
Arbitrator Named in Arbitration Notice under Section 21 of the Arbitration Act Cannot Unilaterally Pass Orders Without Consent of Other Party

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Introduction

In *Manjula v. Shriram Transport Finance Co Ltd.*, [2025:KHC:18406] the Karnataka High Court quashed the entire arbitral proceedings initiated by a private financier against the legal heirs of a deceased borrower. The High Court held that the financier had improperly and unilaterally appointed an arbitrator without complying with the mandatory requirements under the Arbitration and Conciliation Act, 1996 ("**Arbitration Act**").

The High Court found that the arbitrator had purported to pass an interim order under Section 17 of the Arbitration Act even before a formal notice invoking arbitration had been issued. Further, the appointment had been made unilaterally by the purported claimant without evidence of a valid arbitration agreement or any consent from the legal heirs.

Criticising what it called an abuse of the arbitral process, the High Court concluded that the proceedings were void and instructed the Director General of Police to carry out an inquiry into the matter.

Brief Facts

The petitioner, Manjula, was the widow of a borrower who had availed of a vehicle loan from Shriram Transport Finance Co Ltd. Following the borrower's death, the financier initiated arbitral proceedings purportedly under a clause contained in the loan agreement. However, no notice invoking arbitration was served on the legal heirs, nor was any consent sought from them for the appointment of an arbitrator.

Despite the absence of notice or a formal invocation, an arbitrator was appointed unilaterally by the financier. The arbitrator proceeded to pass an interim order under Section 17 of the Arbitration Act, directing the seizure of the vehicle and authorising coercive measures. Acting on this order, agents of the financier attempted to recover the vehicle from the petitioner's premises, leading to police intervention.

The petitioner challenged the entire arbitral process under Article 226 of the Constitution of India before the High Court, seeking quashing of the proceedings and protection from coercive recovery. The petitioner also alleged that neither she nor any of the legal heirs were signatories to the loan agreement or its arbitration clause and that the proceedings were initiated without legal basis.

Issues and Submissions

The primary issue before the High Court was whether arbitral proceedings could be sustained where no notice of invocation was issued and the arbitrator was appointed

unilaterally without the consent of the other party. A related issue concerned the enforceability of an arbitration clause against legal heirs who were neither signatories to the agreement nor parties to the loan transaction.

The petitioner submitted that the arbitration clause was never brought to her knowledge, nor had any notice under Section 21 of the Arbitration Act, been issued to her or the other legal heirs. It was argued that the financier had acted in complete violation of statutory procedure by appointing an arbitrator without consent or recourse to the courts. The arbitrator, in turn, had passed an interim order under Section 17 *ex parte*, without even verifying the existence of a valid arbitration agreement or the locus of the respondents.

It was further submitted that the arbitration clause, even if contained in the original loan agreement, could not bind the petitioner as she had never agreed to its terms. The petitioner also highlighted that the arbitrator's order was used as a tool for harassment, with attempts made to forcibly seize the vehicle by invoking the authority of the police.

On the other hand, the financier sought to justify the proceedings by relying on the loan documents and contending that the arbitration clause formed part of the agreement executed by the deceased borrower. It was argued that the clause survived the borrower's death and could be enforced against his estate and legal representatives. The financier maintained that the arbitrator had acted within jurisdiction and that the interim order was necessary to preserve the subject matter of the dispute.

Findings of the High Court

The High Court held that the entire arbitral process suffered from fundamental procedural illegality and could not be sustained. It observed that the appointment of the arbitrator was made unilaterally, without issuance of any notice under Section 21 of the Arbitration Act. This omission, in the High Court's view, struck at the root of the proceedings and rendered the arbitrator's jurisdiction invalid.

The High Court reiterated that arbitration is a consensual process, and the issuance of notice invoking arbitration is a statutory prerequisite. Without such notice, the opposite party is deprived of an opportunity to respond, contest the arbitrability of the dispute, or participate in the selection of the arbitrator. The financier's failure to adhere to this requirement vitiated the very basis of the proceedings.

The High Court further held that there was no material to demonstrate that the petitioner or any other legal heir had accepted the arbitration clause or agreed to submit to the jurisdiction of the arbitrator. In the absence of consent or contractual privity, the proceedings initiated against them were legally untenable.

Regarding the interim order under Section 17, the High Court observed that the arbitrator had passed the order *ex parte* and without recording reasons. The order had been used as a means of initiating coercive recovery in disregard of the legal process. The High Court described this approach as an abuse of arbitral procedure and cautioned against the use of arbitration as a tool for extra-legal enforcement.

In light of these findings, the High Court quashed the entire arbitral proceedings, set aside the order passed under Section 17, and directed the police authorities to take no action based on the impugned order. The High Court also directed the Director General of Police to conduct an inquiry into the actions of the financier and its agents.

Comment

The judgment in *Manjula v. Shriram Transport Finance Co Ltd.*, [2025:KHC:18406] offers a clear and unequivocal reaffirmation of the principle that arbitration must adhere to procedural fairness, consent, and statutory compliance. The Karnataka High Court's decision to set aside the arbitral proceedings underscores that unilateral appointments and coercive measures cannot be justified under the guise of private dispute resolution.

At the heart of the High Court's reasoning lies the mandatory requirement under Section 21 of the Arbitration Act, which stipulates that arbitration proceedings commence only upon notice to the other party. The failure to serve such notice deprives the responding party of a meaningful opportunity to object to jurisdiction, contest the arbitrability of the dispute, or participate in the appointment of the arbitrator. The judgment makes clear that bypassing this step amounts to a denial of due process.

Equally significant is the High Court's emphasis on consent. The attempt to bind non-signatory legal heirs to an arbitration clause, without evidence of agreement or acquiescence, was rightly rejected. Arbitration, even when rooted in a valid agreement, cannot be expanded to include individuals who were never parties to the contract, unless established legal exceptions apply. In this case, no such exception was demonstrated.

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