



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 27TH DAY OF MAY, 2025

BEFORE

THE HON'BLE MR JUSTICE SURAJ GOVINDARAJ

WRIT PETITION NO. 10493 OF 2020 (GM-RES)

BETWEEN

1. SMT. MANJULA
W/O LATE MANJUNATH,
AGED ABOUT 41 YEARS,
2. THARUN GOWDA
S/O LATE MANJUNATH,
AGED ABOUT 18 YEARS,

BOTH ARE RESIDING AT NO 6-A,
JANIVARA VILLAGE AND POST,
KASABA HOBLI, C R PATNA TALUK,
HASSAN DISTRICT 573116

...PETITIONERS

(BY SRI. S. SHRIHARI.K., ADVOCATE)

AND



1. SHRIRAM TRANSPORT FINANCE CO LTD
HAVING ITS BRANCH OFFICE AT 1ST FLOOR,
BMR COMPLEX, ABOVE KARNATAKA BANK,
B M ROAD, CHANNARAYAPATNA 573116,
REPRESENTED BY ITS G P A HOLDER
KESHAVAMURTHY S L
2. SRI B K VISHWANTH
ADVOCATE AND ARBITRATOR,
NO 02, 1ST FLOOR, BENAKA COMPLEX,
BESIDE ANDHRA BANK,
SHANKARMUTT ROAD, K R PURAM,
HASSAN 573201
3. SHRIRAM TRANSPORT FINANCE CO LTD



3RD FLOOR, MOOKAMBIKA COMPLEX,
LADY DESIKA ROAD, MYLAPORE,
CHENNAI-600001
REPRESENTED BY ITS MANAGING DIRECTOR/
CHAIRMAN

4. KUMARASWAMY
S/O KALLAIAH,
R/AT MALLNALLI VILLAGE,
ANEKERE POST, D.G. HALLI HOBLI,
CHANNARAYAPATNA TALUK,
HASSAN-573116

5. CHANDRASHEKAR,
S/O RAMASHETTY,
R/AT #69, JANIVARA VILLAGE,
KASABA HOBLI,
JANIVARA POST,
CHANNARAYAPATNA TALUK,
HASSAN DIST-573116.

.... RESPONDENTS

(BY SRI.M.J. ALVA., ADVOCATE FOR R1;
R2 TO R5 SERVED)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 & 227
OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE ENTIRE
PROCEEDINGS BEARING NO. A.C.NO.1032/2019 & 1033/2019
PENDING BEFORE THE 2ND RESPONDENT ARBITRATOR AT
ANNEXURE-A AND B AND ETC.

THIS WRIT PETITION COMING ON FOR ORDERS AND HAVING
BEEN RESERVED FOR ORDERS ON 24.04.2025, THIS DAY, THE
COURT PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MR JUSTICE SURAJ GOVINDARAJ



CAV ORDER

1. The Petitioners are before this Court seeking the following reliefs:
 - i. *To quash the entire proceedings bearing No. A.C.No.1032/2019 & 1033/2019 pending before the 2nd Respondent Arbitrator at Annexure A and B;*
 - ii. *Issue such other suitable writ or order on the facts and circumstances of the case in the interest of justice and equity.*
2. Petitioner No.1 claims to be the widow, and Petitioner No.2 claims to be the son of Manjunath, who expired on 25-08-2018. The said Manjunath had availed two loans, from 1st Respondent - Shriram Transport Finance Company Limited, (hereinafter referred to as '**Shriram**').
3. On the ground that the said Manjunath had not made payment of the above loans, on his expiry, two legal notices had been issued on 27-7-2019, to the Petitioners calling upon them to repay the entire amount of Rs.28,33,882/- towards full and final



settlement in respect of the vehicle loan towards vehicle bearing No.KA13-B-4570 and a sum of Rs.28,61,998/- towards the vehicle bearing No.KA13-B-4571. It was also informed that if the payments were not made, Shriram would appoint an arbitrator. It is contended that Shriram indeed did appoint an Arbitrator who had passed an order on an application under Section 17 of the Arbitration and Conciliation Act, 1996 (for short, 'the Act') directing the repossession of the hypothecated vehicles. It is in that background that the Petitioners are before this Court challenging the proceedings, as also the order passed by the Arbitrator and seeking for the aforesaid reliefs.

4. Ms.Neeraja Karanth, learned Counsel appearing for the Petitioners, would submit that:

4.1. There is no notice which had been issued to Sri.Manjunath during his lifetime. On his expiry, the notice dated 27-7-2019 had been issued,



calling upon the Petitioners to make payment of the amounts as afore indicated, within seven days of the receipt of the notice, failing which the lawyer of Shriram had indicated that the matter would be referred for arbitration to Sri.B.K.Vishwanath, the 2nd Respondent herein. Two notices have been issued on the very same date; one for Vehicle bearing No.KA13-B-4570 and the other for Vehicle bearing No.KA13-B-4571.

4.2. The notices having been issued on 27-07-2019, even before that date, applications were filed before the 2nd Respondent - Arbitrator on 12-07-2019 under Section 17 of the Act, seeking for ad interim order authorizing Shriram to seize and take possession of the aforesaid vehicles.

4.3. On the very same day, the Arbitrator had passed an order holding that the petition



discloses that the Respondents have not paid the amount and trying to cause damage to the vehicle and also trying to alienate the vehicles to third parties with the intention to deprive Shriram of the security and hence in the interest of justice, the 2nd Respondent – Arbitrator permitted the Respondent to repossess the hypothecated vehicles, with the help of jurisdictional police and retain the same in the custody, till the disposal of the case. But however, observed that if the amounts were paid, the vehicles would be released, to the Respondents' therein, that is the Petitioners' herein.

4.4. The Claim Petition under Section 23 of the Act was filed only on 10.8.2019. Thus, she submits that a notice having been issued, on 27-7-2019, calling upon the Petitioners to make payment of the monies, failure thereof within 7



days would result in Arbitrator being appointed, namely the 2nd Respondent. The 2nd Respondent could not have entered reference on 12-7-2019, even prior to his nomination being made on 27-7-2019, and the order which has been passed on 12-7-2019 is without jurisdiction since the Arbitrator had not been appointed, even unilaterally by Shriram.

4.5. She submits that there is no unilateral appointment of an Arbitrator which could be made by Shriram inasmuch as the agreement entered into between the parties does not provide for a named Arbitrator.

4.6. The Petitioners are not parties to the alleged arbitration agreement and they have been brought on record as only legal heirs of the deceased Manjunath. Therefore, no proceedings could have been initiated against the Petitioners.



4.7. Her submission is that upon a notice having been issued on 27-7-2019, it should be a notice in terms of Section 21 of the Act. The request had been made only on 27-7-2019. If the request were not to be accepted, it is the procedure under Section 11 of the Act which is required to be followed. There being no named Arbitrator in terms of Subsection (5) of Section 11 of the Act, it could be treated as failure to agree, to arrive at an agreement as regards the appointment of an Arbitrator requiring Shriram to approach this Court under Section 11 for appointment of such an Arbitrator.

4.8. She submits that the entire procedure not having been followed, even before the notice was issued on 27-07-2019, the Arbitrator has entered reference on 12-07-2019 and passed an interim order directing repossession of the hypothecated vehicles, which the Arbitrator was



not entitled to do so. Thus, the entire proceedings which have been initiated by Shriram is without any basis. The applicable procedure has not been followed.

4.9. The details of the agreement have not been made known to the Petitioners who are the legal heirs of Sri.Manjunath. They are not signatories to any agreement with Shriram. They being only legal heirs without the requirement of law being fulfilled, the impugned orders could not have been passed.

4.10. She further submits that both the applications under Section 17 filed before the Arbitrator and the order passed by the Arbitrator appears to be from the very same computer, very same font has been used and as such the arbitration proceedings initiated by Shriram are hogwash and a staged arbitration proceeding to take possession of the property of the Petitioners.



5. Sri.M.J.Alva, learned Counsel appearing for Shriram would submit that:

5.1. The procedure Shriram followed was proper and correct. His contention is that Shriram was in terms of the arbitration agreement, entitled to appoint an Arbitrator of its choice, and as such 2nd Respondent has been appointed as an Arbitrator. No fault can be found therewith.

5.2. In this regard, he relies upon the decision of the Hon'ble Apex Court in SLP Nos.23441-23444/2022 dated 16.5.2024 more particularly Paras 35 and 36 thereof which are reproduced hereunder for easy reference:

35. *This Court has interpreted the term 'authority' used in Article 226 in the case of Andi Mukta(supra), wherein it was held as follows:*

"17. There, however, the prerogative writ of mandamus is confined only to public authorities to compel performance of public duty. The 'public authority' for them means everybody which is created by statute—and whose powers and duties are defined by statute. So government departments, local authorities, police authorities, and statutory undertakings and corporations, are all 'public



authorities'. But there is no such limitation for our High Courts to issue the writ 'in the nature of mandamus'. Article 226 confers wide powers on the High Courts to issue writs in the nature of prerogative writs. This is a striking departure from the English law. Under Article 226, writs can be issued to 'any person or authority'. It can be issued 'for the enforcement of any of the fundamental rights and for any other purpose'.

20. The term 'authority' used in Article 226, in the context, must receive a liberal meaning like the term in Article 12.

Article 12 is relevant only for the purpose of enforcement of fundamental rights under Article 32. Article 226 confers power on the High Courts to issue writs for enforcement of the fundamental rights as well as non-fundamental rights. The words 'any person or authority' used in Article 226 are, therefore, not to be confined only to statutory authorities and instrumentalities of the State. They may cover any other person or body performing public duty. The form of the body concerned is not very much relevant. What is relevant is the nature of the duty imposed on the body. The duty must be judged in the light of positive obligation owed by the person or authority to the affected party. No matter by what means the duty is imposed. If a positive obligation exists mandamus cannot be denied." (emphasis supplied)

36. *Further, in the case of Federal Bank Ltd. v. Sagar Thomas 22, this Court culled out the categories of body/persons who would be amenable to writ jurisdiction of the High Court which are as follows:*

"18. From the decisions referred to above, the position that emerges is that a writ petition under Article 226 of the Constitution of India may be



maintainable against (i) the State (Government); (ii) an authority; (iii) a statutory body; (iv) an instrumentality or agency of the State; (v) a company which is financed and owned by the State; (vi) a private body run substantially on State funding; (vii) a private body discharging public duty or positive obligation of public nature; and (viii) a person or a body under liability to discharge any function under any statute, to compel it to perform such a statutory function."

5.3. By relying on **R.S.Madireddy's** case, he submits that Shriram being a private company would not be amenable to a jurisdiction under Article 226 of the Constitution of India and as such, this petition is required to be dismissed as not maintainable.

6. Heard Ms.Neeraja Karanth, learned Counsel for the Petitioners, Sri.M.J.Alva, learned Counsel for Respondent No.1 and perused papers.

7. The points that would arise for determination are:

1) Can one of the parties to an arbitration agreement appoint an arbitrator without the other party's consent?



2) Whether a person who is the named Arbitrator in a notice issued under Section 21 of the Arbitration and Conciliation Act, 1996 can enter reference and pass orders without the other person consenting thereto, or without an order of appointment of Arbitrator by institution or a Court under Section 11 of the Arbitration and Conciliation Act, 1996?

3) Is the reference entered into by 2nd Respondent in the present matter proper and correct?

4) Is the above Writ Petition maintainable?

5) What order?

8. I answer the above points as under:

9. **Answer to Point No.1: Can one of the parties to an arbitration agreement appoint an arbitrator without the other party's consent?**

9.1. The submission of Sri.M.J.Alva, learned Counsel for Shriram is that in terms of the arbitration agreement, Shriram was entitled to appoint an Arbitrator. The Petitioners not having produced the arbitration agreement, Shriram was called upon to produce the same, which was also not



produced. Hence, the records were also secured from the Arbitrator. A perusal of the records indicates that the so-called arbitration agreement is not even on the file of the Arbitrator and does not accompany the claim statement filed by Shriram.

9.2. Though there is a list of documents which has been indicated to have been filed along with the claim petition, on perusal of the file apart from the power of attorney, no document has been produced along with the claim petition.

9.3. The documents which are on records in Arbitration Case No.1032/2019 are only the claim petition, vakalathnama, list of documents, power of attorney in favour of the authorised representative of Shriram, copying application filed by Shriram, returned covers of the notices issued by the Arbitrator to the Petitioners which have been returned with the endorsement 'door



locked', an application under Section 17 of the Act dated 9-3-2020 along with the affidavit in support thereof, an undated memo producing the vehicle inventory and photos of the vehicles seized and parked at Shriram Auto Mall, the operative portion of the order dated 12-7-2019, the interim order passed on 10-08-2021, permitting the claimant to sell the vehicle, memorandum of objections filed by respondents, notice of reference dated 24-04-2019 and another application under Section 17 dated 12-07-2019. Similar is the situation in respect of Arbitration Case No.1033/2019. In both the cases, along with the claim petition, the documents which have been produced are as under.

**LIST OF DOCUMENTS SUBMITTED ON BEHALF OF
THE CLAIMANT:-**

- 1. Copy of general power of attorney dated 30.01.2015
Claimant in favour of Sri. Keshva Murthy S.L.*



- 2. Original Copy of Loan Cum Hypothecation Agreement 02.05.2017 executed between claimant and the respondents.*
- 3. Certified Copy of B Extract of vehicle bearing Reg No. KA-13-B-4571.*
- 4. Office copy of the Arbitration Notice dated 24.04.2019 sent to the Respondents.*
- 5. Postal receipts of notice dated 25.04.2019 (in two numbers).*
- 6. "Party Dead" returned postal cover of Respondent No.1.*
- 7. Office copy of the Arbitration Notice dated 27.06.2019 sent to the Respondents.*
- 8. Postal Receipts of notice dated 11.04.2019.*
- 9. "Out of Station" returned postal cover of Respondent No.2.*
- 10. "Out of Station" returned postal cover of Respondent No.3.*
- 11. "Served" postal acknowledgement of Respondent No.4.*
- 12. Statement of Accounts.*

9.4. In both the above cases, the original copy of the loan-cum-hypothecation agreement executed between the claimant and respondents therein has not been produced. Despite opportunity being granted for Shriram



to produce the same, the same has not been produced before this Court also. Thus, when there is no agreement which is available on record to indicate the existence or otherwise of an arbitration clause. the question of Shriram relying upon arbitration clause would not arise. Since the arbitration agreement has not been placed on record, it would have to be presumed that there is no such arbitration agreement let alone entitling Shriram to invoke arbitration proceedings and appoint 2nd Respondent as an Arbitrator.

9.5. Even assuming that there is an arbitration agreement, the contents whereof is not clear. Even assuming, for the sake of argument, as contended by Sri.M.J.Alva, learned Counsel for Shriram, that the arbitration clause entitled Shriram to appoint an Arbitrator, admittedly even the said clause does not indicate a named



Arbitrator, but only entitles Sriram to appoint an Arbitrator.

9.6. Shriram had issued a notice on 27-07-2019 indicating the nomination of 2nd Respondent as an Arbitrator. This notice was not replied to by the Petitioners. There was no consent which was expressed by them to the appointment of 2nd Respondent as the sole Arbitrator, despite which the Arbitrator has entered reference.

9.7. What is more crucial is that the Arbitrator has entered reference and passed an order on 12-7-2019 when the notice itself was issued on 27-7-2019. Thus, even the exercise of the right by Shriram to nominate an Arbitrator which was so exercised on 27-7-2019 was prior to the order being passed by the Arbitrator on 12-7-2019. Suffice it to say that as on 12-7-2019, there is no nomination of 2nd Respondent as an Arbitrator, there was no appointment of the 2nd



Respondent as an Arbitrator, then the question of 2nd Respondent passing such an order on 12-7-2019 would not arise.

9.8. The manner in which Shriram has acted in the present matter categorically and unimpeachably establishes the abuse of law resorted to by Shriram. It is on the basis of this so-called order dated 12-7-2019 passed by the 2nd Respondent Arbitrator that police help has been secured, the vehicles have been seized, impounded and taken to the parking yard of Shriram, which could never have been done by Shriram since the applicable procedure and law has not been followed. Shriram has abused the process prescribed under the Act, nominated its own person as an Arbitrator, who has passed an order as an Arbitrator even before being appointed, which has also been executed prior to his appointment, and a memo has been filed.



9.9. There is also substance in the submission of Ms.Neeraja Karanth, learned Counsel that the application and the order has been printed on the very same machine since the fonts of both the documents appear to be one and the same. Of course, this would have to be determined by an appropriate expert, in the enquiry which is proposed to be ordered.

9.10.Hence, I answer Point No.1 by holding that the appointment of the 2nd Respondent as an Arbitrator by Shriram is unilateral in nature, which is not permissible. If the other party were not to respond to the request of Shriram favourably, it was for Shriram to approach this Court under Section 11 of the Act, seeking the appointment of any Arbitrator by this Court and not to appoint an Arbitrator by itself and proceed with the matter. The orders passed by



an arbitrator not properly appointed are non est.

10. **Answer to Point No.2: Whether a person who is the named Arbitrator in a notice issued under Section 21 of the Arbitration and Conciliation Act, 1996 can enter reference and pass orders without the other person consenting thereto, or without an order of appointment of Arbitrator by institution or a Court under Section 11 of the Arbitration and Conciliation Act, 1996?**

10.1. This issue has been partly dealt with in answer to Point No.1 above. In the present matter, the notice of nomination of an Arbitrator was issued on 27-07-2019. However, the Arbitrator has entered reference and passed orders on the interlocutory application under Section 17 on 12-07-2019. The Arbitrator has apparently acted on the statement made by Shriram that he has been appointed as an Arbitrator and that he has jurisdiction in terms of Article 15 of aforesaid agreement. Paragraph 10 on the said



claim statement makes an interesting reading
which is reproduced hereunder:

10. The Claimant submits that, in above circumstances the claimant is constrained to refer the matter to you for the arbitration as you have been appointed as Arbitrator by the parties to decide any claim and dispute arising under the said agreement. The Hon'ble Arbitrator has jurisdiction to try this matter as per provisions of Article 15 of above said agreement which is unambiguous with respect to referring the disputes arising between the claimant and respondents to Arbitrator.

Further as per the said agreement it is agreed that the place arbitration shall be at Hassan, Karnataka.

Therefore the claimant prays that the Hon'ble Arbitrator may pleased to admit the above claim and enquire into the same and pass award against both the Respondents directing the respondents to:

- a. Jointly and severally pay the claimant a sum of Rs. 28,61,998/- (Rupees Twenty Eight Lakh Sixty One Thousand Nine Hundred Ninety Eight Only) along with further interest @ 3% p.m. from the date of claim petition till the date of realization in full.*
- b. Pay the entire costs, and*
- c. Pass such other and further orders, as this Hon'ble Tribunal may deem fit and proper under the circumstances of the case in the interest of justice.*

10.2.A perusal of Para 10 would indicate that the claimant is constrained to refer the matter to the Arbitrator for arbitration, as he has been appointed as the Arbitrator by the parties to



decide any claim and dispute arising under the said agreement. As aforesaid, the agreement has not been placed on record. Hence, the Petitioners having denied that they had appointed 2nd Respondent as an Arbitrator-Shriram could not have stated, that the 2nd Respondent has been appointed as the Arbitrator by the parties to decide any claim.

10.3. An Arbitrator is supposed to be an independent entity to decide the *lis* between the parties by way of an Alternate Dispute Resolution process in the form of an arbitration. The Arbitrator is not a stooge for any party, nor is he a rubber stamp for any party. In the present case, from perusal of the record, it is clearly and categorically seen, that the 2nd Respondent has acted as a stooge and rubber stamp of Shriram and has been more loyal than the king even before he was nominated by Shriram to be an



Arbitrator on 27-07-2019, he has entered reference on 12-07-2019 and passed an order, directing repossession of the hypothecated vehicle, with the help of jurisdiction police.

10.4.This Arbitrator who is also stated to be an advocate, ought to have been aware of the applicable law and in what manner, he can act. By acting for and on behalf of Shriram, by misusing his position as an Arbitrator, he has directed seizure of a vehicle, with police help, and the police have apparently given such help, considering that it is an order passed by an Arbitrator.

10.5.This is a complete abuse of the process of law, misuse of the applicable procedure for the benefit of Shriram and its officers, which is required to be dealt with an iron hand. By making use of such private forums with appointment made of choice by Shriram,



Shriram has obtained benefit of repossession of hypothecated vehicles using police help, has impounded the vehicles and retained them in its parking yard and thereafter under an order passed by the very same unilaterally appointed Arbitrator sold the vehicles and appropriated the monies.

10.6.This would amount to, Shriram trying to establish, a parallel dispute resolution machinery under the guise of arbitration without, any supervision, without any checks and balances, which has resulted in such an order being passed and subsequently, resulted in the very same Arbitrator allowing the sale of the vehicle.

10.7.These kind of orders are required to be passed by an appropriate authority vested with appropriate powers and not by an Arbitrator like that in the present case, who has entered



reference even before being nominated, and the Arbitration Clause/Agreement, despite enough opportunities having been provided, has not been placed on record by Shriram.

10.8.It would therefore be required that necessary enquiry is held in this regard since Shriram has dragged in the police, in terms of enforcing the order of the Arbitrator, such enquiry would be required to be held by the police to ascertain the veracity thereof, of course, if required, with the assistance of suitable experts.

10.9.Hence, the Director General of Police, Karnataka, is directed to appoint a suitable officer not below the rank of Superintendent of Police to conduct an enquiry into the manner in which the above proceedings were held and submit a report within a period of six weeks from today. If there are any other similar



complaints received necessary enquiry in regard thereto would also have to be held.

10.10. Hence, I answer Point No.2 by holding that a person who is the named Arbitrator in a notice issued under Section 21 of the Arbitration and Conciliation Act, 1996 cannot enter reference and pass orders without the other person consenting thereto, or without an order of appointment of Arbitrator by institution or a Court under Section 11 of the Arbitration and Conciliation Act, 1996.

11. **Answer to Point No.3: Is the reference entered into by 2nd Respondent in the present matter proper and correct?**

11.1. This aspect has been answered in Points No.1 and 2 above. The notice of reference issued on 27-7-2019, the Arbitrator could not have entered reference and passed an order on 12-7-2019. The so-called Arbitrator has acted



as a stooge and rubber stamp of Shriram requiring action to be taken against him.

11.2.Hence, I answer Point No.3 by holding that the reference entered into by 2nd Respondent in the present case is not correct.

12. **Answer to Point No.4: Is the above Writ Petition maintainable?**

12.1.Sri M.J.Alva, the learned Counsel, appearing for Shriram, has sought to vehemently contend that a Writ Petition is not maintainable and, in that regard, has relied upon the decision in ***R.S.Madhireddy***'s case. His submission is that Shriram being a private party, a Writ Petition cannot be entertained.

12.2.This would have been so, if not for the manner in which Shriram has acted inasmuch as, as observed supra, Shriram has appointed a private person as an Arbitrator without the consent of the other party, namely the



Petitioners. Shriram has indulged itself in misuse of the Act, obtained so-called order from a unilaterally appointed Arbitrator for repossession of a vehicle using police help. Thus, making the police to act on the order of a person who was not even appointed as an Arbitrator. The actions on part of Shriram in doing all the above by involving the jurisdictional police, abusing the process of law, misusing the arbitral mechanism, in my considered opinion, would entitle this Court to exercise its powers under Article 226 and 227 of the Constitution of India to render effective justice to the Petitioners who have been deprived of their rights, by the above misuse on part of Shriram.

12.3.If a Constitutional Court does not come to the rescue of the Petitioners, that would amount to denial of justice to the Petitioners, which cannot



be countenanced under any law. Hence, I answer Point No.4 by holding that the present Writ Petition is maintainable.

13. **What order?**

13.1. In view of the above, I pass the following:

ORDER

- 1) The Writ Petition is ***allowed***.
- 2) The order passed by 2nd Respondent in A.C.No.1032/2019 and A.C.No.1033/2019 so also the entire proceedings in A.C.No.1032/2019 and A.C.No.1033/2019 are quashed.
- 3) Registrar (Judicial) is directed to forward a copy of this order to the Director General of Police for necessary action.
- 4) Though the above petition is disposed, relist on **30.7.2025** to enable the nominee of the Director General of Police to submit a report.

**SD/-
(SURAJ GOVINDARAJ)
JUDGE**

PRS
List No.: 3 Sl No.: 41