



ARB. O.P.(Com.Div) No.76 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.07.2023

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

Arb. O.P. (Com. Div.) No.76 of 2023

Manoj Kumar

...

Petitioner

vs.

1. M/s. Cholamandalam Investment
and Finance Company Ltd.,
Having its registered office at
'Dare House', No.2,
NSC Bose Road,
Parrys,
Chennai - 600 001.

2. Sanjay Walia

...

Respondents

Prayer : Arbitration Original Petition (Commercial Division) filed under Section 34(2)(a)(iii), 34(2)(a)(v), 34(2)(b), and 34(2A) of Arbitration and Conciliation Act, 1996.

For petitioner
For respondents

: Mr.Antony R. Julian
: Mr.D. Pradeep Kumar

ORDER

This petition has been filed under Section 34 of the Arbitration and Conciliation Act, 1996 challenging an Arbitral Award dated 26.10.2017



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passed in Arbitration Case No.VP825/17, primarily on the ground that the respondent / claimant has unilaterally appointed an Arbitrator, which is in violation of the decision rendered by the Hon'ble Supreme Court in the case of ***Perkins Eastman Architects DPC vs. HSCC (India) Limited reported in 2020 20 SCC 760.*** In the said decision, the Hon'ble Supreme Court has held that a party interested in a dispute cannot appoint an Arbitrator unilaterally.

2. The learned counsel for the respondent / claimant would also raise another preliminary issue by stating that the O.P. has been filed beyond the stipulated time as fixed under Section 34 of the Arbitration and Conciliation Act, 1996 and therefore it is barred by limitation. To ascertain the details as to when the Arbitral Award was served on the petitioner, this Court had directed the respondent to collect the original records from the Arbitrator and place the same before this Court. As directed by this Court by its earlier order dated 03.07.2023, the original records pertaining to the Arbitration has been produced by the Arbitrator, through the learned counsel for the respondent. As seen from the original records, the date of receipt of the Arbitral Award is not known as the acknowledgment card for having sent the Arbitral Award by the



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Arbitrator to the petitioner is not available in the original records.

Therefore, it can be inferred that the petitioner has not been served with the impugned Arbitral Award dated 26.10.2017 by the Arbitrator.

3. Admittedly, the Arbitral clause in the loan agreement which has given rise to initiation of arbitration makes it clear that the respondent is permitted to unilaterally appoint an Arbitrator. Only in accordance with the said arbitration clause, the respondent had appointed the Arbitrator unilaterally, which has culminated in the passing of the impugned Arbitral Award, dated 26.10.2017. As held by the Hon'ble Supreme Court in *Perkins* case referred to supra, such an unilateral appointment of an arbitrator by a party to the dispute is not permissible under law. In view of the settled law as laid down in the decision of the Hon'ble Supreme Court referred to supra, the impugned Arbitral Award, dated 26.10.2017 passed in Arbitration Case No.VP825/17 has to be set aside by this Court. Accordingly, the impugned Arbitral Award, dated 26.10.2017 passed in Arbitration Case No.VP825/17 is hereby set aside by this Court and the arbitration O.P. is allowed as prayed for.

However, both the parties are given liberty to initiate fresh arbitration in accordance with law.



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4. The original records pertaining to the Arbitration submitted by the Arbitrator is returned back to the learned counsel for the respondent for giving it back to the learned Arbitrator.

5. The certified copies of the records available with the Arbitrator have already been produced by the Arbitrator which are available in the Court bundle.

17.07.2023

Index: Yes/ No
Speaking order / Non speaking order
Neutral citation : Yes / No
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ABDUL QUDDHOSE, J.

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