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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.06.2025

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THE HON'BLE Mr. JUSTICE ABDUL QUDDHOSE

Arb.O.P. No.53 of 2024

Prashant Saboo

... Petitioner

Versus

1.M/s.Sundaram Finance

2.Saboo Motors Pvt. Ltd.,

3.Kura Veerendher Reddy

... Respondents

Prayer: Arbitration Original Petition (Commercial Division) filed under Section 34(2) of the Arbitration and Conciliation Act, 1996 to set aside the Arbitral Award dated 26.02.2024 passed by the Sole Arbitrator in its entirety and direct the respondents to pay the costs.

For Petitioner : Mr.K.S.Shankar Chakrapani

For Respondents : Mr.M.Arunachalam for R1

ORDER

This petition has been filed under Section 34 of the Arbitration and Conciliation Act, challenging the impugned arbitral award dated 26.02.2024.



2.The petitioner has challenged the impugned Arbitral Award primarily on the ground that the Arbitrator, who has passed the impugned Arbitral Award, was appointed unilaterally by the first respondent.

3.This Court has perused and examined the arbitration clause as well as the impugned arbitral award. As seen from the same, it is clear that the Arbitrator, who has passed the impugned Arbitral Award, was appointed unilaterally by the first respondent.

4.Learned counsel for the first respondent also does not dispute the same. According to the learned counsel for the respondent, since the petitioner had filed an application under Section 16 of the Arbitration and Conciliation Act before the Arbitrator, who has passed the impugned arbitral award, raising the very same issue of unilateral appointment and the same was rejected and further the order of the Arbitrator was also challenged under Section 37 of the Arbitration and Conciliation Act, 1996, the question of raising such a plea once again in this petition filed under Section 34 of the Arbitration and Conciliation Act does not arise. According to him, having participated in the arbitration, the petitioner cannot raise the plea of unilateral appointment in this petition, filed under Section 34 of the Arbitration and Conciliation Act.



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5.The law is now well settled by the decisions rendered 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** as well as **Central Organisation for Railway Electrification vs ECI SPIC SMO MCML (JV) A Joint Venture Company reported in 2024(6) CTC 495** that a party to the dispute cannot unilaterally appoint an Arbitrator and an Arbitral Award passed by such an Arbitrator is per se illegal.

6.Admittedly, the impugned Award has been passed by an Arbitrator, appointed unilaterally by the first respondent based on an arbitration clause contained in the contract, which is the subject matter of the dispute between the parties, which enables the first respondent to appoint the Arbitrator unilaterally.

7.In view of the well settled law that unilateral appointment of an Arbitrator is not legally permissible, the impugned arbitral award has to be necessarily set aside by this Court. In view of the same, the impugned arbitral award passed by the Arbitrator appointed unilaterally by the first respondent dated 26.02.2024 is hereby set aside by this Court and this petition is allowed. The time spent by both the parties before the Arbitrator



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ABDUL QUDDHOSE, J.

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as well as before this Court shall stand excluded for the purpose of saving limitation under Section 14 of the Limitation Act. Both the parties are permitted to initiate fresh arbitration in respect of the dispute arising out of the contract dated 01.03.2019 in accordance with law. No costs.

04.06.2025

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