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O.P.No.370 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17..10..2023

Coram

THE HON'BLE MR JUSTICE N.SATHISH KUMAR

Original Petition No.370 of 2014

Munaga Sriram,
Son of M.Venugopal,
No.10, South Street,
Sriram Nagar,
Chennai 600018.

..... Petitioner

-Versus-

1.M/s.Kotak Mahindra Bank Limited,
Rep. by its Legal Manager,
No.39, Montieth Road,
Chennai 600 008.

2.S.H.Vinod Kumar Mishra,
Arbitrator,
D-1, Sudha Hospital,
Gokul Dham,
Goregaon East,
Mumbai 400063.

..... Respondents

Petition filed under Section 34(1) of the Arbitration and conciliation Act, 1996, praying to set aside the award passed by the 2nd respondent/Arbitrator in Claim Petition No.L-9/394 of 2010 dated 22.10.2010.

For Petitioner : *Mr.V.V.Sairam*

For Respondent (s) : *Mr.S.Namasivayam for R1*



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ORDER

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2. The award of the arbitrator has been challenged on two grounds that the 2nd respondent was appointed as arbitrator unilaterally by the 1st respondent and that no notice was given to the petitioner before the commencement of the arbitral proceedings in respect of claim with respect to amount due under the credit card facility extended to the petitioner.

3. Heard both sides.

4. The learned counsel for the petitioner would submit that the arbitrator was appointed unilaterally by the 1st respondent and no prior notice was issued to the petitioner before the commencement of the arbitral proceedings.

5. The learned counsel for the 1st respondent would submit that appointment of arbitrator was made in accordance with law. Despite notice, petitioner had not entered appearance and and hence, the respondent was



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proceeded against ex parte.

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6. On a careful perusal of the entire material placed on record, it is seen that no notice of arbitration before the commencement of arbitral proceedings as mandated under Section 21 of the Act has been issued to the petitioner. No material has been produced before the court to show that notice as mandated under Section 21 of the Act was served on the petitioner before the commencement of the arbitral proceedings.

7. 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.



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WEB COPY 8. 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 impugned award cannot be sustained in the eye of law and the same is liable to be set aside in its entirety.

In the result, the Original Petition is allowed. The impugned award dated 22.10.2010 passed by the 2nd respondent-Arbitrator is set aside. It is well open to the 1st respondent to appoint an Arbitrator afresh as per law. No costs.

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

To

1.Mr. Naveen Kumar Murthy,
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No.164, New No.337, Linghi Chetty Street,
Chennai 600001.



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N.SATHISH KUMAR.J.,

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