IN THE COURT OF THE ADDITIONAL DISTRICT JUDGE, MANJERI
Present:- Sri. Suraj S, Additional District Judge - III

Saturday, the 4th day of October 2025.
12st day of Aswina, 1947

EXECUTION PETITION No.338/2023
in ARC/CLT No. 481/2019

Between:-

HDFC Bank Ltd., Having its Registered Office at HDFC Bank House, Senapati Bapat Marg, Lower Parel, West Mumbai 400 013, having one of its branch office at HDFC Bank Ltd., 1st Floor, Door No. 1/554-H, PB Business Point, Kovilakam Road, Nilambur, Malappuram 679 329, Represented by Power of Attorney Holder & Legal Manager Visak K.P., 30 years, S/o. Krishnan Nair B.S.	Petitioner/ Decree Holder

And:-

Juhasin Khan T., 27 years, S/o. Najmul Nisam T., Thiruvath House, Neelancheri P. O., Manjeri, Malappuram 676 525.	Respondent/ Judgment Debtor

This petition is coming on the 3rd day of October, 2025 for final hearing before me in the presence of Sri. Noushad Kalloada, Advocate for the petitioner and of the respondent is not entered in appearance, and having stood over to this day for consideration, the court passed the following:

<u>O R D E R</u>

This execution petition has been filed by the decree holder in ARC/CLT No. 481/2019. The decree holder seeks enforcement of the arbitral award dated 15.01.2020, by which he was permitted to recover a sum of ₹94,030/- along with interest at the rate of 12% per annum from the judgment debtor.

2. Heard on the issue of maintainability of the execution petition.

3. Learned counsel for the decree holder submitted that prior to the commencement of arbitration proceedings, due notice was issued by the arbitrator. However, the judgment debtor chose not to participate in the proceedings. It was contended that the judgment debtor, having failed to avail himself of the opportunity to contest the claim during arbitration, is now estopped from challenging the validity of the award at the execution stage.

4. The recitals in the arbitral award indicate that the arbitrator was unilaterally appointed by the claimant company, relying on the arbitration clause contained in the agreement. There is no material on record to show that the appointment was made with the written consent of both parties after the dispute had arisen.

5. The Arbitration and Conciliation Act, 1996, was extensively amended with effect from 23/10/2015. One of the primary objectives of the amendment was to ensure neutrality and impartiality in arbitration proceedings. In furtherance of this objective, Section 12(5) was introduced to disqualify certain categories of persons from being appointed as arbitrators, thereby strengthening the integrity of the arbitral process.

6. In ***Hedge Finance Private Finance Private Limited (M/s.) Ernakulam v. Bijish Joseph (2022 KHC 591)***, the Hon'ble High Court of Kerala, after considering various precedents of the Hon'ble Supreme Court

held that "*After evaluating the pleadings and materials on record and clause 20 of Ext P1 agreement, and the law laid down by the Hon'ble Supreme Court in* ***Voestalpine Schienen GmbH v. Delhi Metro Rail Corporation Ltd (2017 (4) SCC 665), TRF Ltd v. Energo Engineering Projects Ltd (2017 (8) SCC 377), Bharat Broadband Network Ltd v. United Telecoms Ltd (2019 (5) SCC 755) and Perkins Eastman Architects DPC and another v. HSCC (India) Ltd.*** *(2020 (20) SCC 760), wherein it is held in explicit terms that, post-2015 amendment of the Act, a unilateral appointment of an Arbitrator by an Authority which is interested in the outcome of the decision of the dispute is impermissible in law. Such an Arbitrator becomes de jure incapacitated to perform his functions as an Arbitrator.”*

7. In paragraph 22 it has been further held that *“On an analysis of the amended provisions of the Arbitration and Conciliation Act, 1996 and the exposition of the law laid down by the Hon'ble Supreme Court in the afore - cited decisions, it is abundantly clear that the law mandates that there should be neutrality not only for the Arbitrator but also in the arbitrator selection process as well. Thus, in the post - 2015 amendment era, there are only two modes of appointment of a sole Arbitrator (i) by express agreement in writing between the parties, post the dispute, agreeing to waive the applicability of S.12 of the Act or (ii) by order of appointment by the High Court under S.11 of the Act. If the appointment of a sole arbitrator is made other than by the above two methods, the appointment is ex facie bad and is in contravention of the provisions of the Act, which goes to the roots of the matter, and the Arbitrator becomes de jure ineligible to act as an arbitrator by the operation of law.”*

8. In ***Central Organisation for Railway Electrification v. M/S ECI SPIC SMO MCML (JV) A Joint Venture Company (2024 KHC OnLine 6620)*** the Hon’ble Supreme Court held as follows:- *“c. A clause that allows one party to unilaterally appoint a sole arbitrator gives rise to justifiable doubts as to the independence and impartiality of the arbitrator. Further, such a unilateral clause is exclusive and hinders equal participation of the other party in the appointment process of arbitrators;*"

9. In the present case, the arbitrator was not appointed according to a written agreement between the parties, nor through recourse to Section 11 of the Arbitration and Conciliation Act. Instead, the decree holder company unilaterally appointed the arbitrator, despite having an interest in the outcome of the dispute. Such a unilateral appointment, as previously discussed, is impermissible in law. Consequently, the arbitral award rendered by the said arbitrator is null and void and, therefore, not capable of being enforced through these execution proceedings. Accordingly, this Execution Petition is dismissed, without any order as to costs.

(Dictated to the Confidential Assistant transcribed by her corrected and pronounced by me in open court this the 4th day of October, 2025).

(Sd/-)
Addl. District Judge-III

Typed by : Sindhu M.P.
Compared by :

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Fair/Copy of order in
E.P. No. 338/2023
Dated: 04-10-2025
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