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Arb.O.P.(Com.Div.).No.166 2022
and C.M.A.No.335 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.04.2023

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THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY

Arb.O.P.(Com.Div.).No.166 of 2022
and C.M.A.No.335 of 2022
and A.No.1566 of 2022 & C.M.P.No.2253 of 2022

Arb.O.P.(Com.Div.).No.166 of 2022;-

Parthasarathi M

...Petitioner

versus

1.M/s Shriram Transport Finance Co., Ltd.,
Having their Registered Office at Sri Towers,
No.14A, South Phase, Industrial Estate,
Guindy, Chennai – 600 032.
and their Branch Office at No.6/54,
G.S.Complex, Avadi Road, Senneerikuppam,
Poonamallee, Chennai – 600 056.,
is represented by its Authorized Signatory
G.Raveendran.

2.A.K.N.Vaithiyanathan, M.A., B.L, (District Judge Retd.)
Sole Arbitrator,
SBA fancy Apartment, building No.3,
Flat No.G-1, OV Alagesan Nagar,
Ambattur, (Near Murugan Theatre),
Chennai – 600 053.

... Respondents



Arb.O.P.(Com.Div).No.166 2022
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Prayer in Arb.O.P(Com.Div.).No.166 of 2022: This petition filed under Section 14(2) of the Arbitration & Conciliation Act, 1996, to terminate the mandate of the 2nd respondent in the Arbitration Disputes in ARB.Nos.392 and 393 of 2021 as contrary to the provisions of Act, 1996.

C.M.A.No.335 of 2022:-

Parthasarathi M

... Appellant

versus

M/s Shriram Transport Finance Co. Ltd.,
Having their Registered Office at Sri Towers,
No.14A, South Phase, Industrial Estate,
Guindy, Chennai – 600 032.
and their Branch Office at No.6/54,
G.S.Complex, Avadi Road, Senneerikuppam,
Poonamallee, Chennai – 600 056.,
is represented by its Authorized Signatory
G.Raveendran.

... Respondent

Prayer in C.M.A.No.335 of 2022: This appeal filed under Section 37 of Arbitration and Conciliation Act, 1996, to set aside the order exparte dated 28.12.2021 passed in I.A.No.1 of 2021 in ARB.No.393 of 2021 on the file of the Arbitral Tribunal, Chennai, sole Arbitrator A.K.N.Vaithiyanathan, M.A., B.L., (District Judge Retd.) SBA Fancy Apartment, Building No.3, Flat No.G-1, OV Alagesan Nagar, Ambattur, (Near Murugan Theatre), Chennai – 600 053.



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(In both the cases)

For Petitioner/Appellant : Mr.N.Nithianandam

For Respondents : Mr.M.Peer Mohamed

COMMON ORDER

Arb.O.P.(Com.Div.).No.166 of 2022 has been filed to terminate the mandate of the 2nd respondent in the Arbitration Disputes in ARB.Nos.392 and 393 of 2021 as contrary to the provisions of Act, 1996.

2. C.M.A.No.335 of 2022 has been filed to set aside the exparte order dated 28.12.2021 passed in I.A.No.1 of 2021 in ARB.No.393 of 2021 on the file of the Arbitral Tribunal, Chennai Sole Arbitrator, SBA Fancy Apartment, Building No.3, Flat No.G-1, Ov Alagesan Nagar, Ambattur, (Near Murugan Theatre), Chennai – 600 053.

3. When the matter is taken up for hearing today, the learned counsel appearing for the petitioner submitted that previously an Arbitrator was



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appointed and he has passed an order under Section 17 of the Arbitration and Conciliation Act, 1996, in I.A.No.1 of 2021 in ARB.No.393 of 2021 dated 28.12.2021 and the said order is under challenge in CMA.No.335 of 2022.

4. The bonafide contention of the petitioner is that the previous appointment of Arbitrator is invalid. He further submitted that in view of the law laid down by the Hon'ble Apex Court in the case of “*Perkins Eastman Architects DPC Vs. HSCC (India) Ltd.*” reported in *2019 SCC OnLine SC 1517*, the said appointment is non-est in law. Hence, the present application is filed.

5. Both the learned counsel submitted that the present dispute is arbitrable in terms of the loan agreement dated 15.02.2018.

6. The learned counsel for the respondents fairly submitted that since the present dispute is with regard to appointment of an Arbitrator and in view of the law laid down by the Hon'ble Apex Court in the case of *Perkins*



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Eastman Architects DPC Vs. HSCC (India) Ltd., the appointment is non-est in law. Hence, he fairly submitted that a new Arbitrator may be appointed. He further requested that already an interim order was passed by the then Arbitrator and the same is under challenge in CMA.No.335 of 2022 and the same may be continued till the commencement of the arbitration proceedings.

7. This Court is of the view that the original appointment itself is non-est in law and the person, who was already appointed is a disqualified person and the order passed by the then Arbitrator is non-est in law. Hence, on the strength of the order passed by the said Arbitrator, the submission made by the learned counsel is not acceptable.

8. However, the learned counsel for the petitioner fairly submitted that his client will not alienate the property until the commencement of the arbitration proceedings by a new arbitrator.



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9. Recording the said submission, this Court is inclined to pass the following directions;-

i) ***Ms.S.Anusuya, the learned counsel, Madras High Court Women Lawyers Association, High Court Building, Chennai – 600 104, Phone No.9841873207,*** is appointed as sole Arbitrator to enter upon reference and adjudicate the disputes *inter se* the parties.

ii) The learned Arbitrator appointed herein, shall after issuing notice to the parties and upon hearing them, pass an award as expeditiously as possible, preferably within a period of six months from the date of receipt of the Order. The learned Arbitrator is also directed to decide the matter without influenced by any of the observations made by this Court in the present order.

iii) Learned Arbitrator is requested to conduct arbitration proceedings in accordance with the Madras High Court Arbitration Proceedings Rules, 2017 and the fee of the learned Arbitrator shall be fixed in accordance with Madras High Court Arbitration Centre (MHCAC) (Administrative Cost and Arbitrator's Fees), Rules 2017.



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iv) In the event of non-appearance of the respondent/s herein, the petitioner herein shall bear the entire remuneration and other expenses and thereafter, the petitioner can recover the same directly from the respondent/s herein.

v) Since this Court has appointed an Arbitrator, it is open to the petitioner/s as well as the respondent herein to seek other reliefs under the provisions of Arbitration and Conciliation Act 1996 before the learned Arbitrator.

10. With the above directions, the Arbitration Original Petition is disposed of. In view of the order passed in Arb.O.P(Com.Div.).No.166 of 2022, nothing survives for further adjudication in CMA.No.335 of 2022. Accordingly, CMA.No.335 of 2022 is also dismissed. No costs. Consequently, connected miscellaneous petition and application are closed.

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Index : Yes/No
Neutral Citation : Yes/No
Speaking / Non- Speaking order
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KRISHNAN RAMASAMY.J.,
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