



2026:KER:62401

OP(C) NO. 2206 OF 2026

1

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE EASWARAN S.

TUESDAY, THE 4TH DAY OF AUGUST 2026 / 13TH SRAVANA, 1948

OP(C) NO. 2206 OF 2026

AGAINST THE ORDER DATED 13.07.2026 IN EP(Arb) NO.226
OF 2024 OF ADDITIONAL DISTRICT COURT - V, KOZHIKODE

PETITIONER/S:

M/S. HEDGE FINANCE LIMITED
HEDGE HOUSE, MAMANGALAM, PALARIVATTOM, ERNAKULAM,
KOCHI- 682 025, REPRESENTED BY ITS AUTHORIZED
SIGNATORY, MR. MADHU E, S/O KELAPPAN, AGED 49,
VENKALLULLATHIL HOUSE, MEPPAYUR P O, KOZHIKODE
DISTRICT., PIN - 673524

BY ADV SRI.SHIJU VARGHESE

RESPONDENT/S:

SANGEETHA A.V
AGE AND FATHER'S NAME NOT KNOWN,
KIZHAKKEKARULELIL HOUSE, VENNALA P.O, ERNAKULAM,
PIN - 682028.

THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON
04.08.2026, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

OP (C) NO. 2206 OF 2026

2

“C.R”

EASWARAN S., J.**OP(C) No.2206 of 2026****Dated this the 4th day of August, 2026****J U D G M E N T**

The petitioner secured an award (Ext.P2) in an arbitration proceeding declaring that it is entitled to recover a sum of Rs.3,47,439/- together with interest @ 18% per annum. The appointment of the arbitrator was pursuant to an agreement of loan (Ext.P3) entered into between the petitioner and the respondent on 16.12.2019. When the award was put to execution, the Additional District Court-V, Kozhikode took a view that unilateral appointment of an arbitrator cannot be sustained in view of the decision of this Court in **Hedge Finance Private Ltd. v. Bijish Joseph [ILR 2022 (3) KER 347]**. Accordingly, the execution petition was dismissed. Pertinently, the dismissal of the execution petition by Ext.P4 was even without hearing the respondent. Thus, presumably, the objection was formulated by itself. The order (Ext.P4) dismissing the execution petition is thus impugned in the original petition.



OP (C) NO. 2206 OF 2026

3

2. The question which this Court required to address is whether the executing court can entertain an objection regarding the executability of the award passed under the provisions of the Arbitration and Conciliation Act, 1996. This Court felt it necessary to examine this issue since, repeatedly, the courts, where such an award is put to execution, have proceeded to hold that the award is not executable, despite the party not raising a dispute. Surprisingly, it appears that the court itself had taken up the task of deciding this issue, thus necessitating a closer judicial scrutiny.

3. Heard Sri.Shiju Varghese, the learned counsel appearing for the petitioner.

4. In the nature of the order/decision which this Court proposes to pass/issue, this Court feels that it is not necessary to put notice to the respondent.

5. On a conspectus analysis of the issues required to be addressed, this Court feels it necessary to address the following questions:

i) Whether the executing court can raise an objection regarding the executability of the award passed by an arbitrator?



OP(C) NO. 2206 OF 2026

4

ii) Can the executing court refuse to execute the award passed by an arbitrator on the ground that his appointment is unilateral?

6. **Question-i).** The power of the executing court to decide the executability of a decree can be traced to Section 47 of the Code of Civil Procedure, 1908. No doubt, the executing court can examine whether the decree sought to be executed is a nullity or not. But then, while exercising the power under Section 47, the scope of enquiry is limited and cannot be substituted with a full trial of the issues.

7. In the scheme of the Arbitration and Conciliation Act, 1996, the opposite party, if aggrieved by the award, has to apply for setting aside the same by filing an application under Section 34 of the Act. If the party has not moved any application for setting aside the award, the enquiry under Section 47 of the CPC cannot be enlarged to such an extent, so as to obliterate the award itself unless the award is found to be a nullity.

8. In **Bhawarlal Bhandari Vs Universal Heavy Mechanical Lifting Enterprises [(1999) 1 SCC 558]**, the Supreme Court held that if a person has received notice in an



OP (C) NO. 2206 OF 2026

5

arbitration proceedings and did not raise objection under Section 30 of the Arbitration Act, 1940, he cannot later raise an objection that the award passed by the arbitrator is not executable. The executing court cannot entertain such an objection.

9. **Question -ii)** The sole reason why the executing court dismissed the execution petition is that the appointment of the arbitrator is unilateral. A perusal of Ext.P3 agreement shows that the parties have themselves agreed to nominate a person as an arbitrator. If the parties chose to reduce their bargain in writing and agreed on a particular person as arbitrator, then his appointment cannot be termed as unilateral and can only be construed as one by consent. Therefore, it is unfathomable as to how the executing court concluded that the appointment of the arbitrator is unilateral.

10. The question as to whether, after nominating a person, the opposite party could still invoke the remedy under Section 21 read with Section 11 of the Arbitration and Conciliation Act, 1996 came up for consideration before the Supreme Court in ***Swadesh Kumar Agarwal v. Dinesh Kumar Agarwal [(2022) 10 SCC 235]***. It was held by the Supreme Court that once a dispute is referred to



OP (C) NO. 2206 OF 2026

6

arbitration and a sole arbitrator is appointed by the parties by mutual consent, the arbitration agreement cannot be invoked for the second time. Paras 23 to 25 are extracted as under:

“23. Now the next question which is posed for consideration of this Court is, whether, in a case where the parties themselves have referred the dispute for arbitration and appointed and/or nominated the sole arbitrator by mutual consent and in the absence of any arbitration agreement and contract containing an arbitration agreement once the arbitrator is appointed, an application under Section 11(6) of the 1996 Act to terminate the mandate of the arbitrator and to substitute the arbitrator would be maintainable.

24. It is to be noted that in the present case as such the application under Section 14(2) of the 1996 Act to terminate the mandate of the arbitrator was already pending before the court concerned on the ground that his mandate stood terminated in view of Section 14(1)(a) of the 1996 Act.

25. As observed hereinabove, there is a difference and distinction between the arbitrator to be appointed under Section 11(5) and under Section 11(6) of the 1996 Act. As observed above, even in the absence of any arbitration agreement in writing between the parties, with



consent the parties may refer the dispute for arbitration and appoint a sole arbitrator/arbitrators by mutual consent and parties may agree mutually on a procedure for appointing an arbitrator or arbitrators even in the absence of any written agreement. In such a situation and failing an agreement referred to sub-section (2), the aggrieved party may approach the High Court for appointment of an arbitrator under sub-section (5) of Section 11 and in such a situation sub-section (5) of Section 11 shall be attracted. However, where there is a written agreement on the appointment procedure agreed upon by the parties and there is a failure to appoint an arbitrator or arbitrators, in that case, sub-section (6) of Section 11 shall be attracted and an aggrieved party may approach the High Court for appointment of an arbitrator under sub-section (6) of Section 11 of the 1996 Act. Therefore, an application under Section 11(6) of the 1996 Act shall be maintainable only in a case where there is a written agreement and/or the contract containing the arbitration agreement and the appointment procedure agreed upon by the parties, application under Section 11(6) of the 1996 Act shall be maintainable. Otherwise, the application under Section 11(6) of the 1996 Act shall not be maintainable.”



OP (C) NO. 2206 OF 2026

8

11. Yet another aspect to be considered is whether the appointment of an arbitrator nominated by both parties in the loan agreement offends the provisions of Section 12(5) of the Arbitration and Conciliation Act, 1996. It is true that a person having direct acquaintance with one party cannot act as the Arbitrator. But nothing prevents both parties from nominating an arbitrator for resolving the dispute. This can be done by an agreement executed before the dispute arises or after the dispute has arisen. Such nomination falls outside the bar under sub-Section (5) of Section 12 of the Act.

12. A cursory reading of clause O(1) of the Ext.P3 agreement shows that the choice of arbitrator is mutual. Clause O(1) reads as under.

“O. ARBITRATION

1. All disputes, differences and/or claim arising out of this agreement shall be settled by ARBITRATION in accordance with the provisions of the Arbitration and Conciliation Act, 1996 or any statutory amendments thereof. All the parties to this agreement (First Part, second Part and third part) do hereby mutually agreed to



OP (C) NO. 2206 OF 2026

9

appoint S.Nidheesh, Advocate, 2nd floor, Hari Kripa Building, Mathai Manjooran Road, Cochin – 682031 as the independent and impartial sole arbitrator for the arbitration as above, who is found eligible and competent to arbitrate the disputes, on the opinion of the parties herein. The above person's previous appointment as the arbitrator of any of the parties within the past 3 years, if any, is not a bar to appoint him/her as the arbitrator to this agreement as a mutually agreed person and the parties have absolute faith on him. This reference to the Arbitrator shall be within the clauses, terms and conditions of this Agreement. The award given by the Arbitrator shall be final and binding on the parties concerned. The venue of arbitration shall be at Ernakulam, Kerala and the arbitration proceedings shall be conducted in English language.”

The mutual agreement in so far as choice of arbitrator is concerned will save his appointment from the mischief which is sought to be remedied under the Seventh Schedule to Section 12(5) of the Arbitration and Conciliation Act, 1996.

13. Coming to the reasoning of the executing court in the order impugned, it is seen that the court placed heavy reliance on the decision of this Court in **Hedge Finance Private Limited vs**



Bijish Joseph [ILR 2022(3) KER 347] to conclude that there are only two modes of appointment of sole arbitrator, (i) by express agreement in writing by parties post the dispute by agreeing to nominate a person to arbitrate, and (ii) By an order of appointment by the High Court, and hence the award sought to be executed cannot be sustained, especially since the appointment of the arbitrator was based on an agreement entered into prior to the dispute.

14. On a careful reading of the decision in **Bijish Joseph** (supra), this Court is of the view that the decision is distinguishable on facts. In the above case, this Court was called upon to interpret a clause in the agreement of hypothecation which provided for appointment of the arbitrator by the financier. Invoking the said clause, the financier issued a notice for appointing the arbitrator, who proceeded to pass the award. Unlike in the case of **Bijish Joseph** (supra), in this case, the parties have themselves nominated the arbitrator in case of any dispute. Moreover, the person so nominated is shown to be disqualified in terms of the Seventh Schedule to the Act.



OP (C) NO. 2206 OF 2026

11

15. In *M/s.Hedge Finance Limited v. Sahala V.P & Ors.* [OP(C) No.683/2024 decided on 18.3.2025], this Court held that if there is an agreement between the parties nominating the arbitrator, then the principles laid down in **Bijish Joseph** (supra) cannot be applied.

16. Later, another Single Bench of this Court in **M/s.Maben Nidhi Ltd. Vs Paul M.P.** (OP (C) No. 1894/2025 decided on 11.8.2025) followed the very same principles and interfered with the orders of the executing court.

17. In the above backdrop, this Court finds that reliance placed on by the executing court in the decision in **Bijish Joseph** (supra) is totally misconceived and amounts to judicial impropriety. When this Court has clarified that the position qua the principles governing the unilateral appointment will not affect such an agreement where the parties themselves have nominated the arbitrator, it was wholly impermissible for the executing court to still rely on **Bijish Joseph** (supra) and dismiss the execution petition. Thus, this Court is of the view that Ext.P4 order cannot be sustained



OP (C) NO. 2206 OF 2026

12

and requires to be interfered with in exercise of the powers under Article 227 of the Constitution of India,

18. Having said so, the conclusion by this Court should not be taken as one giving *imprimatur* to all such awards, which have been passed on a unilateral nomination by one party. The conclusion reached as above is only applicable in cases where, either in an agreement between the parties, the parties choose to nominate a particular individual as an arbitrator, or post-dispute the parties agreed by mutual consent to nominate a person as an arbitrator.

Accordingly, Ext.P4 order dated 13.7.2026 stands set aside. EP (Arb) No.226/2024 in AP No.15/2021 stands restored to the files of the Additional District Court-V, Kozhikode. The Additional District Court-V, Kozhikode is directed to proceed with the execution petition, in accordance with law.

Registry is directed to communicate this judgment to all the District Courts. It is made clear that the District Courts, while considering execution petitions, are advised to exercise caution in such matters and not to unilaterally dismiss the execution petitions,



OP (C) NO. 2206 OF 2026

13

on the ground of unilateral appointment of the arbitrator, without looking into the factual matrix.

Ordered accordingly.

Sd/-
EASWARAN S.
JUDGE

jg



2026:KER:62401

OP(C) NO. 2206 OF 2026

14

APPENDIX OF OP(C) NO. 2206 OF 2026

PETITIONER EXHIBITS

Exhibit P1	A TRUE COPY OF THE EXECUTION PETITION (ARB) NO. 226/2024
Exhibit P2	A TRUE COPY OF THE AWARD IN ARBITRATION REFERENCE NO.: 15/2021 DATED 01.07.2021
Exhibit P3	A TRUE COPY OF THE LOAN AGREEMENT DATED 16.12.2019
Exhibit P4	A TRUE COPY OF THE ORDER DATED 13.07.2026 IN E.P. (ARB) NO.226/2024
Exhibit P5	A TRUE COPY OF THE COMMON JUDGMENT IN OP(C) NOS. 2009/2026, AND 2012/2026 DECIDED ON 17.07.2026