**In the Court of the Additional District & Sessions Judge,**

**Srivilliputtur.**

**Present : Tmt. Gajara R. Jiji, M.A., LL.M.,**
**Additional District Judge,**
**Srivilliputtur.**

**Saturday, the 4th day of November 2023**

**E.A. No. .../ 2022 (Unnumbered)**

**in**

**E.P. No. 13/2018**

**Arbitrator Case SSP / SF / 80 / 2017**
**on the file of the Sole - Arbitrator**

. . . . .

1) R. Robert Gladson

2) T. Leela .. Petitioners / 1, 2 Respondents / Judgment Debtors

/vs/

M/s. Sundaram Finance Limited
No. 21 Patullos Road,
Chennai. .. Respondent / Petitioner / Claimant

This petition came before me for final hearing on 13.10.2023 in the presence of Thiru.P. Kannan, Advocate for the petitioners and upon perusing the records and having stood over for consideration till this day, this court delivers the following:

**ORDER**

The petitioner filed this petition under Section 47 CPC to set aside the award passed by the sole Arbitrator on 13.04.2017 as it is unenforceable and dismiss the execution petition with cost.

**2.** The averments in the petition filed by the petitioners in short is as follows:

The 1st petitioner had availed a loan from the respondent/Finance Company for purchase of a lorry bearing Registration No. TN75V2539 and had entered into a loan agreement dated 28.08.2015. The 1st petitioner and the guarantor 2nd petitioner who is the wife of the 1st petitioner were unable to repay the loan amount. The respondent's

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staff with dishonest intention of making wrongful gain and cause damage, on 08.06.2018 at about 9.00 pm, stealthily took the respondent's vehicle and involved in an accident thereby causing damage to the lorry and the 1st petitioner also had to pay compensation to the victims of the accident. The petitioners had initiated criminal proceedings against the respondent. However since the respondent agreed to withdraw this execution proceedings, the petitioners had not proceeded with the criminal case. The lorry has been auctioned for a meager amount of Rs.16,00,000/-. The sale amount has been deducted from the claim amount in E.P. The petitioners challenged the appointment of the Arbitrator in this case. The Managing Director of the respondent finance company unilaterally appointed the Arbitrator and there was no choice for the petitioners to choose the Arbitrator. The respondent is also a party to the agreement and hence cannot unilaterally appoint the sole Arbitrator at its choice. Though there is a clause in the agreement authorizing the respondent to appoint a sole Arbitrator, the said clause will not bind the petitioners. The Arbitrator appointed in this case was also appointed as Arbitrator by the respondent in many other cases and hence the Arbitrator will be biased. The unilateral appointment of the sole Arbitrator and his proceedings and award are all void in the eye of law. The Managing Director himself is ineligible to arbitrate and hence has no power to nominate another person as arbitrator to the dispute. The appointment of the sole arbitrator by the respondent raises questions on the impartiality or fairness of the Arbitrator Tribunal. Hence the award is void and unenforceable in law and hence cannot be executed in this proceedings. Hence prays to set aside the award passed by the sole Arbitrator and dismiss the execution petition.

**3. <u>Point for determination:</u>**

Whether the petition as framed is maintainable?

**4.** The arguments let in by the learned Counsel for the petitioner was heard and carefully considered.

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**5. <u>Point and answer</u>**

The petitioners are the respondents in the execution petition. The petitioners have filed this Application under Section 47 CPC challenging the enforceability of the award. The reason stated by the petitioner is that the appointment of Arbitrator by the Managing Director of the respondent finance company which also is a party to the proceedings is void and hence the award passed by the Arbitrator also is void. Since the petition has been heard on maintainability, this court has not received any counter or heard the respondent and is proceeding only on the basis of the legal question of maintainability of the petition. Since this petition has been filed under Section 47 of the Civil Procedure Code (hereinafter referred to as CPC). This court finds it fit to reproduce the provision under Section 47 of CPC for better appreciation.

**<u>Section 47 CPC</u>**

*Questions to be determined by the Court executing decree.*

*(1) All questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge or satisfaction of the decree, shall be determined by the Court executing the decree and not by a separate suit.*

The essential ingredients of Section 47 CPC are

1) The question to be determined should be between the parties or their legal representatives.

2) It should relate to the execution discharge or fulfillment of the decree.

**6.** The learned Counsel for the petitioner would argue that the Managing Director of the respondent company which is a party to the proceedings cannot appoint the sole Arbitrator and as such the award is void and unenforceable. The learned counsel would depend upon the judgment of our Honourable Supreme Court in ***Gurunam Singh (D) through Lrs. and Others Vs. Gurbachan Kaur (D) by Lrs.***

***and others 2017 SAR (Civil) 704*** and argue that when a decree is passed by a court without jurisdiction, it is a nullity. The petitioners relied upon Para 22 of the judgment which runs as follows.

> *22) It is a fundamental principle of law laid down by this Court in Kiran Singh's case (supra) that a decree passed by the Court, if it is a nullity, its validity can be questioned in any proceeding including in execution proceedings or even in collateral proceedings whenever such decree is sought to be enforced by the decree holder. The reason is that the defect of this nature affects the very authority of the Court in passing such decree and goes to the root of the case. This principle, in our considered opinion, squarely applies to this case because it is a settled principle of law that the decree passed by a Court for or against a dead person is a "nullity" (See-N. Jayaram Reddy & Anr. Vs. Revenue Divisional Officer & Land Acquisition Officer, Kurnool, (1979) 3 SCC 578, Ashok Transport Agency vs. Awadhesh Kumar & Anr., (1998) 5 SCC 567 and Amba Bai & Ors. Vs. Gopal & Ors., (2001) 5 SCC 570).*

**7.** The decision of the Honourable Supreme Court makes it candid that a decree passed by a court without jurisdiction is a nullity and defect of jurisdiction strikes at the very authority of the court to pass any decree. In the case in hand, the petitioners claim that since the Arbitrator has been appointed by the Managing Director of the respondent company which is also a party to the agreement, such appointment is void. The Arbitrator has been appointed as per the agreement between the petitioners and the respondent company. The petitioners admit in this very petition Para No. 3 that the 1st petitioner had availed loan from the respondent for purchase of lorry and the 2nd petitioner had stood as guarantor. The petitioners have also not denied liability to pay the loan amount but has made some claim regarding damages to the lorry and compensation paid for the accident caused by the respondents. The agreement entered into by the parties is the basis to nominate the Arbitrator. The agreement between the parties to the proceedings is not produced before this court. However the award of the arbitration tribunal has been produced wherein the arbitrator observes in Page 5 of the arbitration award as follows.

> *In view of the dispute that has arisen due to non-payment of the instalments due as detailed above, the Manager (Legal) of the Claimant Company has written to the company's Managing Director as per Article 22 Clause (a) of the loan agreement, for nominating a 'Sole Arbitrator" in accordance with the provisions of 'The Arbitration and conciliation Act, 1996 as amended by Arbitration and Conciliation (Amendment) Act, 2015'. Article 22 Clause (a) of the said agreement reads as follows:*
>
> *"All disputes, differences and / or claim arising out of this Agreement whether during its subsistence or thereafter shall be settled by arbitration in accordance with the provisions of* ***'the Arbitration and Conciliation Act, 1996, or any statutory amendments'*** *thereof and shall be referred to sole Arbitration of an Arbitrator, nominated by the Managing Director of the Lender. The award given by such an Arbitrator shall be final and binding on the Borrower to this Agreement."*
>
> *Accordingly, the Managing Director of the lender company in his letter 16/02/2017 dated 16/02/2017 nominated me, the under-signed as the sole arbitrator to arbitrate upon the dispute and also requested for my acceptance. Since to the best of my knowledge*

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*there exists no justifiable cause for my showing any favour or partiality while adjudicating, I signified my acceptance for the said nomination as arbitrator and issued notice dated 25/02/2017 to the exact address furnished by the Respondents themselves, for the first hearing before me to all parties both the Claimant and the Respondents, who are borrower and his guarantors.*

**8.** A perusal of the award would show that the loan agreement has been produced before the arbitrator as Ex.A1. Thus it is clear from the observation of the arbitrator that it has been agreed by the parties in the loan agreement that the Managing Director of the respondent company may nominate the arbitrator. The petitioners also concede to such clause in the agreement however states that said clause will not be binding the petitioners. The petitioners while admits the execution of the loan agreement cannot refuse to accept the clause found in the agreement. The petitioners cannot approbate and reprobate. Further the executing court cannot go behind the decree. When the petitioners themselves have agreed to the terms of appointment of arbitrator in the loan agreement, the petitioners cannot challenge the same before the executing court. If at all the petitioner has any grievance regarding the correctness or otherwise of the arbitration award, they have to approach the proper forum and cannot agitate the same before the executing court for the executing court cannot go behind the decree.

In the light of the above discussions, this Court finds that this petition under Section 47 of CPC is not maintainable and liable to be rejected.

In the result, the petition is rejected.

Dictated to Steno Typist, typed by her in computer, then corrected and pronounced by me in open court, on this the 4th day of November 2023.

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Additional District and Sessions Judge,
Srivilliputtur.

*Additional District & Sessions Court,*
*Srivilliputtur,*
*E.A. No. .../ 2022 (Unnumbered)*
*E.P. No. 13/2018*
*Draft / Fair ORDER*
Date: 04.11.2023