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ARB. O.P.(Com.Div) No.244 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.07.2023

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

Arb. O.P. (Com. Div.) No.244 of 2023

1. Rajkumar Gunderao Gaikwad
2. Gunderao Anandrao Gaikwad ... Petitioners

vs.

M/s.Cholamandalam Investment &
Finance Company Ltd.,
No.45, Justice Basheer Ahmed Sayeed
Building II Floor, 2nd Line Beach,
Moore Street,
Parrys,
Chennai - 600 001.

Represented by its Authorized Signatory ... Respondent

Prayer : Arbitration Original Petition (Commercial Division) filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 to a) To set aside the Arbitral Award, dated 17.02.2023, Arbitration Case No.11/SG510/2022 passed by sole Arbitrator Mr.I.S. Gopinath in its entirety and b) to direct the respondent to pay the costs and c) to grant such further reliefs.

For petitioners	: Mr.Shahed Ali Ansari Senior Counsel for Mr.M.Sunil Kumar Shahed Ali Ansari
For respondent	: Mr.D. Pradeep Kumar



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ORDER

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This petition has been filed under Section 34 of the Arbitration and Conciliation Act, 1996 challenging the Arbitral Award, dated 17.02.2023.

2. The petitioners have availed a loan from the respondent and had entered into a loan contract. There arose disputes between the parties, which resulted in the arbitration. The respondent being the claimant had initiated arbitration by unilaterally appointing an Arbitrator which has culminated in the passing of the impugned Arbitral Award, dated 17.02.2023.

3. The petitioners have challenged primarily the impugned Arbitral Award dated 17.02.2023 on the ground that the respondent has unilaterally appointed an Arbitrator which is not legally permissible in view of the decision rendered by the Hon'ble Supreme Court in the case of *Perkins Eastman Architects DPC vs. HSCC (India) Limited reported in 2020 20 SCC 760*.

4. Admittedly as seen from the impugned Arbitral Award, an Arbitrator has been appointed unilaterally by the respondent, who is a party to the dispute. It is now settled law as laid down by the decision of



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the Hon'ble Supreme Court in **Perkins** judgment, referred to supra, that an unilateral appointment of an Arbitrator by a party, who is interested in a dispute cannot be made. In view of the settled law as laid down by the Hon'ble Supreme Court in **Perkins** judgment, the Arbitral Award, dated 17.02.2023, which is the subject matter of challenge in this Section 34 petition has to be set aside by this Court. Accordingly, the impugned Arbitral Award dated 17.02.2023 passed by the sole Arbitrator in Arbitration Case No.11/SG510/2022 is hereby set aside and this petition is allowed. However, liberty is granted to both the parties to initiate fresh arbitration in accordance with law with regard to the dispute between the petitioners and the respondent arising out of the loan contract dated 13.07.2018 entered into between the petitioners and the respondent.

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Index: Yes/ No

Speaking order / Non speaking order

Neutral citation : Yes / No



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