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Arb.O.P.(Com. Div.) No.280 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **25.08.2023**

CORAM

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

Arb.O.P.(Com. Div.) No.280 of 2023

Kamaraj

... Petitioner

Vs.

1.Vignesh

2. M/s.Shriram Transport Finance Co. Ltd.,

Represented by its Authorized Signatory, Mr.V.Velu,

No.127, Bypass Road,

GNT Road, Redhills,

Chennai - 600 052.

3.K.Balasubramanian

... Respondents

PRAYER: Petition filed under Section 14 (1) (a) and 14 (2) r/w Sections 11 (6) and 11 (8) of the Arbitration and Conciliation Act, 1996 to terminate the mandate of the 3rd respondent, Mr.K.Balasubramanian, Advocate, the Sole Arbitrator and consequently, appoint an independent and impartial sole arbitrator to adjudicate the disputes between the parties.

For Petitioner : Ms.S.Rajeni Ramadass

For Respondents : Mr.Peer Mohammed
for R2
R1 - No Appearance
R3 - Notice returned 'unserved'



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ORDER

This petition has been filed under Section 14 of the Arbitration and Conciliation Act, 1996, seeking for termination of the mandate of the sole arbitrator appointed by the second respondent on the ground that, unilaterally, the second respondent has appointed an arbitrator which is in violation of the decision of the Honourable Supreme Court in the case of ***Perkins Eastman Architects DPC Vs. HSCC (India) Limited*** reported in ***2020 (20) SCC 760***, wherein, the Honourable Supreme Court has held that unilaterally a party to the dispute cannot appoint an arbitrator.

2. This Court has perused and examined the impugned arbitral proceedings as well as the arbitration clause contained in the loan agreement dated 27.12.2018. Admittedly, the second respondent has appointed, unilaterally, an arbitrator to adjudicate the dispute between the petitioner and the second respondent, which has arisen out of the loan agreement dated 27.12.2018. The sole arbitrator appointed by the second respondent also acted upon the reference and has conducted the arbitration proceedings.



3. In view of the settled law as laid down in the decision of the Honourable Supreme in the case of *Perkins Eastman Architects DPC Vs. HSCC (India) Limited* reported in **2020 (20) SCC 760** referred to supra, the impugned arbitral proceeding is bad in law, as the arbitration is conducted by a sole arbitrator, unilaterally appointed by the second respondent, who is a party to the dispute. Therefore, the mandate of the sole arbitrator has to be terminated as per the provisions of Section 14 of the Arbitration and Conciliation Act, 1996. Accordingly, the mandate of the sole arbitrator is terminated and this petition is allowed as prayed for.

4. During the course of the arbitral proceeding, which is challenged in this petition, an order of attachment was passed against the petitioner on 21.02.2022 by the sole arbitrator under Section 17 of the Arbitration and Conciliation Act, 1996. Since the mandate of the sole arbitrator has been terminated by this Court, in view of the unilateral appointment of the arbitrator by the second respondent, necessarily, the order dated 21.02.2022 passed by the sole arbitrator, ordering attachment of the immovable property owned by the petitioner is raised and liberty is granted to the second respondent to file a fresh application under Section 17 of the Arbitration and



Conciliation Act, 1996 before the arbitrator to be appointed by this Court.

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5. Both the counsels have now made an endorsement in the Court bundle on instructions that the petitioner as well as the second respondent are willing to go for arbitration through an arbitrator appointed by this Court. In terms of the endorsement, the mandate of the existing arbitrator is terminated and in view of the termination, the attachment order dated 21.02.2022 passed by the sole arbitrator under Section 17 of the Arbitration and Conciliation Act, 1996 is hereby set aside by this Court. In view of the consent given by both the parties to the dispute, this Court appoints Mr.Sharath Chandran, Advocate as the sole arbitrator to adjudicate the dispute between the petitioner and the second respondent arising out of the loan agreement dated 27.12.2018.

6. Accordingly, this Arbitration Original Petition is allowed as prayed for by issuing the following directions:

(a) Mr. Sharath Chandran, Advocate, who is having office at Gokulam No.3, Gopala Menon Street, Vepery, Chennai - 600 007 (Mobile No. 98844 45442) is appointed as the sole Arbitrator to decide the



dispute between the petitioner and the second respondent arising out of the loan Agreement, dated 27.12.2018.

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(b) The Arbitrator shall be paid his remuneration / fees in accordance with the 4th schedule of the Arbitration and Conciliation Act, 1996.

(c) Both the parties shall equally share the arbitrator's fees.

(d) The Arbitrator shall conduct the arbitration in accordance with the provisions of the Arbitration and Conciliation Act, 1996 and shall complete the arbitration within the specified time as prescribed under the said Act.

25.08.2023

Index : Yes/No
Speaking Order : Yes / No
Neutral Citation Case: Yes / No
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ABDUL QUDDHOSE. J.,

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