

IN THE COURT OF PRINCIPAL DISTRICT JUDGE, UDHAMPUR

File No. 10/Execution
CNR No.: JKUD020010812022
Date of Institution: 27.10.2022
Date of Decision: 14.05.2025

Shriram Transport Finance Company Limited, a registered company under the Companies Act 1956, registered office at no. 14 A-South Phase Industrial Estate, Guindy Chennai-600032, and having its Branch office at 1st Floor, Jandial Complex, Near Raju Filling Station, Old Industrial Estate, Dhar Road, Udhampur through its Power of Attorney holder Sh. Rohin Abrol.

..... Petitioner/Decree Holder

Through: Mr. Aprajita Sharma, Advocate

Versus

1. Mr. Ankush Kohli S/o Rajinder Pal Kohli R/o W.No. 9 Chabutra Bazar Udhampur Tehsil & District Udhampur
.....Respondent No.1/Judgment Debtor
Through: Mr. Sahil Raina, Advocate
2. Mr. Rahul Khokher S/o Rattan Chand R/o H. No. 87 W.No. 3 Udhampur Tehsil & District Udhampur
.....Respondent No.2/Judgment Debtor

In the matter of:- Petition for execution of the award/decreed dated 25.03.2018 passed by the sole Arbitrator.

Coram: Virinder Singh Bhou,
J. O. Code: JK00067

ORDER

1. Heard the Ld. Counsel for the petitioner and learned counsel for respondent no.1 and also perused the record available. The instant execution petition has been moved seeking execution of an Arbitral award dated 25.03.2018 passed by Sh. Ashok Kumar Shan, District and Sessions Judge, (Retired), Arbitrator appointed by the award holder in which respondents/award debtors were directed to pay sum of Rs. 194758/- plus interest @ 18% per annum interest to the award holder till the realization of the decretal/ award amount. The award was passed in ex-parte by the sole Arbitrator.
2. Upon institution of this execution petition, notices were issued to the judgment debtors. Judgment debtor no.1 caused appearance through his counsel Mr. Sahil Raina, advocate and judgment debtor no.2 appeared in person and thereafter did not appear, nor the judgment debtors filed objections.
3. Heard learned counsel for the decree/award holder and judgment debtor no.1 and gone through the execution petition and legal provisions governing the controversy.

4. Learned counsel for the decree holder has strenuously argued that the award is executable, notwithstanding the fact that same has been passed by sole arbitrator as the award was passed by the sole arbitrator in terms of the dispute referred.
5. Before proceeding further it is apt to refer to judgment of Hon'ble High Court of Calcutta (Commercial Division) titled SREI Equipment Finance Limited Versus Sadhan Mandal decided on 11.04.2023. In the said judgment it has been held by the said Hon'ble High Court as under:-

I have dealt in detail with the fate of arbitral awards passed by unilaterally appointed arbitrators in the case of Chalamandalam Investment and Finance Company Ltd. v- Amrapali Enterprises and Another reported in 2023 SCC Online Cal 605 wherein after examination of the Supreme Court's pronouncements in HRD Corporation -v- GAIL reported in (2018) 12 SCC 471, TRF Limited -v - Energo Engineering Projects Limited reported in (2017) 8 SCC 377, Perkins Eastman Architects DPC -v- HSCC (India) Ltd. (supra) and Bharat Broadband Network Ltd. -v- United Telecoms Ltd. reported in (2019) 5 SCC 755, I had concluded that arbitral awards passed by unilaterally appointed arbitrators do not carry the privilege of existence before the eyes of law and should be regarded as a nullity. In other words, there is nothing to execute in an execution application seeking enforcement of an arbitral award which has been passed by a unilaterally appointed arbitrator. I have delineated below the relevant paragraph of my judgment:-

"22. From the analysis undertaken above, the principles that emanated are extracted below:

- a) As held in HRD Corp (Supra), arbitrators falling under Schedule VII of the Act are ineligible as they lack inherent jurisdiction. Such ineligibility was extended to persons appointed by persons falling under Schedule VII of the Act in TRF Limited (Supra). This ineligibility was ultimately extended to persons who are unilaterally appointed by one of the parties to the arbitration in Perkins (supra).
- b) The Apex court has judicially expanded the Schedule VII of the Act to include persons unilaterally appointed by one of the parties vide its judgment in Perkins (supra) and/ or persons appointed by persons falling under Schedule VII of the Act vide its judgment in TRF Limited (supra).
- c) It is a settled principle of law that compliance with section 12 (5) read with Schedule VII is sine qua non for any arbitral reference to gain recognition and validity before the Courts. An arbitral reference which begins with an illegal act vitiates the entire arbitral proceedings from its inception and the same cannot be validated at any later stage. Thus, it would be a logical inference to consider such arbitral proceedings as void ab initio.

d) Awards passed by a unilaterally appointed arbitrator are nonest in the eyes of law. While section 47 of the CPC is not directly applicable, guidance has to be sought from the jurisprudence of the Apex Court vis-à-vis decrees passed while lacking inherent jurisdiction. Such decrees do not exist in the eyes of law and similarly awards passed while lacking inherent jurisdiction can be said to have never existed. Therefore, the parties would be free to re-agitate the matter.

e) This judgment is applicable to awards wherein the arbitral proceeding commenced post the 2015 amendment to the Act. It does not deal with proceedings having been initiated pre the 2015 amendment and concluding post the 2015 amendment".

It is also not out of place to refer the judgment of the Hon'ble High Court of Himachal Pradesh At Shimla passed in CMP No's 58,59,60 of 2023, Decided on 27-02-2023 titled Divisional Manager, H.P. State Forest Development Corporation Ltd Versus Prem Lal, Divisional Manager, H.P. State Forest Development Corporation Ltd Versus Rakesh Parkash, Divisional Manager, H.P. State Forest Development Corporation Ltd Versus Rakesh Parkash decided on 27.02.2023. which judgment is based on the Hon'ble Supreme Court judgment titled Jaipur Zila Dugdh Utpadak Sahkari Singh Limited & Ors vs. Ajay Sales & Suppliers reported in 2021 (17) SCC 248 it has been held by the said Hon'ble High Court as under:-

"Thus, contention of the petition that Sub-section 5 of Section 12 read with Seventh Schedule of the Act cannot be applied to the instant case in view of agreement executed between the parties prior to insertion of Section 12 (5) read with Seventh Schedule of the Act, cannot be accepted. Any prior agreement executed by the parties contrary to the mandate of sub-Section 5 of Section 12 and Seventh Schedule of the Act, gets wiped out by the non-obstante clause in Section 12 (5).

4 (iv) The contention of the petitioner that the respondent had signed the arbitration agreement and participated in the arbitration proceedings are also of no avail in view of the legal position settled in the aforesaid pronouncements by the Hon'ble Apex Court. Proviso to Section 12 (5) can only be invoked in case of existence of express agreement in writing of the parties to satisfy the requirements of proviso to Section 12 (5) of the Act and no otherwise.

6. Undisputably, the award has been passed by the sole arbitrator in ex-parte. The entire proceedings have been conducted by the sole arbitrator in absence of the respondents and even there is no consent for appointment of sole arbitrator by the respondents. The award, thus, is illegal and is not executable in the light of the judgments referred supra.
7. As a sequel to all what has been discussed herein above, the impugned award is set-aside with liberty to the parties to re-agitate their claims/counter claims in properly constituted Arbitral Tribunal in Arbitration proceedings.

The execution petition, thus, is not maintainable, and as such, is dismissed
File be consigned to records after its due compilation.

Announced
14.05.2025

Principal District Judge
Udhampur