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Arb.O.P.(Com.Div.)No.339 of 2023

In the High Court of Judicature at Madras

|                                 |                                    |
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| Reserved on<br><b>11.9.2025</b> | Delivered on :<br><b>17.9.2025</b> |
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Coram :

The Honourable Mr.Justice N.ANAND VENKATESH

Arbitration O.P.(Com.Div.)No.339 of 2023

1.Shabana  
2.Ashkar Ali

...Petitioners

Vs

N.Manoharan

...Respondent

PETITION under Section 34(2A) of the Arbitration and Conciliation Act, 1996 praying to set aside the arbitral award dated 25.2.2023 bearing No.Arb/OP21/2021 passed by the learned sole Arbitrator - Mr.P.V.Balasubramanian in its entirety and for costs.

For Petitioners : Mr.Sharath Chandran &  
Ms.Gopika Nambiar

For Respondent : Ms.S.Ishaa for  
Mrs.P.Veena Suresh



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ORDER

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This is a petition filed by the petitioners under Section 34 of the Arbitration and Conciliation Act, 1996 (for short, the Act) against the award passed by the sole Arbitrator dated 25.2.2023.

2. Heard both.

3. The facts leading to filing of the above original petition are as follows :

(i) The respondent initiated arbitration proceedings based on a loan agreement dated 12.4.2018 that was entered into between the petitioners and the respondent purportedly for receipt of a loan amount of Rs.13 lakhs in cash. As per the loan agreement, the first petitioner borrowed the loan amount and the second petitioner stood as a guarantor for the said loan transaction.

(ii) As the loan amount was not repaid back, the respondent initiated arbitration proceedings and an Arbitrator was also appointed. An ex parte award was passed on 31.10.2019 in Arbitration Case No.2 of 2019. This was put to challenge by the petitioners by filing Arbitration O.P.No.21 of 2021 before this Court. This petition along



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with Arbitration O.P.No.115 of 2020 challenging another award in Arbitration Case No.1 of 2019 dated 31.10.2019 came to be allowed by a common order dated 04.8.2021 and the award dated 31.10.2019 in Arbitration Case No.2 of 2019 was set aside and a sole Arbitrator was appointed to enter into a reference and decide the disputes between the parties.

(iii) Pursuant to the said order dated 04.8.2021, the claim statement was filed by the respondent and a counter statement was filed by the petitioners before the sole Arbitrator. Further, documents were marked on both sides and witnesses were also examined. Ultimately, the award dated 25.2.2023 came to be passed and this is put to challenge in the above petition.

4. The learned counsel for the petitioners submitted as follows :

(i) The petitioners challenged the so-called loan agreement dated 12.4.2018, marked as Ex.C1, by denying the very execution of the document and also the execution of the letter of recording dated 12.4.2018, marked as Ex.C2, through which, security was created. In spite of it, the respondent did not prove the documents in a manner known to law. The sole Arbitrator did not even call upon the



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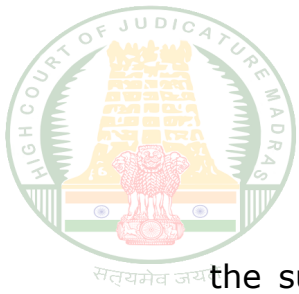
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respondent to prove the execution of the said documents and instead, acted upon Ex.C1 and Ex.C2, which would amount to patent illegality.

(ii) The respondent never had the financial wherewithal to lend the loan amount. Further, no income tax assessment was filed by him ever before. It was not even explained as to how and where the respondent was able to earn such a huge amount to lend the monies to the petitioners when no income tax assessment was filed. Ex.C2 dated 12.4.2018 was inadmissible in evidence since it was a document, which was compulsorily registerable. However, the sole Arbitrator placed reliance on the provisions of Section 49 of the Registration Act, 1908 for collateral purposes. The award suffers from perversity and patent illegality warranting the interference of this Court.

5. Per contra, the learned counsel appearing on behalf of the respondent submitted as follows :

The award does not suffer from any of the infirmities provided under Section 34 of the Act and therefore, there is no scope for interfering with the award. The sole Arbitrator had dealt with every issue that was raised by the petitioners and answered the same with



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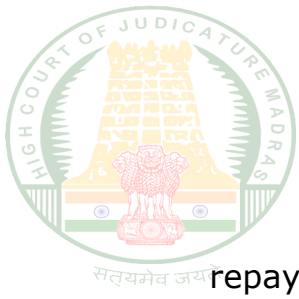
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the support of the case laws and therefore, this Court cannot sit on appeal and review the award since it is beyond the jurisdiction prescribed under Section 34 of the Act. Accordingly, she sought for dismissal of this original petition.

6. This Court has carefully considered the submissions of the learned counsel on either side and perused the materials available on record and more particularly the impugned award.

7. The main issue that has to be considered by this Court is as to whether the award passed by the sole Arbitrator suffers from patent illegality by applying the test as enunciated in the judgment of the Hon'ble Supreme Court in the case of **OPG Power Generation Private Limited Vs. Enexio Power Cooling Solutions India Private Limited [reported in 2025 (2) SCC 417]**.

8. The entire case hinges upon Ex.C1 and Ex.C2, which are the loan agreement dated 12.4.2018 between the petitioners and the respondent and the letter of recording dated 12.4.2018, through which, the security was stated to have been created towards



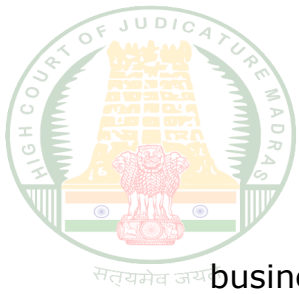
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repayment of the loan.

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9. The petitioners took a very specific defence before the sole Arbitrator that the respondent/claimant was a vegetable vendor, who did not have financial wherewithal to lend a sum of Rs.13 lakhs. They further alleged that a forged loan agreement dated 12.4.2018 was created in a stamp paper, which was purchased at Thuraiyur, Tiruchirapalli District for a transaction at Gudiyatham, which was almost 300 Km away from Thuraiyur. In short, the defence raised by the petitioners was that Ex.C1 and Ex.C2 were forged, fabricated, bogus and fictitious documents.

10. During the cross examination of both the respondent as CW1 (claimant) as well as CW2, they were repeatedly questioned regarding the financial wherewithal of the respondent whereby they made it clear that the respondent did not even have an income tax assessment. When the respondent was examined as CW1, he stated that the original of Ex.C1 was available at his residence at Tiruvannamalai and that he could produce the original before the sole Arbitrator. The petitioners took a specific stand that one Mr.P.Gurunathan was a



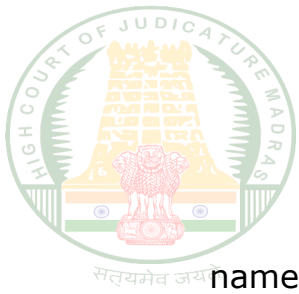
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business associate of the first petitioner and that it was he, who was behind the entire foul play.

11. Therefore, when CW1 was questioned about the said Mr.P. Gurunathan, he stated that the said Mr.P.Gurunathan came along with him. However, the said Mr.P.Gurunathan did not attend the proceedings. CW1 was not even able to read as to what was written in Ex.C2. In fact, for one of the questions that was put to him during the cross examination, he stated that his annual income was approximately Rs.4 lakhs to Rs.5 lakhs. When he was cross examined for the second time, he once again stated that the said Mr.P. Gurunathan accompanied him. But, he was not present during the proceedings.

12. Nearly after six months, the said Mr.P.Gurunathan came into the scene as CW2. He also admitted the fact that he had accompanied CW1 during the hearings both on 19.3.2022 and 04.6.2022. Even, he was not able to read as to what was contained in Ex.C2. The said Mr.P. Gurunathan is none other than the power agent of the respondent. Further, Ex.C6 was shown to the said Mr.P.Gurunathan wherein the



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names of one Mr.S.Aravind and one Mrs.Sumathy were mentioned. But, he was not willing to answer the question that was put to him. It was a stamp paper that was used to prepare the special power of attorney deed, through which, the respondent appointed the said Mr.P.Gurunathan as the power agent.

13. What becomes clear from the evidence of CW1 and CW2 is that CW2 kept himself away and rather deposed after CW1 gave evidence only to cover up the lapses on the part of CW1 in extending the loan transaction. Both witnesses were not able to speak about the financial wherewithal of the respondent (CW1) during the cross examination. Further, they were not in a position to read what was written in Ex.C2.

14. The sole Arbitrator, while dealing with the defence taken by the petitioners that Ex.C1 and Ex.C2 were fabricated documents, rendered a finding that the petitioners only denied their knowledge about the contents of those documents and that therefore, the burden of proof was upon the petitioners to show that they did not put signatures in those documents. To render this finding, the sole



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Arbitrator placed reliance upon the judgment of the Hon'ble Apex Court in the case of **Rao Saheb Vs. Rangnath Gopalrao Kawathekar (dead) by legal heirs [reported in 1972 (4) SCC 181]**. At paragraph 8.3 of the award, the sole Arbitrator extracted the following portion from the said judgment of the Hon'ble Apex Court :

*"The Hon'ble Supreme Court in the judgment reported in (1974) 4 SCC 181 (Rao Saheb Vs. Rangnath Gopalrao Kawathekar) has held 'if the only plea taken is that the executant has not signed the document and the document is a forgery, party seeking to prove the execution of a document need not adduce evidence to show that the party, who signed the document knew the contents of the document'."*

15. After having extracted the above portion, the sole Arbitrator rendered a finding that since the petitioners denied the execution of the documents by raising the plea of forgery, the contents of the documents stood proved.

16. The above finding of the sole Arbitrator suffers from perversity.



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17. It is relevant to extract the entire paragraph 5 from the judgment of the Hon'ble Apex Court in **Rangnath Gopalrao Kawathekar**, which reads thus :

*"5. Now coming to the question whether the suit properties fell to the share of the first defendant or the second defendant, it was pleaded in the plaint that the second defendant had specifically admitted in a document executed by him on January 12, 1952 that the suit properties were of the exclusive ownership of his brother and that he had no right on the same. In his written statement, the second defendant had pleaded that the deed in question is a forgery and that he had not executed it. The trial court came to the conclusion that the said deed was executed by the second defendant. The first appellate court also did not accept the contention of the second defendant that he did not execute that deed. On the other hand, the first appellate court held that the same was obtained on misrepresentation. No plea of misrepresentation was taken in the written statement. No issue as to whether the said deed was obtained by misrepresentation was raised. Therefore, it was not open to the first appellate court to consider whether the deed in question was invalid on the ground that it was obtained by misrepresentation. The only plea put forward by*



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*the second defendant was that the deed was a forgery. Both the trial court as well as the first appellate court have rejected that plea. Mr Sanghi, the learned Counsel for the appellant contended that when the execution of a document is denied, the party seeking to prove that document must not only prove that the alleged executant has signed that deed, but he must also prove that the executant had signed the same with the knowledge of its contents. What facts and circumstances have to be established to prove the execution of a document depend on the pleas put forward. If the only plea taken is that the executant has not signed the document and that the document is a forgery, the party seeking to prove the execution of a document need not adduce evidence to show that the party who signed the document knew the contents of the document. Ordinarily no one is expected to sign a document without knowing its contents but if it is pleaded that the party who signed the document did not know the contents of the document then it may in certain circumstances be necessary for the party seeking to prove the document to place material before the Court to satisfy it that the party who signed the document had the knowledge of its contents."*

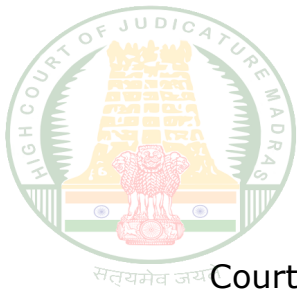


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18. The sole Arbitrator has unfortunately not taken into consideration the latter portion in the same paragraph of the said judgment, which makes the proposition of law very clear. The Hon'ble Apex Court, in no uncertain terms, held in the latter portion of the same paragraph that if it is pleaded that a party, who signed the document, did not know the contents of the document, then it may, in certain circumstances, be necessary for the party seeking to prove the document, to place materials before the Court to satisfy that the party, who signed the document, had the knowledge of its contents. This crucial portion at paragraph 5 of the said judgment of the Hon'ble Apex Court was completely disregarded by the sole Arbitrator.

19. The sole Arbitrator, at paragraph 8.3 of the award, rendered a finding that the petitioners only denied their signatures and not the execution of both the loan agreement dated 12.4.2018 and the letter of recording dated 12.4.2018 (Ex.C1 and Ex.C2 respectively) and therefore, the burden of proof upon the respondent was only to prove the signatures and not the factum of knowledge of contents of those documents. This finding runs contrary to the evidence available on record and it also runs contrary to the judgment of the Hon'ble Apex



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Court in **Rangnath Gopalrao Kawathekar** wherein it was held that it is necessary for the party seeking to prove the document to place materials before the Court to satisfy that the party, who signed the document, had the knowledge of its contents.

20. It is also relevant to take note of the judgment of the Hon'ble Apex Court in the case of **Veena Singh (dead) through legal representative Vs. District Registrar/Additional Collector (F/R) [reported in 2022 (7) SCC 1]**, the relevant portions of which are extracted as hereunder :

*"73. The "execution" of a document does not stand admitted merely because a person admits to having signed the document. Such an interpretation accounts for circumstances where an individual signs a blank paper and it is later converted into a different document, or when an individual is made to sign a document without fully understanding its contents. Adopting a contrary interpretation would unfairly put the burden upon the person denying execution to challenge the registration before a civil court or a writ court, since registration will have to be allowed once the signature has been admitted."*



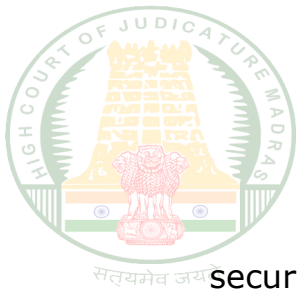
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21. The above judgment also reiterates the same position of law that execution of a document does not stand admitted even in a case where the person admits to have signed the document.

22. The petitioners had disputed both the execution of Ex.C1 and Ex.C2 as well as the signatures contained therein and therefore, the burden of proof was upon the respondent to prove those documents. Unfortunately, no proof was adduced by the respondent by means of other materials since he even failed to prove his financial wherewithal.

23. The sole Arbitrator had also taken into consideration Ex.C2, which created a right over the property by means of security, even though it was not registered, by placing reliance upon the Proviso to Section 49 of the Registration Act. The sole Arbitrator rendered a finding that Ex.C2 was a compulsorily registerable document. Thereupon, the sole Arbitrator relied upon the judgment of the Hon'ble Apex Court in the case of ***K.B.Saha & Sons (P) Ltd. Vs. Development Consultant Ltd.*** [reported in 2008 (8) SCC 564]. By relying upon this judgment, the sole Arbitrator gave a finding that Ex.C2 was divisible into two namely the loan transaction and the



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security that was created and that for the purpose of determining the loan transaction, it could be looked into for collateral purposes. The above finding rendered by the sole Arbitrator also suffers from perversity.

24. Useful reference can be made to the judgment of the Hon'ble Apex Court in the case of ***Paul Rubber Industries Private Limited Vs. Amit Chand Mitra [reported in 2023 SCC OnLine SC 1216]***, the relevant portions of which are extracted as hereunder :

*“14. On behalf of the appellant, however, it was urged, referring to the provisions of Section 49 of the Registration Act that for establishing nature and purpose of possession, even an unregistered document could be looked into as that would come within the ambit of collateral purpose. On this point, judgment of this Court in the case of Sevoke Properties Ltd. v. West Bengal State Electricity Distribution Company Limited [(2020) 11 SCC 782] has been relied upon. In the case of Sevoke Properties (supra) a coordinate Bench opined that as the agreement for lease in that case was unregistered, contents of the instrument were inadmissible in evidence. There was admission in the written statement of respondent in the case of Sevoke Properties (supra) by the defendants*



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*that they were in occupation under the lease agreement (in controversy in that case) for a period of fifteen years with effect from 1981 and that period of lease had expired on 24.05.1996. The issue decided in that case was whether the lease stood determined by efflux of time and once it did, what would be the position of the lessee? The coordinate Bench found that the position of the lessee would be that of a tenant at sufferance. In that context, it was held that there was no necessity to terminate the lease under Section 106 of 1882 Act. That case was decided on the basis of admission in written statement and has no application to the facts of the present case. The observation made in the case of Sevoke Properties (supra) that only purpose for which the lease can be looked at for assessing nature and character of the possession was in that context and that judgment proceeded on the basis that the period of lease had expired on a certain date. This decision is not an authority for the proposition that nature and character of the possession in an unregistered lease deed could always constitute collateral purpose so that the Court could examine the deed for that reason. The purpose for which lease is granted forms an integral part of the lease deed in this case and this very issue forms one of the main disputes. The expression "collateral*



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*purpose” has been employed in proviso to Section 49 of the Registration Act to imply that content of such a document can be used for purpose other than for which it has been executed or entered into by the parties or for a purpose remote to the main transaction. This view was taken by this Court in an earlier decision, in the case of K.B. Saha and Sons Private Limited v. Development Consultant Limited [(2008) 8 SCC 564]. The position of law on this point has been summarized in paragraph 34 (of the report) in this judgment:—*

*‘34\*. From the principles laid down in the various decisions of this Court and the High Courts, as referred to hereinabove, it is evident that:*

*1. A document required to be registered, if unregistered is not admissible into evidence under Section 49 of the Registration Act.*

*2. Such unregistered document can however be used as an evidence of collateral purpose as provided in the proviso to Section 49 of the Registration Act.*

*3. A collateral transaction must be independent of, or divisible from, the transaction to effect which the law required registration.*

*4. A collateral transaction must be a transaction not itself required to be effected by a registered document, that is, a transaction creating, etc. any right, title or interest in*



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*immovable property of the value of one hundred rupees and upwards.*

*5. If a document is inadmissible in evidence for want of registration, none of its terms can be admitted in evidence and that to use a document for the purpose of proving an important clause would not be using it as a collateral purpose.'*

*15. In the case of Rai Chand Jain v. Miss Chandra Kanta Khosla [(1991) 1 SCC 422], dispute arose as to whether certain premises were let out for residential purpose or as to whether there was an oral agreement of letting out the premises to the tenant, for running a press. It was in that perspective, it was held in the said case that a lease deed though unregistered, could be considered for collateral purposes to show the purpose for which the premises was leased out. Thus, the lease deed was referred to for the sole purpose to defeat the claim of subsistence of an oral agreement. The ratio of this authority has been considered in the case of K.B. Saha and Sons Private Limited (supra) and we follow that ratio. In the case of Satish Chand Makhan (supra), another coordinate Bench of this Court declined to accept admissibility of an unregistered lease agreement for determining duration of the lease (9 years in that case) on the reasoning that terms of lease would not constitute collateral purpose. It was*



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*observed in this judgment that "nature and character of possession" could constitute collateral purpose but that was not the point which was directly in lis before this Court. In our opinion, nature and character of possession contained in a flawed document (being unregistered) in terms Section 107 of the 1882 Act and Sections 17 and 49 of the Registration Act can form collateral purpose when the "nature and character of possession" is not the main term of the lease and does not constitute the main dispute for adjudication by the Court. In this case, the nature and character of possession constitutes the primary dispute and hence the Court is excluded by law from examining the unregistered deed for that purpose. In respect of the suit out of which this appeal arises, purpose of lease is the main lis, not a collateral incident."*

25. The fact that in the judgment in ***Paul Rubber Industries Private Limited***, the earlier judgment of the Hon'ble Apex Court in ***K.B.Saha & Sons (P) Limited*** that was relied upon, was taken note of by the sole Arbitrator. The Hon'ble Apex Court held that the test of main dispute must be the criterion to decide as to whether the document is relied upon for the main purpose or for collateral purpose.



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In other words, if an unregistered document is relied upon in terms of the Proviso to Section 49 of the Registration Act and full reliance is placed for deciding the main/primary dispute, the document becomes indivisible and cannot be relied upon.

26. In the case in hand, the dispute is regarding the very loan that was purported to have been taken by the petitioners from the respondent. The sole Arbitrator rendered a finding that even though Ex.C2 was a compulsorily registerable document, he would look into that document for collateral purposes. In other words, the sole Arbitrator relied upon that document to see if there was a loan transaction. In this case, that is the primary dispute and therefore, the Proviso to Section 49 of the Registration Act will not come to the aid of the sole Arbitrator and Ex.C2 cannot be looked into for any purposes. The finding rendered by the sole Arbitrator in this regard goes against the settled principles of law.

27. The sole Arbitrator, while appreciating the evidence of CW1 and CW2, unfortunately took note of only the chief examination (proof affidavit). During cross examination, CW1 made a statement that



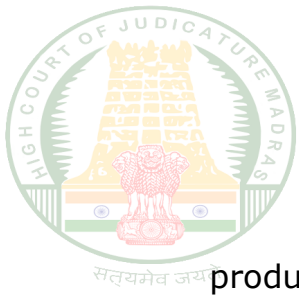
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money was received by him in the course of business, that he had kept the same in his shop and that money was lent to the first petitioner. By relying upon this statement, the sole Arbitrator rendered a finding that it is the plausible explanation to prove the financial wherewithal of the respondent.

28. It is true that the law of evidence is not applicable to arbitration proceedings. However, the settled principles of law, in so far as appreciation of evidence is concerned, are certainly applicable even in the arbitration proceedings. Just like how the settled principles of law enunciated by the Courts will bind the sole Arbitrator, such principles of law enunciated for appreciation of evidence will also bind the sole Arbitrator. If such settled principles of law are disregarded by the sole Arbitrator, it will fall foul of Section 34(2)(b)(ii) of the Act.

29. The specific answer given by CW1 during the cross examination is that his annual turnover would be Rs.4 lakhs to Rs.5 lakhs. However, what was lent was nearly Rs.13 lakhs [in total, Rs.26.50 lakhs in two different agreements]. Admittedly, the respondent was not an income tax assessee nor he was able to



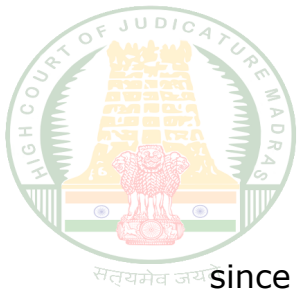
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produce any material to show that he possessed such large amount of money. While appreciating the evidence, the sole Arbitrator ought to have read the evidence in toto and rendered a finding instead of picking one answer from the deposition and coming to the conclusion that the respondent had the financial wherewithal. Even though the sole Arbitrator rendered a finding that the explanation given by CW1 is a plausible explanation, this Court holds that the explanation is not even a possible explanation.

30. The learned counsel appearing on behalf of the respondent placed reliance upon the judgment of the Hon'ble Apex Court in the case of ***Ssangyong Engineering and Construction Company Limited Vs. National Highways Authority of India [reported in 2019 (15) SCC 131 : AIR 2019 SC 5041]*** and submitted that the case in hand does not fall under any one of the eight pigeonholes as was enunciated in the said judgment.

31. This Court is not in agreement with the above submission of the learned counsel appearing on behalf of the respondent. In the case in hand, this Court holds that the award suffers from patent illegality



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since the findings of the sole Arbitrator are found to be perverse, for which, the reasons have been given supra. The view that has been taken by the sole Arbitrator is not even a plausible view. The sole Arbitrator has ignored to appreciate the vital portion of the evidence while arriving at a conclusion. The sole Arbitrator has also failed to take note of the settled position of law in so far as the issue regarding reliance on an unregistered document for collateral purposes and appreciation of evidence are concerned. Thus, the award certainly falls foul of Section 34(2)(b)(ii) and Section 34(2A) of the Act.

32. In the light of the above discussions, the above original petition stands allowed and the award dated 25.2.2023 is hereby set aside with cost of **Rs.1,00,000/- (Rupees one lakh only)** to be payable by the respondent to the petitioners within a period of four weeks from the date of receipt of a copy of this order.

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Index : Yes  
Neutral Citation : Yes

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