



In the Court of District Judge, Jaipur Metro-II

Presiding Officer

Baljit Singh, *R.J.S. (Dj Cadre)*

Sr.No	Title	Reg. No.	Execution No.
1.	Shriram City Union Finance Ltd. v/s Tarun Kumar Sharma & Ors.	1401/22	1455/22
2.	Shriram City Union Finance Ltd. v/s Munna Khan & Ors.	1406/22	1460/22
3.	Shriram City Union Finance Ltd. v/s Sandeep Yadav & Ors.	1410/22	1464/22
4.	Shriram City Union Finance Ltd. v/s Narendra Singh Rathore	1414/22	1468/22
5.	Shriram City Union Finance Ltd. v/s Mangilal	1417/22	1471/22
6.	Shriram City Union Finance Ltd. v/s Tarachand	1402/22	1456/22
7.	Shriram City Union Finance Ltd. v/s Hanuman Yadav	1403/22	1457/22
8.	Shriram City Union Finance Ltd. v/s Jitendra Singh	1411/22	1465/22
9.	Shriram City Union Finance Ltd. v/s Hamid Khan	1416/22	1470/22
10.	Shriram City Union Finance Ltd. v/s Jagdish	1405/22	1459/22
11.	Shriram City Union Finance Ltd. v/s Firoj Qureshi	1415/22	1469/22
12.	Shriram City Union Finance Ltd. v/s Rakesh Singh Rajawat & Ors.	1400/22	1454/22
13.	Shriram City Union Finance Ltd. v/s Kamlesh Ghosaliya	1409/22	1463/22
14.	Shriram City Union Finance Ltd. v/s Deepak Kumar & Ors.	1408/22	1462/22
15.	Shriram City Union Finance Ltd. v/s Rahul Chhipa	1399/22	1453/22
16.	Shriram City Union Finance Ltd. v/s Sirajuddin	1398/22	1452/22
17.	Shriram City Union Finance Ltd. v/s Mosin	1407/22	1461/22

18.	Shriram City Union Finance Ltd. v/s Sitaram Choudhary	1412/22	1466/22
19.	Shriram City Union Finance Ltd. v/s Man Singh	1413/22	1467/22

Present:

Counsel for the Applicant : Sh. Akash Agrawal, Mohit Gupta
Counsel for the Judgment Debtor : None

ORDER**Dated:-31.01.2024**

1. Arguments on maintainability of the execution petitions and enforceability of awards passed by the unilaterally appointed Sole Arbitrator in all the execution petitions heard.
2. In all the execution petitions described in the head note admittedly the awards have been passed by Sole Arbitrator Shri Arif Mohd. Madani on different dates who was appointed by the petitioner company namely Shriram City Union Finance Ltd.. As all the execution petitions are filed by the same finance company on the basis of awards passed by the Sole Arbitrator against different respondents, therefore all the petitions are being disposed of by single order.
3. Counsel for the petitioner has argued that the award passed by the Ld. Sole Arbitrator has not been challenged by the respondent before any competent authority u/s 34 of the Arbitration and Conciliation Act of 1996. The petitioner has filed these execution petitions u/s 36 of the Arbitration and Conciliation Act 1996. The executing court cannot look into the legality or illegality of the award at this stage. The respondents have not appeared before Ld. Sole Arbitrator inspite of notice given by the Arbitrator before starting the arbitration proceedings. This amounts to implied consent. The respondents have not appeared before this Hon'ble Court and not challenged the legality of the award in question. Therefore the execution petitions filed on the basis of award passed by the Sole Arbitrator are very much maintainable.
4. Arguments addressed by the counsel for the petitioner considered. The file and award passed by the Ld. Arbitrator in each file has been perused.
5. It is admitted by counsel for the petitioner that Sole Arbitrator has been appointed by the petitioner finance company unilaterally in all the cases and the awards have been passed ex-parte.

6. Before proceedings further it is appropriate to discuss law settled by the Hon'ble Supreme Court and Hon'ble High Courts of different states regarding legality and executability of award passed by the sole Arbitrator appointed unilaterally by one party. First of all Hon'ble Supreme Court in *Dharma Prathisthanam Vs M/s Madhak Construction PVT. Ltd.* AIR 2004 SCW 6496 held that if Arbitrator is not named in the agreement and after the appointment of Sole Arbitrator unilaterally by one party, he sends a notice to the respondent for joining the proceedings and if respondent does not appear before the Arbitrator it does not lead to an inference as to implied consent or acquiescence of the respondent.
7. The Hon'ble Supreme Court in *TRF Limited v/s Energo Engineering Projects Ltd.* 2017 (8) SCC 377, *Perkins eastman Architects DPC & another v/s HSCC (India) Ltd.* 2020 (20) SCC 760, *Bharat Broadband Network Ltd. v/s United Telecom Ltd.* Civil Appeal No. 3972 of 2019 and Hon'ble Delhi High Court in *Proddatur Cable TV Digi Services V/s Siti Cable Network Limited* (2020) 267 DLT 5, *M/s Sital Das Jewellers & Anr. v/s Asian Hotels (North) Ltd.* 2021 SCC Online Delhi 3914 and Hon'ble Calcutta High Court in *Cholamandalam Investment and Finance Company Ltd. v/s Amrapali Enterprises and Anr.* principally held that award passed by Sole Arbitrator unilaterally appointed by one party are non est / void ab-initio.
8. Now coming on the second point whether this court can look into the legality or illegality of the award in question, the Hon'ble Supreme Court in *Urban Improvement Trust Jodhpur v/s Gokul Narayan and others* held that nullity can be assailed on any stage including at the execution or any collateral proceedings since it stands at the very jurisdiction and authority of the court. In *Hindustan Zinc Ltd. v/s Ajmer Vidhyut Vitran Nigam Ltd.* 2019 (17) SCC 82 Hon'ble Apex Court held that the High Court is right in stating that the Arbitrator could not, in law, have been appointed by the State Commission u/s 86 of the Electricity Act. The award passed on such appointment would be non est in law. Similarly, in *Kiran Singh and others v/s Chaman Paswan and others* AIR 1954 (340) Hon'ble Apex Court held that if there is an inherent lack of jurisdiction, the plea can be taken up at any stage and also in collateral proceedings.
9. Similarly, in *Sushil Kumar Mehta v/s Gobind Ram Bohra* 1990 SCC (1) 193 and in *Sarwan Kumar and others v/s Madan Lal Aggarwal (civil) (SC)* 1058 of 2003 held that a decree passed by court having no jurisdiction is null and it's nullity can be setup whenever it is said to be enforced including the stage of execution of decree or any other collateral proceedings. Thus, the executing court can look into the legality and illegality of decree which is sought to be enforced.

10. Therefore, keeping in view the abovesaid settled legal position the contentions of the Ld. Counsel for the petitioners are meritless and the awards passed by the Ld. Sole Arbitrator appointed unilaterally by the petitioner finance company are void ab-initio / non est which cannot be enforced. Thus, the execution petitions filed for the enforcement of void ab initio/non est award are liable to be dismissed.

ORDER

11. Hence all the abovesaid execution applications are hereby dismissed.

(Baljit Singh)
District Judge
Jaipur Metro-II

12. Signed and pronounced in open court on 31.01.2024

(Baljit Singh)
District Judge
Jaipur Metro-II