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Arb.O.P (Com.Div.) No.435 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.04.2025

CORAM

THE HON'BLE Mr. JUSTICE ABDUL QUDDHOSE

Arb.O.P (Com.Div.) No.435 of 2024

Nallathambi.M (deceased)

1.Padma Nallathambi

2.Rajeshwari

3.Vetrivel.N

... Petitioners

Versus

1.M/s.Shriram Transport Finance Co. Ltd.,

rep. by its P.A.Holder S.Varadhan

2.M/s.Raj Granites,

rep. by its Managing Partner

Gandhi

... Respondents

Prayer: Arbitration Original Petition (Commercial Division) filed under Section 34(2)(a)(iii) of the Arbitration and Conciliation Act, 1996 to set aside the Award dated 02.07.2021 of the Sole Arbitrator Mr.P.Rosiah in Arbitration Case No.1605 of 2019.

For Petitioners : Mr.S.Saran Prasad

For Respondents : Set exparte

ORDER



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As directed by this Court in its earlier order dated 13.03.2025, the petitioner has effected Substituted Service on the second respondent by effecting paper publication. The affidavit of service along with the paper publication has been filed. Despite effecting substituted service, no one has entered appearance on behalf of the second respondent. The name of the second respondent has also been printed in the cause list.

2.The first respondent has already been served with the notice in this petition and the same was recorded by this Court on 13.03.2025. Since both the respondents have not entered appearance till date, despite service of notice, they are set exparte by this Court.

3.The petitioner has challenged the impugned Arbitral Award dated 02.07.2021 passed by the Sole Arbitrator on the ground that the Arbitrator, who has passed the impugned Arbitral Award, was appointed unilaterally by the first respondent. The petitioner has also challenged the impugned Arbitral Award on the ground that Section 21 notice sent by the first respondent was not received by the petitioners and notice in the arbitration was also not received by them from the Arbitrator.

4.As seen from the impugned Arbitral Award, the Arbitrator, who has



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passed the impugned Arbitral Award, was appointed unilaterally by the first respondent, without getting consent of the petitioners, who are the respondents in the arbitration. The law is now well settled as laid down by the Hon'ble Supreme Court in the case of **Perkins Eastman Architects DPC and another vs. HSCC (India) Limited reported in (2020) 20 SCC 760** that an Arbitral Award passed by the Sole Arbitrator, appointed unilaterally by one of the parties to the dispute, without getting consent of the other, is per se patently illegal.

5. Admittedly, in the case on hand, the Arbitrator, who has passed the impugned Arbitral Award, was appointed unilaterally by the first respondent without getting consent of the petitioners. The petitioners have also contended that they have not received any notice in the Arbitral Proceedings. They have also contended that they did not receive Section 21 Notice alleged to have been sent by the first respondent prior to the appointment of the Arbitrator, who has passed the impugned Arbitral Award. Since the impugned Arbitral Award has been passed by an Arbitrator, unilaterally appointed by the first respondent, without getting consent of the petitioners,



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ABDUL QUDDHOSE, J.

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this Court is of the considered view that the impugned Arbitral Award is in violation of the principles laid down by the Hon'ble Supreme Court in the case of Perkins, referred to supra.

6.In the result, the impugned Arbitral Award dated 02.07.2021 passed by the Arbitrator in favour of the first respondent against the petitioners is hereby set aside and this petition is allowed. The first respondent is granted liberty to initiate fresh arbitration against the petitioners in accordance with law. The period spent by the parties before the Arbitrator as well as before this Court under Section 34 of the Arbitration and Conciliation Act, 1996 shall stand excluded for the purpose of saving limitation under Section 14 of the Limitation Act. No costs.

07.04.2025

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