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Arb.O.P.No.81 of 2023

THE HIGH COURT OF JUDICATURE AT MADRAS

Date 11.10.2023

CORAM:

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

Arb.O.P.No.81 of 2023

and

A.No.4863 of 2023

Fareed Sattar
S/o.Abdul Sattar,
No.45, PNT Colony,
Gali No.02, Ratlam-457 001.
Madhya Pradesh.

. . . Petitioner

Versus

1. HDB Financila Services Ltd.,
Rep. by its Authorised Signatory,
Mrs.B.Kavitha, Corporate Office,
Ground Floor Zenith House,
Opposite Race Course Keshavrao Khadye Marg,
Mahalaxmi, Mumbai-400 034.

2. Bhupendra Singh Chouhan (Deceased)
S/o. Lakhon Chouhan,
906/A, Railway Colony,
Ratlam, Ratlam-457 001,
Madhya Pradesh.

. . . Respondents



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PRAYER : Petition filed under Section 11(5) of Arbitration and Conciliation Act, 1996 to

(a) set aside the Arbitral award dated 28.12.2022 in ARB Case No.ARC/HDB/PL/34753 passed by the Ld. Sole Arbitrator in its entirety

(b) To direct the respondent to pay cost

(c) To grant such further relief as this Hon'ble Court may deem fit under the circumstances.

For petitioner : M/s.Vandana Parasuram

For respondents : No appearance (for R1)
Deceased (R2)

ORDER

This Original Petition has been filed to set aside the Arbitral award dated 28.12.2022 passed against the petitioner.

2. The brief facts of the case is as follows:

The petitioner has availed a personal loan from the respondent and executed a loan agreement dated 22.10.2021. It is the contention of the respondents that the petitioner is not regular in repayment of the loan, hence, there is a due of a sum of



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Rs.1,99,256/- and the matter has been referred to the sole Arbitrator appointed by the respondents. The award passed has been challenged by the petitioner mainly on the ground that the Arbitrator was appointed unilaterally and no notice of appointment of Arbitrator was served to the petitioner. Hence, the award is challenged in the present petition.

3. It is well settled that the award can be interfered only on the ground set out under Section 34 of the Arbitration and Conciliation Act. At the outset, the award itself makes in very clear that the Arbitrator was appointed unilaterally by the respondent, which is against the settled principles as held by the Apex Court in the case of *Perkins Eastman Architects DPC Vs. HSCC (India)Ltd.*, reported in **2020 (20)SCC 760**. In the entire award, there is no indication to show that any proper notice of appointment of Arbitrator was issued to the petitioner. The very reference has made itself clear that the Arbitrator is appointed by letter issued by the first respondent and no notice of Arbitrator's appointment has been served to the petitioner. Further, to show that notice has been sent, no document has been filed even during the Arbitral proceedings.



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4. Therefore, this Court is of the considered opinion that the petitioner has not been given any proper notice of appointment of Arbitrator and also no notice was served during the Arbitral proceedings, the entire award cannot be sustained in the eye of law. The very Arbitrator has been appointed unilaterally which is also against the well settled principles of law.

5. In the view of the matter, this Court has no hesitation to interfere with the award passed by the sole Arbitrator appointed by the respondent herein and the set aside the award. Accordingly, the award is set aside and the Original Petition stands **allowed**. Consequently, the connected application is closed.

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Index : Yes / No

Internet: Yes

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N. SATHISH KUMAR, J.

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order in:

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