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Arbitration Original Petition (Com.Div.) No.544 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.12.2025

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THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Arbitration Original Petition (Com.Div.) No.544 of 2025

M/s.Shriram Finance Limited,
(Formerly known as Shriram Transport Finance Co Ltd.,)
Rep. by its Authorised representative,
Sri Towers, Plot No.14A, South Phase,
Industrial Estate, Guindy, Chennai - 600 032.
branch office at Branch Office,
No.40/10/2, 2nd Floor, Saraswathi Complex,
Mount Road, YMCA Corner,
Coonoor, The Nilgiris - 643 101. Petitioner

Vs.

1.Poornima S
W/o.Shankar
2.Shankar
S/o.Jeyaraman
3.Sivakumar
S/o.Belli Respondents

Arbitration Original Petition (Com.Div.) filed under Section 11(6) of the Arbitration and Conciliation Act, 1996, praying to appoint a Sole Arbitrator to preside over the arbitration proceedings to be commenced with respect to the dispute that have arisen with respect to the Loan cum Hypothecation Agreement dated 27.12.2017 between the parties.

For Petitioner : Ms.V.Pushpa
For Respondents : Mr.P.Suresh Babu [R1]
Mr.N.Surya Senthil [R2]
No appearance [R3]



ORDER

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This petition has been filed under Section 11 of the Arbitration and Conciliation Act, 1996 [for brevity 'the Act'] for appointment of an Arbitrator to decide the dispute and differences between petitioner and respondents in terms of the Term Loan Agreement dated 27.12.2017.

2. When the matter came up for hearing on 10.09.2025, this Court passed the following order:

“The petitioner had already initiated the arbitration proceedings and an award also came to be passed by the sole Arbitrator on 18.12.2020. However, this award was set aside by the Commercial Court (District Judge cadre), Coimbatore in Arb.O.P.No.98 of 2023 on the ground that the Arbitrator was unilaterally appointed by the petitioner.

2. Pursuant to the above order, notice under Section 21 of the Arbitration and Conciliation Act, 1996 dated 25.11.2024 was issued by the petitioner to the respondents. Thereafter, the present application has been filed before this Court for appointment of an Arbitrator to enter reference and decide the dispute that has arisen between the parties with respect to the loan cum hypothecation agreement dated 27.12.2017.

3. Notice to the respondents returnable by 13.10.2025. Private notice is also permitted.

Post on 13.10.2025.”

3. After service of notice, the respondents entered appearance, filed counter and raised two preliminary objections. The first objection is that



when the earlier award was set aside in Arb.O.P.No.98 of 2023 on 04.12.2023, no liberty was granted by the Court to re-agitate the issue and the said order has also become final. The second issue raised on the side of respondents is that the claim is clearly barred by limitation. Hence, the matter cannot be referred to the Sole Arbitrator.

4. Heard learned counsel for petitioner and learned counsel for respondents.

5. In the case in hand, the parties had entered into a Term Loan Agreement dated 27.12.2017. A letter of guarantee was also issued on 27.12.2017. Due to the alleged default in repayment of loan amount, the petitioner issued a trigger notice and initiated arbitration proceedings. An award came to be passed in A.P.No.199 of 2019 on 18.12.2020 and the same was put to challenge before the Commercial Court (District Judge Cadre), Coimbatore, in Arb.O.P.No.98 of 2023. The Commercial Court, Coimbatore, set aside the award primarily on the ground that the award is in violation of principles of natural justice since sufficient opportunity was not given to respondents before the award was passed.



6. The petitioner once again issued the trigger notice under Section 21 of the Act on 25.11.2024 and thereafter, approached this Court for appointment of an Arbitrator.

7. The first objection raised on the side of respondents is that when the order was passed setting aside the award, no liberty was granted to the petitioner and therefore, the petitioner cannot once again initiate arbitration proceedings.

8. Learned counsel for petitioner brought to the notice of this Court the judgment of the Bombay High Court in *Associated Constructions v. Mormugoa Port Trust [2010 (5) BomCR100]*. The relevant portions relied upon by learned counsel for petitioner are extracted hereunder:

“11. The question, therefore, is whether in view of the said award having been set aside, except as to one claim on grounds other than on merit, the present application under Section 11 of the said Act is maintainable.

12. The learned Counsel appearing on behalf of the applicant relied upon following observations of the Supreme Court in *Mc Dermott International Inc. v. Burn Standard Co. Ltd. and others [JT 2006 (11) SC 376]*.

"55. The 1996 Act makes provision for the supervisory role of Courts, for the review of the arbitral award only to ensure fairness, intervention of the court is envisaged in few circumstances only, like, in case of fraud or bias by the Arbitrators, violation of natural justice, etc. The Court cannot correct errors of the Arbitrators. It can



only quash the award leaving the parties free to begin the arbitration again if it is desired. So scheme of the provision aims at keeping the supervisory role of the court at minimum level and this can be justified as parties to the agreement make a conscious decision to exclude the court's jurisdiction by opting for arbitration as they prefer the expediency and finality offered by it."

(emphasis supplied)

13. The learned counsel appearing on behalf of the Applicant also relied upon the following observations in the said judgment of the Division Bench of this Court in Appeal No.981 of 2001 decided on 4th October 2007 in the case of Pushpa Mulchandani v. Admiral Radhakishan Tahlani (Retd.) and others 2008 (7) L J SOFT 161:-

"26. It is, thus, clear that if the court finds that the award is vitiated because of violation of principles of natural justice or such other reasons, which cannot be called as "adjudication" on merits, the court can set aside the Award and if the Award is set aside for such reasons, it is open to the parties to invoke the arbitration clause again and initiate arbitration proceedings. In our opinion, in this regard reference can be made to the provisions of sub-section (4) of Section 43. They read as under:-

43(4) Where the Court orders that an arbitral award be set aside, the period between the commencement of the arbitration and the date of the order of the Court shall be excluded in computing the time prescribed by the Limitation Act, 1963 (36 of 1963), for the commencement of the proceedings (including arbitration) with respect to the dispute so submitted. When the award is set aside for the reasons other than merits, then it is open to the parties to the arbitration agreement, if arbitration agreement survives, to invoke the arbitration agreement and to have the matter referred to arbitration. In other contingencies they can adopt other remedy that may be available to them and in that situation, either for adopting any other remedy or in initiating arbitration, the period spent during the earlier arbitration is liable to be excluded while computing the period of limitation."



These observations have not been set aside by the Full Bench. In fact, this aspect did not fall for consideration in the reference to the Full Bench.

14. The judgments support the submission on behalf of the Applicant that a fresh arbitration is permissible at least in the event of an award being set aside for reasons other than on merits. In the present case the entire award except as to one claim, was set aside for reasons other than on merits. This is clear from the fact that although the award in respect of only three items/claims was set aside, the entire award was set aside. The claims, other than those referred to in the judgment, were not considered or even referred to. In any event, as noted earlier, at least the claim in respect of a sum of Rs.1,50,000/- was set aside, not on merits but on the ground that no reasons were furnished. This was obviously in view of the Judgments which held that under the 1996 Act an award cannot be segregated and therefore even if a part thereof is liable to be set aside the entire award must be set aside. The Applicants are therefore entitled to begin the arbitration again.

15. Mr.Shetty then submitted that it is only the court setting aside an award that can permit a fresh arbitration under the same arbitration agreement. He based his submission upon the observation of the Supreme Court extracted above: “It can only quash the award leaving the parties free to begin the arbitration again if it is desired.” He submitted that the term “It” implies that it is only the court that sets aside the award that can leave the parties free to begin the arbitration again.

16. There is nothing in the judgment of the Supreme Court that even remotely suggests the same. In fact the Supreme Court did not consider this aspect. The Supreme Court has not specified as to the manner in or the stage at which the parties are free to begin the arbitration again. Having held that the parties are free to begin arbitration again there is nothing in the Act, the judgment or in principle that warrants restricting the enforcement of this right to any particular stage, point of time or proceeding.

17. Mr.Shetty also submitted that the observations of the Supreme Court and the Division Bench of this Court in the case of Pushpa Mulchandani (supra) indicate that after an Award is set aside a fresh arbitration can begin again only with the consent of both the parties.



18. The submission is based on the erroneous presumption that the exercise of the right to begin the arbitration again is dependent upon a fresh arbitration agreement. An arbitration agreement, can be entered into only with the consent of the parties. Once an arbitration agreement is entered into it may be invoked by any of the parties unilaterally. If one of the parties refuses to abide by the arbitration agreement, the other party is entitled to invoke or enforce it under the said Act. Where an award is set aside as in the above case, the commencement of the arbitration again is pursuant to and under the existing arbitration clause. The same is neither based on nor dependent upon a fresh arbitration agreement between the parties.

19. It is not necessary to decide whether this Court has the discretion whether or not to allow the arbitration to begin again for I am clearly of the view that in the present case it must be exercised in the Applicants favour. A rejection of this application would be a travesty of justice. The entire award has been set aside only because a part of it was found to be contrary to law. Thus, even that part of the award which was found to be sustainable or at least was not held to be unsustainable is set aside. This as noted above was in view of the judgments of this Court prior to their being overruled by the judgment of the Full Bench.”

9. I am in complete agreement with the above judgment passed by the Bombay High Court. Where an award is set aside as being vitiated because of violation of principles of natural justice, the same cannot be considered as an award passed by adjudication on merits. In such an event, it will always be left open to the parties to invoke the arbitration clause again and initiate arbitration proceedings to enable the matter to be decided on merits. In view of the same, the first objection raised on the side of respondents is rejected.



10. The other objection raised on the side of respondents touches upon the issue of limitation. In the light of this objection raised by the respondents, more particularly, considering the fact that the parties are going to be sent for second round of arbitration proceedings, this Court directed learned counsel appearing on either side to provide particulars to *prima facie* establish before the Court that the relief claimed by the petitioner is barred by limitation.

11. Learned counsel for petitioner has provided particulars and has taken a stand that the total time taken till issuance of the fresh trigger notice on 25.11.2024 is 588 days.

12. *Per contra*, learned counsel for respondents submitted that there is a delay of more than 950 days and therefore, the claim made by the petitioner is clearly barred by limitation.

13. It is quite apparent from the above that the issue of limitation in this case has become a mixed question of fact and law. I had an occasion to deal with the scope of examination of a petition filed under Section 11 of the Act in the case of ***S.Krishnamoorthy v. Engineering Projects***



India Ltd. [2025 (4) LW 716]. After carefully analysing all the judgments of the Apex Court, this Court came to a conclusion that the objections on the grounds of limitation and accord and satisfaction must necessarily await adjudication before the Arbitral Tribunal and that the Court can only examine the arbitration agreement with the arbitration clause, nothing more and nothing less.

14. In view of the above, if according to respondents, the claim is barred by limitation, it will always be left open to respondents to raise it as a preliminary issue before the Arbitral Tribunal. As and when the preliminary issue is raised, the Arbitral Tribunal shall go into that issue and take a decision after affording opportunity to both sides. This liberty will sufficiently take care of the grievance expressed by respondents. It is not necessary for this Court to venture into the issue of limitation while deciding this application for appointment of Arbitrator.

15. In view of the above, this Court appoints Hon'ble Mr.Justice V.Bharathidasan, Former Judge, Madras High Court, No.22, (L-45), 2nd Main Road, Kamaraj Nagar, Thiruvannamiyur, Chennai – 600 041, E-mail: dasanvb@gmail.com [Mobile No.94443 83139] as the Sole



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N.ANAND VENKATESH, J.

gm

Arbitrator and the Hon'ble Sole Arbitrator is requested to adjudicate the arbitral disputes that had arisen between the parties and render arbitral award by holding sittings in the 'Madras High Court Arbitration Centre under the aegis of this Court' (MHCAC) as per Madras High Court Arbitration Proceedings Rules 2017 and fee of the Hon'ble Sole Arbitrator shall be in accordance with the Madras High Court Arbitration Centre (MHCAC) (Administrative Cost and Arbitrator's Fees) Rules 2017.

Accordingly, this petition is disposed of.

17.12.2025

gm

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