

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

Civil Revision No.64 of 2021

Reserved on: 18.06.2026

Decided on: 30.06.2026

Uploaded on: 30.06.2026

M/s Shriram Transport Finance Co. Ltd.

...Petitioner

Versus

Ashutosh Chabbra and another

...Respondents

Coram

Hon'ble Mr.Justice Jiya Lal Bhardwaj, Judge.

Whether approved for reporting?¹ Yes

For the petitioner: Mr. Ajay Sharma, Senior Advocate with Mr.Atharv Sharma, Advocate.

For the respondents: *Ex-parte* vide order dated 23.09.2025.

Jiya Lal Bhardwaj, Judge

The petitioner by way of present petition has challenged the order dated 01.09.2021, passed by the learned District Judge, Kangra at Dharamshala in Cr.No.5 of 2016, titled, ***Shri Ram Transport vs. Ashutosh***, whereby his execution petition has been dismissed. The learned Court has dismissed the execution petition on the ground that the appointment of the arbitrator was not as per law and the award pronounced by him is non-est, which cannot be enforced and thus, the execution petition is not maintainable.

¹ *Whether the reporters of Local Papers may be allowed to see the judgment?*

2. The facts as emerge from the pleadings are that respondent No.1 had entered into a loan agreement dated 28.08.2010 with the petitioner-company and respondent No.2 stood guarantor. The total amount disbursed against vehicle HP53-7331 was Rs.6,80,000/- and this loan amount was to be repaid in 55 equal instalments by the respondents. The loan agreement had an Arbitration Clause and in case of disputes, differences, the matter shall be settled by arbitration to be held at Jalandhar in accordance with the provisions of the Arbitration and Conciliation Act, 1996 (for short the 'Act') or any statutory amendments and the matter shall be referred to sole arbitrator of a person to be nominated/appointed by the petitioner-company. However, when the respondents failed to make the loan installments, the petitioner had invoked the provisions of Act. As per agreement, the sole arbitrator namely, Mr.Shobhit Seth, Advocate, Jalandhar was appointed, who entered into a reference and vide award dated 02.03.2015, the respondents were held jointly and severally liable to pay a sum of Rs.16,15,484/- to the petitioner-company along with interest @9% per annum from the date of filing of petition till its final realization. The petitioner-company was also held entitled to a sum of Rs.3000/- towards arbitrator's fee and Rs.2000/- as expenses of the proceedings to the arbitrator.

3. The petitioner-Company to execute the award passed by the sole arbitrator, preferred the execution petition. The respondents filed the objections to the same. Learned District Judge dismissed the execution petition holding that the petitioner-Company had appointed the sole arbitrator, which was impressible as per provisions of Section 11(6) of the Act. The learned District Judge after considering the judgment passed by the Hon'ble Supreme Court in ***Perkins Eastman Architects DPC and another vs. HSCC (India) Limited, (2020) 20 SCC 760*** came to the conclusion that a party is not entitled to act as an Arbitrator or to appoint an arbitrator after the commencement of the Arbitration and Conciliation (Amendment) Act, 2015.

4. The petitioner-company has assailed the order passed by the learned Executing Court on the ground that the learned Court has wrongly applied the judgment passed in ***Perkins Eastman Architects's*** case inasmuch as the executing Court cannot go behind the decree. The Executing Court has failed to perform its duties as it has acted like an Appellate Court. Further, so far as the amendment in the Act is concerned, the amendment was carried out on 23.10.2015, whereas the award in the present petition was passed on 02.03.2015 and hence the amendment made on 23.10.2015 has no applicability on the award passed on prior date.

Further, the Executing Court cannot eclipse the settled common law principles with regard to retrospective applicability of a legislation/statute, which are being universally followed and, therefore, cannot pass any order antithetical to the same. The Executing Court has failed to consider that the amended legislations cannot be applied with retrospective effect and has to be read with prospective effect and, therefore, the amendment carried out in the Act, which came into effect from 23.10.2015 has no effect on the award passed on 02.03.2015 and thus, the petitioner-Company prayed for setting aside the order under challenge.

5. I have heard the learned counsel for the petitioner and also perused the record carefully.

6. It is not in dispute that the petitioner had appointed the sole arbitrator as per Clause 15 of the agreement without the consent of the respondents. The respondents had raised the objection that the arbitrator, so appointed, by the petitioner-company was not legally appointed by the competent authority, as such the award is not executable. No doubt, the amendment carried out in the Act by amending the provisions has been incorporated w.e.f. 23.10.2015, but the amendment so carried out has been considered by the Hon'ble Supreme Court in ***Perkins Eastman Architects's*** case (supra) and held that the once the person

becomes ineligible by operation of law to act as an arbitrator, he could not nominate another person to act as an arbitrator. In the aforementioned case, the earlier judgment passed by the Hon'ble Supreme Court in ***TRF Limited vs. Energo Engineering Projects Limited, (2017) 8 SCC 377*** was also considered, wherein it was held that if any person, who falls under any of the categories specified in the Seventh Schedule shall be ineligible to be appointed as the arbitrator. The aforementioned view of the Hon'ble Supreme Court was considered in Constitution Bench judgment in ***Central Organisation for Railway Electrification vs. ECI SPIC SMO MCML (JV) A Joint Venture Company, (2025) 4 SCC 641*** and the majority view had come to the conclusion that unilateral appointment clauses in public private contracts are violative of Article 14 of the Constitution. The relevant conclusion of the Hon'ble Supreme Court is reproduced as under:-

170. *In view of the above discussion, we conclude that:*

170.1. *The principle of equal treatment of parties applies at all stages of arbitration proceedings, including the stage of appointment of arbitrators;*

170.2. *The Arbitration Act does not prohibit PSUs from empanelling potential arbitrators. However, an arbitration clause cannot mandate the other party to select its arbitrator from the panel curated by PSUs;*

170.3. *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;

170.4. *In the appointment of a three-member panel, mandating the other party to select its arbitrator from a curated panel of potential arbitrators is against the principle of equal treatment of parties. In this situation, there is no effective counterbalance because parties do not participate equally in the process of appointing arbitrators. The process of appointing arbitrators in CORE is unequal and prejudiced in favour of the Railways;*

170.5. Unilateral appointment clauses in public-private contracts are violative of Article 14 of the Constitution;

170.6. *The principle of express waiver contained under the proviso to Section 12(5) also applies to situations where the parties seek to waive the allegation of bias against an arbitrator appointed unilaterally by one of the parties. After the disputes have arisen, the parties can determine whether there is a necessity to waive the nemo judex rule; and*

170.7. *The law laid down in the present reference will apply prospectively to arbitrator appointments to be made after the date of this judgment. This direction applies to three-member tribunals.*

171. *The reference is answered in the above terms.*

172. *Pending application(s), if any, shall stand disposed of."*

7. In the present case, it is not in dispute that the petitioner-company as per agreement had appointed the arbitrator unilaterally, which is violative of Article 14 of the Constitution of India.

8. Learned senior counsel for the petitioner-company has vehemently argued that since the award was passed before the amendment being carried out in the Act, thus the amending

provisions are not attracted to his case, is without any substance. The Hon'ble Supreme Court in ***Perkins Eastman Architects's*** case (supra) has not held that the law laid down would be applicable prospectively. A decision of the Court has retrospective effect unless expressly given prospective effect. The Constitution Bench of the Hon'ble Supreme Court in the aforementioned judgment in ***Central Organisation for Railway Electrification*** has also dealt with this issue in paragraph 167 and the same is reproduced hereunder:-

"167. A decision of this Court has retrospective effect unless expressly given a prospective effect. Commercial relations are structured on the basis of law. A change in law may have the effect of distorting established rights and commercial bargains between parties. To avoid large-scale social and economic disruption, this Court can exercise its discretionary jurisdiction under Article 142 to give prospective effect to its decisions. The application of the doctrine of prospective overruling results in the application of the law declared by this Court to cases arising in future. In Mineral Area Development Authority v. SAIL eight Judges of this Court held that the doctrine of prospective overruling is applied to bring about a smooth transition of the operation of law without unduly affecting the rights of people who acted upon the overruled law."

9. Once the Hon'ble Supreme Court in ***Perkins Eastman Architects's*** case (supra) has not held that the judgment would be applicable prospectively, the argument raised by the learned senior

counsel for the petitioner is without any substance and thus rejected. Earlier to the decision in ***Perkins Eastman Architects's*** case (supra), a three-Judge Bench in ***TRF Limited's*** case (supra) had also dealt with the issue that the judgment passed by the Hon'ble Supreme Court will be applicable retrospectively. In that case too, an objection was taken that the agreement was entered into between the parties before the amendment came into force and once the procedure for appointment was agreed upon, the amending provisions do not take away the right of a party to nominate a sole arbitrator, otherwise the legislature could have amended other provisions. However, the Hon'ble Supreme Court had negated the said plea holding that the amendment is applicable and the relevant para 54 of the judgment is reproduced as under:-

"54. In such a context, the fulcrum of the controversy would be, can an ineligible arbitrator, like the Managing Director, nominate an arbitrator, who may be otherwise eligible and a respectable person. As stated earlier, we are neither concerned with the objectivity nor the individual respectability. We are only concerned with the authority or the power of the Managing Director. By our analysis, we are obligated to arrive at the conclusion that once the arbitrator has become ineligible by operation of law, he cannot nominate another as an arbitrator. The arbitrator becomes ineligible as per prescription contained in Section 12(5) of the Act. It is inconceivable in law that person who is

statutorily ineligible can nominate a person. Needless to say, once the infrastructure collapses, the superstructure is bound to collapse. One cannot have a building without the plinth. Or to put it differently, once the identity of the Managing Director as the sole arbitrator is lost, the power to nominate someone else as an arbitrator is obliterated. Therefore, the view expressed by the High Court is not sustainable and we say so."

10. The other plea raised by the learned senior counsel for the petitioner that the Executing Court has acted like an Appellate Court is concerned, that is also without any merit for the reason that the Executing Court while considering the execution petition has applied the law applicable. It is settled law that the Executing Court cannot go behind the decree, but at the same time, in case the decree sought to be executed is shown to have been passed by the Court inherently lacking jurisdiction and is a nullity, the same can be gone into at the time of executing the same by the executing Court. Reference in this regard can be made to the judgment in ***Vasudev Dhanjibhai Modi vs. Rajabhai Abdul Rehman and others, (1970) 1 SCC 670***. The relevant para 7 of the judgment is reproduced as under:-

"7. When a decree which is a nullity, for instance, where it is passed without bringing the legal representative on the record of a person who was dead at the date of the decree, or against a ruling prince without a certificate, is sought to be

executed an objection in that behalf may be raised in a proceeding for execution. Again, when the decree is made by a court which has no inherent jurisdiction to make objection as to its validity may be raised in an execution proceeding if the objection appears on the face of the record: where the objection as to the jurisdiction of the Court to pass the decree does not appear on the face of the record and requires examination of the questions raised and decided at the trial or which could have been but have not been raised, the executing Court will have no jurisdiction to entertain an objection as to the validity of the decree even on the ground of absence of jurisdiction. In Jnanendra Mohan Bhaduri v. Rabindra Nath Chakravarti [LR 60 IA 71] the Judicial Committee held that where a decree was passed upon an award made under the provisions of the Indian Arbitration and Conciliation Act, 1899, an objection in the course of the execution proceeding that the decree was made without jurisdiction, since under the Indian Arbitration Act, 1899, there is no provision for making a decree upon an award, was competent. That was a case in which the decree was on the face of the record without jurisdiction."

11. Since in the present case, the award sought to be executed has been passed by a person, who could not have been appointed by the petitioner-company as a sole arbitrator, in view of the provisions of the Act, there is no error having been committed by the Executing court while dismissing the execution petition.

12. Learned senior counsel for the petitioner-company placed reliance on the judgment passed by the High Court of

Judicature at Madras in C.R.P. No.5197 of 2024, **M/s. Sundaram Finance Limited versus S.M. Thangaraj and others** to contend that since no objection was raised regarding appointment of arbitrator, it cannot be said that the mere appointment of arbitrator would vitiate the entire arbitral proceedings, which culminated in an award. However, the said view is contrary to the judgment of the Constitution Bench in the aforementioned case of ***Central Organisation for Railway Electrification***, wherein it has been held that the unilateral appointment of arbitrator is violative of Article 14 of the Constitution of India and I don't subscribe to the said view taken by the Court.

13. This Court while exercising the powers under Section 115 of the Code of Civil Procedure can only exercise the jurisdiction when the order passed by the Court is without jurisdiction or there is flagrant violation of the principles of natural justice. The Court while exercising its revisional jurisdiction cannot sit as an Appellate Court or correct error of law even if committed by the trial Court.

14. In the present case, since there is no error of law having been committed by the Executing Court, I do not find any perversity or illegality in the impugned order passed by the Executing Court, whereby the execution petition preferred by the petitioner-company has been dismissed.

15. Consequently, the present petition being devoid of merit is dismissed. However, there shall be no order as to costs. Pending applications, if any, also stand disposed of.

30th June, 2026
(naveen)

(Jiya Lal Bhardwaj)
Judge