



IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

FRIDAY, THE 30TH DAY OF JULY 2021

THE HON'BLE MR. JUSTICE N.SATHISH KUMAR

O.P. No.734 of 2017

In the matter of Arbitration and
Conciliation Act 1996

and

In the matter of Building Agreement
between M/s. Manju Foundations &
M/s. KM Construction dated 06/11/2015.

M/s.K.M.Constructions,
No.3, Wahab Nagar,
Tindivanam – 604 002.
Rep. By its Prop.
K.M.Naveen Kumar,

. . . Petitioner

Versus

1. M/s.Manju Foundations Pvt. Ltd.,
Rep. by its Managing Director,
K.M.Vidyasagar,
Pioneer Aginito Park,
East Wing, 7th Floor,
No.141, Kandanchavadi,
Old Mahabalipuram Road,
Chennai – 600 096.

2. P.Saranath
Arbitrator,
No.130, Apparsamy Koil Street,
Mylapore,
Chennai – 600 004.

. . . Respondent



O.P. No.734 of 2017

The Original Petition praying that this Hon'ble Court be pleased to set aside the award dated 04.04.2017 passed by the second respondent in ACP.No.5 of 2016 with costs.

This Original Petition coming on this day before this court for hearing in the presence of Mr.Dinesh Kumar. P, advocate for the petitioner herein and Mr. R. Gunasekaran, advocate for the respondents herein and upon reading the petition and the award dated 04/04/2017 filed herein and this court having observed that the learned Arbitrator himself admittedly recorded that there is no evidence adduced by claimant therefore awarding the compensation without any evidence, goes to the root of the matter, which clearly falls within the ambit of perversity, further the award also fails under the mandatory provisions of Section 31(3) of the Act, without any reason and evidence, the learned Arbitration Tribunal has confirmed its opinion and just passed an award without going into the merits of the matter, which is nothing but perversity, in such view of the matter, the award passed by the learned Arbitrator certainly violates mandatory provisions as contemplated, **it is ordered as follows:-**

That the award dated 04.04.2017 passed by the 2nd respondent in



2. That the respondent herein shall be at liberty to seek fresh appointment of arbitrator as per law.

3. That there shall be no costs of this petition.

WITNESS, THE HON'BLE MR.JUSTICE SANJIB BANERJEE,
CHIEF JUSTICE, HIGH COURT OF MADRAS AFORESAID, THIS THE
30TH DAY OF JULY 2021.

Sd/-
ASSISTANT REGISTRAR (O.S.II)

//Certified to be true copy//
Dated at Madras this the day of 2021.

COURT OFFICER(O.S.)
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30.09.2021

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O.P. No.734 of 2017

ORDER
DATED 30/07/2021

THE HON'BLE MR. JUSTICE
N.SATHISH KUMAR

FOR APPROVAL: 04/10/2021

APPROVED ON:05/10/2021



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THE HIGH COURT OF JUDICATURE AT MADRAS

Date 30.07.2021

CORAM:

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

O.P.No.734 of 2017

M/s.K.M.Constructions,
No.3, Wahab Nagar,
Tindivanam - 604

. . . Petitioner

Versus

1. M/s.Manju Foundations Pvt. Ltd.,
Rep. by its Managing Director,
K.M.Vidyasagar,
Pioneer Aginito Park,
East Wing, 7th Floor,
No.141, Kandanchavadi,
Old Mahabalipuram Road,
Chennai – 600 096.

2. P.Saranath
Arbitrator,
No.130, Apparsamy Koil Street,
Mylapore, Chennai – 600 004.

. . . Respondent

PRAYER : Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 to set aside the award dated 04.04.2017 passed by the second respondent in ACP.No.5 of 2016 with costs.

For petitioner : Mr.Dinesh Kumar

For respondents : Mr.R.Gunasekaran

**ORDER**

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This Original Petition has been filed challenging the award passed by the learned arbitrator dated 04.04.2017. The disputes have arisen between the petitioner and the respondents with regard to the construction agreement dated 06.11.2015.

2. The main challenge is made on the ground that no notice was ever issued under Section 21 of the Arbitration and Conciliation Act. The award does not contain any reason for arriving at the conclusion and the documents have not been furnished to the petitioner.

3. It is the contention of the learned counsel for the petitioner that the learned Arbitrator was unilaterally appointed. Copies of documents were furnished. The notice invoking arbitration was never issued in this matter. Besides, the award does not contain any reasons for compensation. Hence, he submitted that the award passed by the Arbitrator is vitiated and violative of the mandatory provisions of law.

4. The learned counsel for the respondent submitted that notice has been issued properly and the respondent appeared before the Arbitrator and filed his defence. Therefore, it cannot be said that no opportunity was



given. He further submitted that the learned Arbitrator passed the award after properly considering all the documents and evidence. Hence, he prayed for dismissal.

5. Perused the records.

6. On perusal of the award and the documents, there is no indication as to whether proceedings have been commenced by issuing notice under Section 21 of the Arbitration and Conciliation Act, which is mandatory. Only after notice, the proceedings have to be commenced whereas in this case, there is no evidence available whether notice has been issued by the respondent before commencement of the Arbitration proceedings. The other contention is that the learned Arbitrator was appointed unilaterally.



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7. Without invoking notice, the second respondent was appointed as an arbitrator without consent of the parties, thereby violating the law. With regard to other aspect that the award does not contain any reason, on a perusal of the award, it is found that no reasons were adduced by Arbitrator. However, the learned Arbitrator has passed the award directing the respondent to pay a sum of Rs.17,20,000/- along with an interest of 18% p.a and pay compensation of Rs.15,00,000/- and also pay the arbitration cost of Rs.40,000/- without any evidence. The compensation arrived at by the learned Arbitrator is without any basis and alleged damages have not been established and there is no evidence adduced in this regard.

8. Further there is no reason whatsoever given as to how the learned Arbitrator concluded the said finding. The learned Arbitrator himself admittedly recorded that there is no evidence adduced by claimant therefore awarding the compensation without any evidence, goes to the root of the matter, which clearly falls within the ambit of perversity. Further the award also fails under the mandatory provisions of Section 31(3) of the Act. Without any reason and evidence, the learned Arbitration Tribunal has confirmed its opinion and just passed an award without going into the merits of the matter, which is nothing but perversity. In such view of the



matter, the award passed by the learned Arbitrator certainly violates mandatory provisions as contemplated. The Arbitrator was appointed unilaterally, which is a fact contrary to the law laid down by the Hon'ble Supreme Court in PERKINS EASTMAN ARCHITECTS DPC AND ANOTHER Vs. HSCC (INDIA) LTD (2019 SCC ONLINE SC 1517). Accordingly, the award is set aside.

Accordingly, this Original Petition is allowed. It is well open to the respondent to seek fresh appointment of arbitrator as per law. No costs.

Sd/- N.S.K.J.
30/07/2021

//Certified to be true copy//
Dated at Madras this the day of 2021.

COURT OFFICER(O.S.)

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