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Arb.O.P.(Comm.Div.) No.430 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.10.2022

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THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

Arb.O.P.(Comm.Div.) No.430 of 2022

M/s.Shriram City Union Finance Limited
Represented by its Authorised Signatory
Ms.Navinaa.P.N.
A Company having its Branch office at:
No.12, Ramaswamy Street, T.Nagar
Chennai-600 017.

... Petitioner

VS.

1.R.Uma
Wife of Mr.Baskaran

2.Mr.P.Baskaran
Son of Mr.Perumal

3.Mr.B.Kabilan
Son of Mr.P.Baskaran
All at: No.2/80, T.V.K.Street
Mundiyambakkam
Villupuram-605 601.

... Respondents



PRAYER: Arbitration Original Petition filed under Section 15(2) of the Arbitration and Conciliation Act, 1996.

(a) Substitute the arbitrator appointed by the petitioner by appointing any fit and competent person as an Arbitrator so as to adjudicate the claim and the dispute between the petitioner and the respondents under the Loan agreement dated 30.06.2018;

(b) Direct the respondents to pay the cost of the petition ; and

(c) Pass such further or others orders as this Hon'ble Court may deem fit and proper under the circumstances of the case.

For Petitioner : Mr.R.Uma Shankar

For Respondents : Mr.P.Baskaran
Mr.B.Kabilan
(Party in person R2 & R3)

ORDER

The petitioner seeks substitution of the arbitrator appointed earlier for the purpose of adjudicating the dispute between the petitioner and the respondents.

2.The respondents approached the petitioner for a loan and executed a loan agreement dated 30.06.2018. On the ground that the obligations under the said loan agreement were not discharged by the respondents, the



petitioner invoked the arbitration clause in the loan agreement and issued a notice under Section 21 of the Arbitration and Conciliation Act, 1996, on 19.10.2021. Pursuant thereto, the person appointed by the petitioner entered upon reference. The respondents herein raised objections to the adjudication of the dispute by the said arbitrator. In the said circumstances, by communication of 09.05.2022, the arbitrator recused from the proceedings. This necessitated the filing of the present petition.

3. Upon receipt of notice, the 2nd and 3rd respondents are present in person. The 2nd respondent has filed a counter, which is labelled as written statement. The 1st and 3rd respondents have countersigned the said document for the purpose of adopting the same. In the said counter, the defense set up by the respondents is that the petitioner claimed exorbitant and unlawful interest which is punishable under the Tamil Nadu Prohibition of Charging Exorbitant Interest Act, 2003. The respondents also state that the persons appointed previously by the petitioner as arbitrator were undertaking multiple cases on behalf of the petitioner and that they lack impartiality.



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4.The loan agreement undoubtedly contains an arbitration clause in

Clause 18 thereof. As per Clause 19 r/w the schedule to the agreement, the parties have agreed that Courts in Chennai could exercise jurisdiction. As stated earlier, the arbitrator appointed by the petitioner earlier withdrew from the reference by communication dated 09.05.2022. In the said facts and circumstances, it is just and necessary to substitute the arbitrator with the person appointed by this Court.

5.Accordingly, Arb.O.P.(Comm.Div.) No.430 of 2022 is allowed by appointing Mr.K.Ashok Kumar, Advocate, New No.38, Old No.49, Padmanabha Nagar, 4th Street, Adyar, Chennai-600020, (Mobile No.9444958093) as the arbitrator instead of Dr.S.S.P.Darwesh. The arbitrator is called upon to enter upon reference and adjudicate the dispute. The fees and expenses in relation to the arbitral proceedings shall be fixed by the arbitral tribunal in consultation with the parties.

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Index : Yes / No

Internet : Yes / No



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