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Arb.O.P. (Com.Div.) No.56 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.04.2025

CORAM

THE HON'BLE Mr. JUSTICE ABDUL QUDDHOSE

Arb.O.P. (Com.Div.) No.56 of 2023

Raman HS Iyengar

... Petitioner

Versus

M/s.Axis Bank Ltd.,

rep. by its Authorised Signatory

... Respondent

Prayer: Arbitration Original Petition (Commercial Division) filed under Section 34 of the Arbitration and Conciliation Act, 1996 to set aside the Award dated 14.11.2022 passed by the learned Arbitrator in the A.C.P. (AXIS-VL) No.66 of 2022 and award costs.

For Petitioner : Mr.A.R.Vivek

For Respondent : Ms.M.R.Uma Vijayan

ORDER

This petition has been filed under Section 34 of the Arbitration and Conciliation Act, 1996, challenging the impugned Arbitral Award dated 14.11.2022.



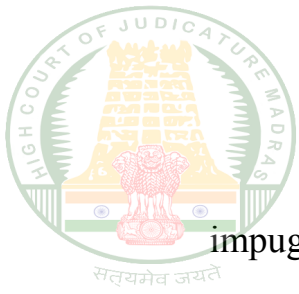
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2.The petitioner has raised several grounds for challenging the impugned arbitral award. However, the primary ground raised by the petitioner is that the impugned arbitral award has been passed by the Arbitrator appointed unilaterally by the respondent, which is not permissible under law.

3.Learned counsel for the petitioner drew the attention of this Court to the impugned arbitral award and would point out that without the consent of the petitioner, the respondent has appointed the Arbitrator unilaterally as seen from the impugned Arbitral award and therefore, in view of the judgment rendered by the Hon'ble Supreme Court in Perkins Eastman Architects DPC and another vs. HSCC (India) Limited reported in (2020) 20 SCC 760, the impugned arbitral award has to be set aside by this Court.

4.Apart from raising the aforementioned ground, the learned counsel for the petitioner also drew the attention of this Court to various other grounds raised by the petitioner in this petition. However, there is no necessity for this Court to consider those grounds since as seen from the



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impugned arbitral award, the Arbitrator has been appointed unilaterally by the respondent without the consent of the petitioner and therefore, on that ground, the impugned arbitral award has to be set aside by this Court and there is no necessity for this Court to consider the other grounds raised by the petitioner, which can be agitated by the petitioner, once the respondent initiates fresh arbitration in accordance with law.

5. Even though the learned counsel for the respondent would submit that the petitioner had given consent for the appointment of an Arbitrator, who has passed the impugned arbitral award, he is unable to produce any evidence before this Court to prove that the petitioner had given written consent for the appointment of an Arbitrator by the respondent.

6. Learned counsel for the petitioner contends that the very same Arbitrator, who has passed the impugned award, is acting as an Arbitrator in many matters in which the respondent is a claimant.

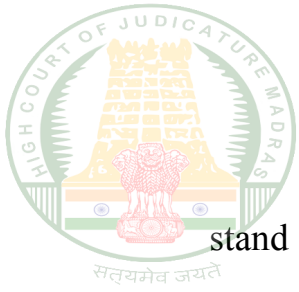


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7. When no written consent has been given by the petitioner for appointing the Arbitrator, who has passed the impugned arbitral award and the impugned arbitral award is also an *ex parte* award, this Court will have to necessarily set aside the impugned arbitral award since the arbitral award is hit by the decision rendered by the Hon'ble Supreme Court in *Perkins Eastman Architects DPC and another vs. HSCC (India) Limited* reported in (2020) 20 SCC 760, wherein it has been categorically held that the arbitral award passed by the Arbitrator, appointed unilaterally by one of the parties to the dispute, is not permissible under law.

8. Accordingly, the impugned arbitral award is hereby set aside by this Court only on the ground that the Arbitrator has been appointed unilaterally by the respondent and this petition is allowed.

9. However, with regard to the other grounds raised by the petitioner in this petition, the same is left open for him to decide when the fresh Arbitrator is appointed in accordance with law. The period spent by both the parties before the Arbitrator as well as before this Court in this petition shall



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stand excluded for the purpose of saving limitation under Section 14 of the Limitation Act. Accordingly, the impugned arbitral award dated 14.11.2022 is hereby set aside and this petition is allowed by granting liberty to the parties to initiate fresh arbitration in accordance with law. Time spent by both the parties before the Arbitrator as well as this Court shall stand excluded for the purpose of saving limitation under Section 14 of the Arbitration and Conciliation Act, 1996. No costs.

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ABDUL QUDDHOSE, J.

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