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Arb.OP.(comdiv) No.51 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.03.2025

CORAM

THE HONOURABLE **MR.JUSTICE ABDUL QUDDHOSE**

Arb.O.P.(Comm.Div.) No.51 of 2024

1.Shanthi N
2.Gowtham N
3.Neelamegam G
4.Dinesh N

.. Petitioners

-VS-

M/s.Five Star Business Finance Ltd.,
Chennai.

.. Respondent

Petition under Section 34 of the Arbitration and Conciliation Act, 1996, has been filed seeking to set aside the arbitral award dated 29.09.2023 passed by the Sole Arbitrator.

For Petitioners : Mr.K.V.Muthu Visakan

For Respondent : Mr.T.K.M.Sai Krishnan



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ORDER

This petition has been filed under Section 34 of the Arbitration and Conciliation Act, 1996, challenging the impugned arbitral award dated 29.09.2023 primarily on the ground that the impugned arbitral award has been passed against the petitioners by an Arbitrator appointed unilaterally by the respondent.

2. Admittedly, the Arbitrator was appointed by the arbitral institution, which, according to the respondent, is competent to nominate an Arbitrator from their arbitral panel. In the case on hand, the petitioners have disputed the existence of an arbitration clause and have also raised a ground that they have never agreed for appointment of an Arbitrator by the said arbitral institution referred to in the loan contract. Admittedly, the impugned arbitral award is an *exparte* award. The arbitral institution referred to in the contract is not a notified institution/recognized institution. The petitioners have also not given their consent for the named arbitrator, who has passed the impugned arbitral award.



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WEB COPY 3. The law is now well settled as laid down by the Hon'ble Supreme Court in ***Perkins Eastman Architects DPC and another vs. HSCC (India) Limited [(2020) 20 SCC 760]*** that a party to the dispute cannot unilaterally appoint an Arbitrator and it is opposed to public policy. Therefore, if the award is passed by such an Arbitrator appointed unilaterally, the said award is patently illegal. In the case on hand, being an unilateral appointment, which culminated in the passing of the impugned arbitral award, necessarily, the impugned arbitral award has to be set aside by this Court.

4. For the foregoing reasons, the impugned arbitral award dated 29.09.2023 is hereby set aside and this petition is allowed. However, liberty is granted to the respondent to initiate fresh arbitration against the petitioners in accordance with law. The period spent by both the parties before the Arbitrator as well as this Court shall stand excluded for the purpose of saving limitation as per Section 14 of the Limitation Act, 1963. No Costs.

26.03.2025



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ABDUL QUDDHOSE, J.

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