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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment delivered on: 08th November, 2023

+ **FAO (COMM) 135/2023 & CM APPL. 33871/2023 & CM APPL. 33873/2023**

BABU LAL AND ANR. Appellants

versus

CHOLAMANDALAM INVESTMENT AND FINANCE COMPANY LTD. AND ANR. Respondents

Advocates who appeared in this case:

For the Appellants: Ms. Neha Rai, Advocate.

For the Respondents: Mr. Puneet Raj, Advocate.

CORAM:-

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

HON'BLE MR. JUSTICE MANOJ JAIN

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Appellants impugn judgment dated 19.12.2022 whereby the objections filed by the appellant under Section 34 of the Arbitration & Conciliation Act have been dismissed.

2. Learned counsel for the appellant submits that the appointment of the Arbitrator was unilateral and contrary to the judgment of the Supreme Court in *Perkins Eastman Architect DPC and Anr. vs. HSCC (India) Ltd.*: (2020) 20 SCC 760 and as such the award rendered by



the Arbitral Tribunal is a nullity.

3. Learned counsel for the respondents submits that prior to the appointment of an Arbitrator, a notice was sent to the appellant on 18.01.2021 whereby the Arbitrator was appointed and intimation was given to the appellant of the appointment of the Arbitrator.

4. *Per contra* learned counsel for the appellant submits that mere receipt of the letter would not validate an invalid appointment.

5. Appellant had availed of a loan from the respondent Company for purchase of a Celerio Car. As per the appellant, appellant was regular in payment of EMIs till the Covid Pandemic struck and thereafter there were certain defaults and a request was made to the respondent to defer the payment of EMIs in terms of the Reserve Bank of India circular, however, the same was not acceded to.

6. Relevant Arbitral clause reads as under:-

"All disputes, differences and/or claims arising out of this Agreement whether during its subsistence or three after shall be settled by arbitration in accordance with provisions of the Arbitration and Conciliation Act, 1996 or any statutory amendments thereof and shall be referred to the Sole Arbitration of an Arbitrator nominated by the company. The award given by such Arbitrator shall be final and binding on all parties to this Agreement. In the event of an appointed arbitrator dying or being unable or unwilling to act as arbitrator for any reason, the company on such death of the arbitrator or his inability or unwillingness to act as arbitrator shall appoint another person to act arbitrator. Such person shall be entitled to proceed



with the reference from the stage left by his predecessor. The Venue of arbitration proceedings shall be Chennai at the Registered office of the company which is presently at Dare House no. 2 (Old no. 234), NSC Bose Road Parrys, Chennai- 600001 or such other place/location/city which the company at its discretion may decide from time to time."

7. In terms of the said clause, the dispute between the parties was liable to be referred to the Sole Arbitrator to be nominated by the Company.

8. It is an admitted position that the respondent Company nominated a Sole Arbitrator on its own without recourse to Court. Supreme Court in *Perkins Eastman Architects DPC and Anr.* (supra) has held that there cannot be a unilateral appointment or nomination of an Arbitrator by a party interested in the dispute. Reference has to be to an independent person.

9. In the instant case, admittedly, nomination of the Sole Arbitrator was done by the respondents on their own without any concurrence from the appellant. Letter dated 18.10.2021 is merely an intimation to the appellant of nomination of the Sole Arbitrator. Said nomination was without reference to the Court in terms of Section 11 of the Arbitration & Conciliation Act, 1996.

10. Clearly, an award rendered by an ineligible Arbitrator would be a nullity as has been held by a Coordinate Bench of this Court in *Kotak Mahindra Bank Ltd. vs. Narendra Kumar Prajapat*: 2023 SCC OnLine Del 3148.



11. In the instant case since the appointment of an Arbitral Tribunal was unilateral and without recourse to Court, the Award rendered by the Arbitral Tribunal would also be a nullity. The Trial Court has clearly erred in not appreciating that the appointment was unilateral and consequently, the Award was a nullity.

12. In view of the above, the impugned order dated 19.12.2022 rejecting the objection of the appellant under Section 34 of the Act is not sustainable. The same is accordingly set aside. Consequently, the Award dated 18.02.2022, passed by the Arbitral Tribunal is also set aside.

13. Appeal is allowed in the above terms.

SANJEEV SACHDEVA, J

MANOJ JAIN, J

NOVEMBER 08, 2023
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