitioner/ Decree Holder

/Vs/

1. R.Shakira Begum,
2. Muhammal Salman
3. Muhammed Suhakib
4. Mohammed Saood

.....Respondents/Judgement Debtors

This petition has come up on this day before me in the presence of Mr.Eghambharam, Learned Counsel for the Petitioner/Decree Holder for maintainability of the execution proceedings and upon hearing the Petitioner's side, upon perusing the documents on records, this Court delivers the following:

ORDER

1. The instant Petition in E.P. No.4/2024 is filed under Order XXI Rule 10 & 11 of CPC by the Decree Holder for execution of the Arbitral Award dated 28.12.2015 passed by the Learned Sole Arbitrator against the Judgement Debtors by executing & registering a Sale Deed in favour of Decree Holder in respect of the Petition Schedule mentioned Property. The Arbitral Award

sought to be executed through this Court is an *ex parte* Award passed by the Learned Sole Arbitrator who was unilaterally appointed by the Petitioner/ Decree Holder.

2. Per se and at first blush, the arbitral award sought to be executed is non-executable. The Arbitral Award passed by the unilaterally sole appointed Arbitrator is non-est in law and the unilaterally appointed sole Arbitrator lacks inherent jurisdiction to adjudicate the dispute between the parties. When a person is ineligible to be appointed as an arbitrator, in the same way, he is also ineligible to nominate any arbitrator. But in the case in hand, the Petitioner/ Decree Holder has unilaterally appointed the sole arbitrator without express consent in writing from the Respondents/ Judgement Debtors subsequent to arising of the disputes between the Parties herein.
3. The Hon'ble Apex Court in *Perkins Eastman Architects DPC & Anr Vs. HSCC (India) Ltd* reported in 2019 SCC OnLine SC 1517/ (2019) 17 SCR 275 extended the approach taken in *TRF Limited Vs. Energo Engineering Projects* reported in 2017 (8) SCC 377/ (2017) 7 SCR 409 and held that a party who has an interest in the outcome of a dispute also cannot nominate a sole arbitrator. The relevant portion of the eloquent exposition penned by the Hon'ble Justice U.U.Lalit is reproduced hereunder:

"15. We thus have two categories of cases. The first, similar to the one dealt with in TRF Ltd. where the Managing Director himself is named as an arbitrator with an additional power to appoint any other person as an

arbitrator. In the second category, the Managing Director is not to act as an arbitrator himself but is empowered or authorised to appoint any other person of his choice or discretion as an arbitrator. If, in the first category of cases, the Managing Director was found incompetent, it was because of the interest that he would be said to be having in the outcome or result of the dispute. The element of invalidity would thus be directly relatable to and arise from the interest that he would be having in such outcome or decision. If that be the test, similar invalidity would always arise and spring even in the second category of cases. If the interest that he has in the outcome of the dispute, is taken to be the basis for the possibility of bias, it will always be present irrespective of whether the matter stands under the first or second category of cases. We are conscious that if such deduction is drawn from the decision of this Court in TRF Ltd., all cases having clauses similar to that with which we are presently concerned, a party to the agreement would be disentitled to make any appointment of an arbitrator on its own and it would always be available to argue that a party or an official or an authority having interest in the dispute would be disentitled to make appointment of an arbitrator."

4. The Hon'ble Apex Court in *Bharat Broadband Network Limited /Vs/ United Telecoms Limited* reported in (2019) 5 SCC 755/ (2019) 6 SCR 97 held that a unilaterally appointed arbitrator is de jure ineligible to perform his functions and that his mandate is automatically terminated under Sec 14(1)(a) of the Arbitration and Conciliation Act. Further, any prior agreement to do away with

his ineligibility would be wiped out by the non-obstante clause contained in Sec 12(5) of the Arbitration and Conciliation Act and the same can be cured only through an express waiver as provided for in the Proviso to Sec 12(5) of the Arbitration and Conciliation Act.

5. On careful and meaningful perusal of the instant Petition and the documents attached to it, it would clearly show that no such express agreement has been made between the parties after the disputes had arisen. Hence, it is amply clear that the unilateral appointment of the sole arbitrator by the Petitioner/ Decree Holder is in violation of Sec 12(5) of the Arbitration and Conciliation Act and the landmark judgements of the Hon'ble Apex Court cited above.
6. The Hon'ble High Court of Madras in *Hina Suneet Sharma & Other Vs. M/s Nissan Renault Financial Services Private Limited* in Arb.O.P (Com.Div) No. 159 of 2022 dated 15.02.2023 and in *J.V Engineering Associate Civil Engineering Contractors Vs. General Manager, CORE* reported in 2020 SCC OnLine Mad 4829 and in a catena of decisions set aside the arbitral awards passed by a unilaterally appointed sole arbitrator. It is also well-settled that unilateral appointment of a sole arbitrator is anti-thesis to "*Nemo judex in causa sua*" (*No man shall be a Judge in his own case*). As the unilateral appointment of a sole Arbitrator is non est and void ab initio, the award passed by the sole arbitrator is a nullity and non-executable.
7. In the light of the above authoritative judgements of the Hon'ble Apex Court and the Hon'ble High Court of Madras and the statutory provisions in Sec

12(5) of the Arbitration Conciliation Act, the award sought to be executed is non-est in law. It is imperative on the part of this Court/ Executing Court not to allow the Petitioner/ Decree Holder to abuse the process of law and of this Court.

8. Whether the Executing Court can decline to execute a decree ?

It is well-settled that an executing court cannot go beyond the decree, nor can it question its legality or correctness. If the Court finds that the decree was passed by a Court without inherent jurisdiction, it shall not proceed to execute it. The law to this effect is no more res-integra. In *Sunder Dass Vs. Ram Prakash* (1977 AIR 1201), the Hon'ble Apex Court in para 3 of the judgement held as follows:

“Now, the law is well settled that an executing court cannot go behind the decree nor can it question its legality or correctness. But there is one exception to this general rule and that is that where the decree sought to be executed is a nullity for lack of inherent jurisdiction in the court passing it, its invalidity can be set up in an execution proceeding. Where there is lack of inherent jurisdiction, it goes to the root of the competence of the court to try the case and a decree which is a nullity is void and can be declared to be void by any court in which it is presented. Its nullity can be set up whenever and wherever it is sought to be enforced or relied upon and even at the stage of execution or even in collateral proceedings. The executing court can, therefore, entertain an objection that the decree is a nullity and can refuse to execute the decree. By

doing so, the executing court would not incur the reproach that it is going behind the decree, because the decree being null and void, there would really be no decree at all. Vide Kiran Singh v. Chaman Paswan (AIR 1954 SC 340) and Seth Hiralal Patni v. Sri Kali-Nath. (AIR 1962 SC 199) It is, therefore, obvious that in the present case, it was competent to the executing court to examine whether the decree for eviction was a nullity on the ground that the civil court had no inherent jurisdiction to entertain the suit in which the decree for eviction was passed. If the decree for eviction was a nullity, the executing court could declare it to be such and decline to execute it against the respondent.”

9. In Urban Improvement Trust, Jodhpur Vs. Gokul Narain (AIR 1996 SC 1819), Hiralal Moolchand Doshi Vs. Barot Raman Lal Ranchhoddas (1993) 2 SCC 458 & a slew of judgements, the Hon’ble Apex Court rendered a similar finding. From the above authoritative precedents, it is abundantly clear that the executing court can refuse execution of a decree which is a nullity and non-est in law as it was passed by the court without inherent jurisdiction.

10. Further, Sec 47 of CPC governs the scope of jurisdictional intervention by an Executing Court. The Hon’ble Supreme Court in Harmand Rai Badridas Vs Devidutt Bhagwati Prasad & Ors (AIR 1973 SC 2423) held as follows:

“In order to empower the Executing Court to consider and determine all questions relating to the execution of a decree, unless it falls beyond its ambit, the provision of Section 47 of the Code must be interpreted liberally”.

One of the most important duties cast upon the executing court u/s 47 of CPC is to ascertain whether the Decree/ Arbitral Award is executable. As held by the Hon'ble Supreme Court in Kiran Singh Vs. Chaman Paswan (AIR 1954 SC 340), 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.

In view of the above discussion, the arbitral award dated 28.12.2015 sought to be executed by the Petitioner/Decree Holder against the Respondents/ Judgement Debtors is non-est in law on the face of it. Knowing well that the arbitral award is non-executable and un-enforceable, this Court being the Executing Court will fail its duty, if the instant execution proceedings is allowed to be continued. Hence, the instant petition deserves to be nipped in bud to avoid waste of judicial time and further abuse of the process of law and of this Court, the instant Petition in E.P.No.4/2024 is dismissed as being not maintainable before this Court.

Dictated to the Steno-Typist, typed by her in the Computer, corrected and pronounced by me in the Open Court on this the 02nd day of December, 2024.

(Sd/-I.Vino)
District Munsif,
Sriperumbudur.

Draft/Fair Order

E.P.No.4/2024 in
Arbitration No.78/2015

D.D.02.12.2024.

DMC/SPR.