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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CM(M) 3823/2024
M/S RIDHA FASHION AND ANRPetitioners.
Through: Mr. Ankur Malik, Adv for P-1 & 2
versus
AGM SUPER ESTATES
PRIVATE LIMITEDRespondent
Through: Mr. Prashant Kumar, Adv

CORAM:
HON'BLE MR. JUSTICE RAVINDER DUDEJA

ORDER

% **14.11.2024**

CM APPL. 66483/2024 (Exemption)

Allowed, subject to all just exceptions.

Application stands disposed of.

CM(M) 3823/2024

1. This petition, filed under Section 115 CPC read with Article 227 of the Constitution, challenges the Execution Proceedings being Execution (Comm.) Case No.86/2024 arising from an Arbitral award dated 25.03.2019.
2. Learned counsel for the petitioner submits that the award is flawed due to unilateral appointment of the Arbitrator by the respondent. It is submitted that unilateral appointment of the Arbitrator renders the award *non est* in law.
3. The dispute stems from the Lease Agreement dated 10.06.2016 in respect of the property situated at Rajouri Garden, Delhi. Petitioner claims that he had paid the security deposit but respondent failed to deliver the possession.



4. Despite this, the respondent terminated the lease, claimed unpaid rent and damages and unilaterally appointed the Arbitrator who ruled in favour of the respondent.

5. Admittedly, the award was challenged by the petitioner under Section 34 of the Arbitration and Conciliation Act, 1996 [“Act”]. The award was partly modified.

6. Learned counsel for respondent has strongly opposed the petition arguing that the petitioner himself participated in the arbitral proceedings so much so, that he even presented a counter claim and never challenged the appointment of the Arbitrator. Even in his application under Section 34 of the Act filed before for the Court for setting aside the Arbitral award, the appointment/constitution of the Arbitral Tribunal was never questioned.

7. It is submitted that the petitioner has questioned the appointment of the Arbitrator for the first time in this petition after approximately five years of passing of the award. He had acquiesced to the appointment of the Arbitrator and therefore, the question of unilateral appointment of the Arbitrator cannot be raised now.

8. It is not disputed that appointment of the Arbitrator was neither questioned during the arbitral proceedings nor before the Court under Section 34 of the Act. Admittedly, no petition under Section 37 of the Act has been filed by the petitioner. Hence, the petitioner cannot be allowed to raise the plea of unilateral appointment of Arbitrator at this belated stage. The Court therefore, finds no merit in the petition. The same is accordingly dismissed.

RAVINDER DUDEJA, J.

NOVEMBER 14, 2024/sk