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Arb.O.P.No.31 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17..10..2023

Coram

THE HON'BLE MR JUSTICE N.SATHISH KUMAR

Arb.O.P.No.31 of 2021

1.Mrs.Reena K,
W/o Mr.Mohan Doss,
No.20, G2, GF, Lakshmi Apart,
Ist Cross Street, Annaji Nagar,
West K.K.Nagar, Chennai 600 078.

2.Mr.Dhanasekar S,
No.73/1, Thiruvalluvar Salai,
Near SIET College,
Alwarpet, Chennai 600 018.

..... Petitioners

-Versus-

Shriram Transport Finance Co. Limited,
Rep. by P.A. Holder Mr.S.Varadhan,
Mookambika Complex, 3rd Floor,
No.4, Lady Desika Road,
Mylapore, Chennai 600 004.

..... Respondent

Petition filed under Sections 34 (2)(a)(iii) of the Arbitration and Conciliation Act, 1996 praying to set aside the ex-parte arbitral award dated 29.01.2019 made in Arbitration Case NO.863/2018 on the file of the Arbitrator-Mr.P.Ganesan and remand back for fresh disposal considering the natural justice by providing opportunity to the petitioners to contest the case and for cost of the petition.



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For Petitioner(s) : Mr.A.P.Loganathan

For Respondent : Mr.Peer Mohammed

ORDER

This Original Petition has been filed challenging the ex-parte arbitral award dated 29.01.2019 made in Arbitration Case No.863/2018 on the file of the sole Arbitrator-Mr.P.Ganesan.

2. It is the case of the petitioners that no notice whatsoever was issued before the commencement of arbitral proceedings by the sole arbitrator appointed by the respondent.

3. Heard both sides.

4. This court has perused the entire materials available on record. On perusal of the impugned award, it is seen that only a legal notice has been issued by the respondent on 25.04.2018 indicating that if the dues were not settled within 10 days, the dispute would be referred to the sole arbitrator - Mr.P.Ganesan, District Judge (Retd.) for adjudication without any further notice or reference to the petitioners. Though it appears that the learned Arbitrator who had entered into the reference to adjudicate the dispute had issued notice prior to the commencement of the arbitration, such notice was served only on the 2nd respondent and not on the 1st petitioner. This fact is not



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disputed by the learned counsel for the respondent.

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5. It is well settled that an award can be interfered by the court only on the grounds set out under Section 34 of the Arbitration and Conciliation Act. On a careful perusal of the award impugned in the original petition, this court finds that Arbitrator was appointed unilaterally by the respondent, which is against the principle laid by the Apex Court in the case of *Perkins Eastman Architects DPC Vs. HSCC (India)Ltd.*, reported in *2020 (20)SCC 760*. This court is unable to find any reference to infer that proper notice of appointment of arbitrator was issued to the petitioner. Further, no material whatsoever was also produced during the arbitral proceedings to show that proper notice has been issued to the petitioner before the commencement of arbitral proceedings.

6. Considering the facts and circumstances of the case and in view of the dictum of the Hon'ble Supreme Court in *Perkins Eastman Architects DPC's* case cited supra, this court is of the view that the award impugned in the petition is liable to be quashed in its entirety.

7. At this juncture, the learned counsel appearing on either side across the bar conceded to appoint any one of the Advocate practising in High Court of Madras as Sole Arbitrator to adjudicate the dispute between the petitioners and the respondent with regard to repayment of vehicle loan.



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8. Considering the above facts and circumstances and the legal position and also in the light of the submissions made on either side, it is ordered as follows:-

i] that Mr.G.Surya Narayanan, Advocate having Office at NO.10/241, St. Mary's Road, Second Floor, Mandaveli, Chennai 600028, Mobile – 97909 17003, is appointed as Arbitrator to enter upon reference and adjudicate the dispute between the petitioners and the respondent.

ii] That the respondent shall make a fresh reference to the Arbitrator within a period of two weeks from the date of receipt of a copy of this order;

iii] That on such reference from the respondent the learned Arbitrator appointed herein, shall after issuing notice to the petitioners and upon hearing them, pass an award as expeditiously as possible, preferably within a period of six months from the date of reference;

iii] That fees of the learned Arbitrator shall be fixed as per the Schedule and the same shall be borne by the



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parties equally.

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This Original Petition is ordered accordingly leaving the parties to bear their own costs.

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Index : yes / no
Neutral Citation : yes / no
Speaking / Non Speaking Order
kmk

To

1. Mr.G.Surya Narayanan,
Advocate,
No.10/241, St. Mary's Road,
Second Floor, Mandaveli,
Chennai 600028,



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N.SATHISH KUMAR.J.,
kmk

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