



IN THE HIGH COURT OF MADHYA PRADESH  
AT INDORE

BEFORE

HON'BLE SHRI JUSTICE PAVAN KUMAR DWIVEDI

ON THE 16<sup>th</sup> OF JANUARY, 2026

ARBITRATION APPEAL No. 206 of 2025

*FIVE STAR BUSINESS FINANCE LTD THROUGH AMIT  
SHRIVASTAVA*

*Versus*

*MANJU BAI AND OTHERS*

.....  
Appearance:

*Shri Surendra Kumar Gupta, learned counsel for the appellant.*

*Shri Harish Joshi, learned counsel for respondent No.1.*

.....

ORDER

Heard on I.A. No.10073 of 2025, which is an application for condonation of delay.

There is a delay of 76 days in filing the appeal.

Learned counsel for the appellant submits that the delay in filing the present appeal was caused because the head office / registered office of the appellant company is situated at Chennai. After the order came to the knowledge of the appellant, certified copy was obtained and the local office at Bhopal contacted the head office / registered office for permission to file the appeal.

Considering the reasons mentioned in the application, I.A. No.10073 of 2025 is hereby allowed. The delay in filing the present appeal is condoned.

2. The present appeal has been filed by the appellant under Section 37



of the Arbitration and Conciliation Act, 1996 being aggrieved by the order dated 12.04.2025 passed in an execution petition filed under Section 36 of the Arbitration and Conciliation Act read with Order XXI Rule 11 of the Code of Civil Procedure, 1908.

3. The facts of the case are that the appellant is a Public Limited Non-Banking Financial Company incorporated under the provisions of the Companies Act, 1956 and regulated by the Reserved Bank of India. The appellant is engaged in the business of providing financial facilities in the form of loans secured by mortgage.

4. The respondents approached the branch office of the appellant for a finance facility against the property proposed to be mortgaged. Accordingly, a loan agreement was executed on 19.03.2021 pursuant to which a loan of Rs.1,50,000/- was sanctioned and disbursed, repayable in EMIs together with interest at the rate of Rs.24.54.% *per annum*. The loan agreement contained a dispute resolution clause. Upon default by the respondents in repaying the loan in terms of the loan agreement, the appellant invoked the arbitration clause and opted for institutional arbitration with the Kovise Foundation Conflict Resolution International (for short "KFCRI") for appointment of sole arbitrator.

4.1 The said institution after following the established procedure, appointed one Shri S.R. Periyasammy, Advocate *vide* letter dated 31.05.2023 as the sole arbitrator for adjudicating the dispute between the appellant and the respondents.

4.2 Despite granting ample opportunities to the respondents to



participate in the arbitration proceedings by issuing registered notices, they failed to appear before the learned arbitrator. Neither did they raise any objections on the merits of the issue nor did they raise any objection to the appointment of the arbitrator nominated by KFCRI. Consequently, the learned arbitrator passed an *ex parte* award dated 21.09.2023 directing repayment of an amount of Rs.1,86,658.86/- along with interest at the rate of 24.54% *per annum* from 07.03.2023 in favour of the appellant.

4.3 Even after the passing of the said award, the respondents failed to make payment. Accordingly, after the expiry of the period prescribed for challenging the award, the appellant filed an execution application under Section 36 of the Arbitration and Conciliation Act, 1996 read with Order XXI Rule 11 of the Code of Civil Procedure, 1908 before the learned II Additional District Judge, Biaora, District Rajgarh, which was registered as EX AB 3/2024.

4.4 The said Court initially issued notices to the respondents in the execution proceedings, however, the respondents failed to appear therein. Despite the same, the executing Court by referring to various judgments of the High Court and even of the Hon'ble Supreme Court, *suo motu* dismissed the execution application by the impugned order passed on 12.04.2025 holding that the arbitrator had been appointed unilaterally and that the award passed by the sole arbitrator was invalid due to lack of inherent jurisdiction. Consequently, the award passed by the sole arbitrator was held to be unenforceable. Being aggrieved by the said order passed by the executing Court, the present appeal has been filed.



5. Learned counsel while arguing on the question of sustainability of the impugned order submits that the executing Court could not have *suo motu* annulled the arbitral award when no party to the arbitration agreement had challenged the same on the ground of ineligibility of the arbitrator in terms of Section 12(5) of the Arbitration and Conciliation Act, 1996.

5.1 He further submits that an award passed in arbitration proceedings can be set aside only by way of an application under Section 34 of the Arbitration and Conciliation Act, 1996.

5.2 In the present case, neither the appointment of the arbitrator nor the arbitral award on merits was challenged by the respondents. Therefore, the execution proceedings could not have been dismissed *suo motu* by the executing Court. In support of his submissions, learned counsel has placed reliance on a Division Bench order of this Court dated *05.12.2024* passed in a bunch of appeals including *AA No.131 of 2024* in the case of *Akme Fintrade (India) Ltd. vs. Seema Jain and Others and connected matters*.

5.3 Apart from the aforesaid submissions, learned counsel for the appellant also placed reliance on an order passed by the High Court of Judicature at Madras in the case of *M/s Sundaram Finance Limited vs. S.M. Thangaraj and Others in CRP No.5197/2024*.

5.4 Learned counsel for the appellant further submitted as a general proposition of law, that an executing Court cannot go behind the decree unless it is shown that the decree was passed by Court inherently lacking jurisdiction and is therefore a nullity. In support of this proposition, he placed reliance on the judgments of the Hon'ble Apex Court in the case of *Vasudev*



*Dhanjibhai Modi vs. Rajabhai Abdul Rehman and Others* in (1970) 1 SCC 670; *ONGC Limited vs. M/s Modern Construction and Company* in (2014) 1 SCC 648 and in the case of *Shivshankar Gurgar vs. Dilip* in (2014) 2 SCC 465.

5.5 Learned counsel further submitted that once an arbitral award is passed, it becomes final and binding in terms of Section 35 of the Arbitration and Conciliation Act, 1996 and that the scope of judicial interference is limited and can be exercised only in proceedings instituted under Section 34 of the said Act. In support of this contention, reliance was placed on the judgment of the Hon'ble Apex Court in the case of *Fuerst Day Lawson Ltd vs. Jindal Exports Limited* in (2011) 8 SCC 333.

6. On the other hand, learned counsel for the respondent(s) supported the impugned order by placing reliance on the findings recorded by the executing Court. He submitted that the executing Court after considering various judgments of the Hon'ble Apex Court and different High Courts has held that an arbitrator appointed without the consent of the other party lacks jurisdiction and consequently, an award passed by such arbitrator is not binding.

6.1 It was further submitted that, in the present case, no consent was obtained from the respondents and the award was passed in an *ex parte* manner. Therefore, the said award is not binding and the order passed by the executing Court calls for no interference.

7. Heard learned counsel for the parties and perused the record.

8. A perusal of the impugned order would show that the executing



Court dismissed the execution proceedings primarily on the grounds that the arbitration proceedings were conducted *ex parte* and that the arbitrator was appointed unilaterally thereby holding that the arbitral award was not enforceable. However, while arriving at this conclusion, the executing Court remained oblivious to the express provisions of the Arbitration and Conciliation Act, 1996. Section 12(5) of the said Act provides that certain persons are ineligible to be appointed as arbitrators; however, the proviso thereto permits waiver of the applicability of the said sub-section by an agreement between the parties.

8.1 In the present case, the respondents did not challenge the appointment of the arbitrator. The arbitrator issued repeated notices to respondents; however, they failed to respond to the same. Consequently, the arbitrator proceeded to pass an *ex parte* award. Once, such award is passed, it attains finality and becomes binding on the parties and persons claiming under them in terms of Section 35 of the Act of 1996. The only remedy available against an arbitral award is under Section 34 of the Act of 1996. Section 34 provides that recourse to a Court against an arbitral award may be made only by an application for setting aside such award in accordance with sub-sections (2) and (3) thereof. Thus, an arbitral award can be challenged only by way of an application under Section 34 of the Act of 1996 and strictly on the grounds enumerated therein.

8.2 In the present case, the respondents never challenged the arbitral award by filing an application under Section 34 of the Act of 1996. As such, the award has attained finality and is binding upon the respondents.



9. The Hon'ble Apex Court while considering the issue as to whether an executing Court can go behind the decree has held in *Vasudev Dhanjibhai Modi (Supra)* that an executing Court cannot go behind the decree unless it is shown that the decree was passed by a Court inherently lacking jurisdiction and is, therefore, a nullity.

10. As regards the finding of the executing Court, it has observed that the award under execution specifically mentions that the company in whose favour the award was passed had appointed the sole arbitrator. However, the award does not mention anywhere that the consent of the respondents was obtained for such appointment. On this basis, the impugned order has been passed.

10.1 This by itself cannot be a ground for refusing execution as the nomination of a person to act as sole arbitrator cannot be held to be illegal *ipso facto* in the absence of any objection to such appointment.

10.2 In fact, the reliance placed by the executing Court on the judgment of the Hon'ble Apex Court in the case of *Dharma Prathisthanam vs. Madhok Construction (P) Ltd.* in *(2005) 9 SCC 686* is misplaced. The said case was decided on an entirely different set of facts and law. In that case, the arbitration proceedings were conducted under the Arbitration Act, 1940 and after the sole arbitrator passed the award, an application under Sections 14 and 17 of the said (now repealed) Act was filed for making the award a rule of the Court.

10.3 Significantly, those proceedings were not execution proceedings. In that factual and legal context, the Hon'ble Apex Court held that a unilateral



appointment or reference to arbitrator was impermissible, particularly because the respondents therein had raised objection to the appointment of the arbitrator.

10.4 In the present case, however, not only has the award been passed under the provisions of the Arbitration and Conciliation Act, 1996 but there has also been no objection whatsoever raised by the respondents at any stage to the appointment of the arbitrator.

11. Similarly, the reliance placed by the executing Court on the judgment of the Hon'ble Apex Court in the case of *Bharat Broadband Network Ltd vs. United Telecoms Ltd.* in (2019) 5 SCC 755, is also misplaced, as the facts of the said case were entirely different.

11.1 In that case, Bharat Broadband Network Ltd. (BBNL) had itself appointed a person as the sole arbitrator. Subsequently, in view of the declaration of law by the Hon'ble Supreme Court in the case of *TRF Ltd. vs. Energo Engineering Projects Ltd.* in (2017) 8 SCC 377 moved an application before the arbitrator for his withdrawal from the proceedings so as to enable the parties to approach the High Court for appointment of an arbitrator. However, the sole arbitrator rejected the application filed by the very party that had nominated him.

11.2 The matter thereafter travelled to the Hon'ble Apex Court, which passed orders in the aforesaid factual context. Notably, in that case, no award had been passed and there was a specific objection to the continuation of the arbitrator.

11.3 In the present case, no such circumstances existed prior to the



passing of the final award and even during the execution proceedings, no specific objection has been raised by the respondents to the appointment of the arbitrator.

12. Similarly, in the case of *Perkins Eastman Architects DPC and Another vs. HSCC (India) Ltd.* reported in *(2020) 20 SCC 760*, the issue before the Hon'ble Apex Court pertained to the appointment of an arbitrator. An application was filed before the Hon'ble Apex Court under Section 11(6) read with Section 11(12)(a) of the Arbitration and Conciliation Act, 1996.

12.1 Thus, the facts of the said case are also entirely different. In none of the above-mentioned three cases was the issue of execution of an arbitral award involved.

12.2 A bare reading of the award (Annexure A-2) would show at the very outset, that the sole arbitrator is not an employee of the award holder. The award itself records that the sole arbitrator Shri S.R. Periyasammy is an Advocate practising in Chennai.

12.3 One significant factor in the present case is that it was not the award holder who nominated the sole arbitrator. Rather, in terms of the arbitration clause contained in the agreement, the award holder filed an application before Kovise Foundation Conflict Resolution International (KFCRI) for appointment of sole arbitrator. On such request, the said institution nominated the person to act as the sole arbitrator.

12.4 It is thus clear that the sole arbitrator was not nominated by interested party nor was he connected in any manner with either of the parties. In fact, in the present case, the appointment was made by an



independent institution.

12.5 For this reason as well, the judgments of the Hon'ble Apex Court referred to herein above are not applicable and the reasoning adopted by the executing Court is unsustainable.

13. In the present case, inherent lack of jurisdiction could have been established by the respondents only by showing that the arbitrator was ineligible to act as such under Section 12 of the Arbitration and Conciliation Act, 1996. No such plea was ever raised by the respondents. However, the executing Court *suo motu* held that the arbitrator lacked jurisdiction solely on the ground that the appointment was unilateral, which by itself does not constitute a ground to infer inherent lack of jurisdiction.

14. In any event, the said issue already stands settled by a Division Bench of this Court in the case of *Akme Fintrade (India) Ltd. (Supra)*, wherein it has been held in paras 4 and 5 as under :

*"4. It is a settled law that Executing Court cannot go behind the award or decree to modify or declare it void. The role of the Executing Court is only to execute the award or decree. The grounds available under Section 34 of the Act of 1996 are not available to the Executing Court to declare any award void or set aside. As per Section 35 of the Act of 1996 the arbitral award is final and binding on the parties. Section 36(1) of the Act of 1996 says that where the time for making an application to set aside the award under Section 34 has expired, the award shall be enforceable.*

*5. Learned counsel appearing for respondents also submits that no such objection was filed before Executing Court that award is not executable and the Executing Court has suo moto passed an order dismissing the execution proceeding. We are surprised and shocked that how the impugned order has been passed declaring the award void by dismissing the application for execution."*

15. In the considered view of this Court, the executing Court committed a grave error of law in *suo motu* rejecting the execution



application(s). Accordingly, the impugned order dated 12.04.2025 is hereby set aside and the matter is restored to the file of the executing Court for passing appropriate orders in accordance with law.

16. With the aforesaid observations, the present appeal stands disposed of.

Certified copy as per rules.

**(PAVAN KUMAR DWIVEDI)**  
**JUDGE**

Anushree