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Arb.O.P.(Com. Div.) No.118 of 2021



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.07.2023

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THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

Arb.O.P.(Com. Div.) No.118 of 2021

Mr.Mujjamil Ibrahim Khan Pathan

... Petitioner

Vs.

1. M/s. Daimler Financial Service India Private Ltd.
A company incorporated under
the provisions of Companies Act,1956,
having its Registered Office at:-
Unity 202, 2nd Floor, Campus 3B, RMZ
Millennia Business Park, No 143, Dr MGR Road,
Perungudi, Chennai - 600 096

2. Ibrahimkhan Sardarkhan Pathan (Deceased)

... Respondents

PRAYER: Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 to call for the records relating to the impugned award passed by the Sole Arbitrator dated 24.08.2019 in CDN/DFS/069/2018 and set aside the same.

For Petitioner : Mr. S.Saranraj

For Respondents : Mr.M.Arunachalam
for R1



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ORDER

This petition has been filed under Section 34 of the Arbitration and Conciliation Act, 1996, challenging the arbitral award dated 24.08.2019.

2. Heard, Mr. S.Saranraj, learned counsel for the petitioner and Mr.M.Arunachalam , learned counsel for the respondent No.1.

3. Admittedly, as seen from the impugned arbitral award, unilaterally, the respondents have appointed an arbitrator which has culminated in the passing of the impugned arbitral award dated 24.08.2019. The petitioner seems to have borrowed money from the respondents for the purchase of a vehicle. He seems to have committed default in the repayment of the loan as per the loan agreement dated 11.11.2014. The arbitration clause contained in the loan agreement enables the respondents, the lender, to appoint an arbitrator in case of dispute / differences between the petitioner and the respondents. Based on the said arbitration clause, the respondents had initiated arbitration which culminated in the impugned arbitral award dated 24.08.2019.



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4. Being an unilateral appointment of arbitrator, that too by a party who is interested in the dispute, any award passed in the said arbitration is *per se* illegal, in view of the latest decision of the Honourable Supreme Court in the case of ***Perkins Eastman Architects DPC Vs. HSCC (India) Limited*** reported in ***2020 (20) SCC 760***.

5. For the foregoing reasons, the impugned arbitral award dated 24.08.2019 has to be set aside and this petition will have to be allowed. Accordingly, the arbitral award dated 24.08.2019 passed in CDN/DFS/069/2018 is hereby set aside and this petition is allowed as prayed for. However, liberty is granted to both the parties to initiate fresh arbitration in accordance with law. No Costs.

20.07.2023

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

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