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Arb.O.P.(Com.Div.) No.246 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.07.2023

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

Arb.O.P.(Com.Div.) No.246 of 2023
and A.No.2924 of 2023

S. Balamurugan

... Petitioner

Vs.

1.M/s.Cholamandalam Investment & Finance
Company Ltd.,
Rep. by its Authorized signatory,
'Dare House' No.2, NSC Bose Road, Parrys,
Chennai – 600 001.

2.S. Elayaraja

... Respondents

Prayer: Arbitration Original Petition (Commercial Division) filed under Section 34(2) of the Arbitration and Conciliation Act, 1996, seeking to set aside the Arbitral Award dated 07.10.2015 bearing Arbitration Case No.CTM2220/14 passed by the sole Arbitrator in its entirety.

For Petitioner : Mr.C.S.K. Sathish

For Respondents : No appearance



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ORDER

This petition has been filed challenging the Arbitral Award dated 07.10.2015 passed in Arbitration Case No.CTM2220/2014, primarily on the ground that unilaterally, the first respondent has appointed an Arbitrator which has culminated in passing of the impugned order dated 07.10.2015 against the petitioner.

2. The petitioner had entered into a Loan Contract with the first respondent/Non-banking Financial Institution. There arose a dispute between the petitioner and the first respondent under the Loan Contract. There seems to be an arbitration clause in the Loan Contract. The first respondent has unilaterally appointed an Arbitrator in accordance with the said arbitration clause. The Sole Arbitrator appointed by the first respondent has passed the impugned Arbitral Award dated 07.10.2015 against the petitioner, by directing him to pay certain sums of money, which according to the Arbitrator, is due and payable by him to the first respondent.



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3. It is now settled law as laid down by the decision of the Hon'ble Supreme Court in the case of ***'Perkins Eastman Architects DPC and another Vs. HSCC (India) Ltd.,*** reported in ***'(2020) 20 SCC 760'*** that a party to a dispute, cannot unilaterally appoint an Arbitrator. In the case on hand, admittedly, as seen from the Arbitral Award dated 07.10.2015, the Sole Arbitrator namely Mr.C.T. Mohan was unilaterally appointed by the first respondent, who is the claimant in the arbitration which has culminated in passing of the Arbitral Award dated 07.10.2015.

4. Being an unilateral appointment by a party to a dispute, the impugned Arbitral Award dated 07.10.2015, has to be set aside by this Court, as the said Award is in violation of the law laid down by the Hon'ble Supreme Court in ***'Perkins Eastman Architects DPC's case'*** referred to *supra*.

5. Both the respondents have been duly served in this petition and the affidavit of service to that effect, has also been filed by the learned counsel for the petitioner. The name of the first respondent is printed in



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the cause list and the name of the counsel who has entered appearance on behalf of the second respondent (Guarantor) is also disclosed. Despite the same, they have chosen not to enter appearance in this Arbitration Original Petition.

6. For the foregoing reasons, the impugned Arbitral Award dated 07.10.2015 passed by the Sole Arbitrator in Arbitration Case No.CTM2220/2014, is hereby set aside and this petition stands allowed, as prayed for. However, both the parties are granted liberty to initiate arbitration, arising out of the dispute under the Agreement dated 28.02.2013, in accordance with law. Connected application stands closed.

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Index: Yes/ No
Speaking/Non-speaking order
Internet: Yes/No

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ABDUL QUDDHOSE, J.

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