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IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: **05.02.2025**
CORAM
THE HONOURABLE MR JUSTICE ABDUL QUDDHOSE

Arb O.P(COM.DIV.) No. 535 of 2024

and

A.No.6390 of 2024

1. L.Srinivasagan
aged about 52 years

2. Nagajothi Narayanan

Aged about 59 years

Both at: 3-46, Ramesh Nagar,
2nd Street, West Tambaram,
Chennai - 600 045.

...Petitioners

Vs

1. Kotak Mahindra Bank Limited,
rep. by its Authorised Signatory,
Mr.R.Vasu, 8th Floor, TVH Agnito Park,
Zone -2, Old Mahabalipuram Road,
Kandhanchavadi,
Chennai - 600 096.

2. Mr.C.Mohankumar,
No.2-14, 3rd Street, Sundaram Colony,
West Tambaram,
Chennai - 600 045.

..Respondents

PRAYER: Arbitration Original Petition filed under Sections 34(2)(b)(ii) & 34 (2-A) of the Arbitration and Conciliation Act, 1996, read with Rule 3 (ii) of the Madras High Court Arbitration Rules, 2020 and Section



2(1)(c)(xviii) and Section 10(2) of the Commercial Courts Act, 2015 to set aside the award dated 25.07.2024 passed by the Arbitral Tribunal.

For Petitioners : Mr.T.S.Vijaya raghavan

For Respondents : Mr.R.A.Gopinath

ORDER

This Petition has been filed under Section 34 of the Arbitration and Conciliation Act, 1996 seeking to set aside the Arbitral Award dated 25.07.2024 passed in favour of the 1st respondent against the petitioners.

2. The petitioners have challenged the impugned arbitral award on the ground that the arbitral award has been passed by an Arbitrator appointed unilaterally by the 1st respondent.

3. There arose a dispute between the petitioners and the first respondent under a loan contract. The loan contract contains an arbitration clause. However, the 1st respondent was empowered to appoint an Arbitrator unilaterally. In accordance with the said clause, the 1st respondent appointed an Arbitrator unilaterally. The said Arbitrator has passed the impugned award which is the subject matter of challenge in this Petition.

4. The law is now well settled 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 unilaterally a party to a dispute cannot appoint an Arbitrator and the arbitral award passed by the said Arbitrator would amount to patent illegality.

5. As seen from the impugned award, it is an undisputed fact that the Arbitrator was appointed unilaterally by the 1st respondent and the said Arbitrator has passed the impugned award.

6. In view of the well settled law as laid down by the Hon'ble Supreme Court in the aforesaid decision, the impugned award suffers from patent illegality. Accordingly, for the foregoing reasons, necessarily, the impugned award passed by the Arbitrator has to be set aside by this Court, since the Arbitrator was appointed unilaterally by the 1st respondent. Accordingly, the impugned award dated 25.07.2024 passed by the Arbitrator is hereby set side by this Court and the O.P. is allowed. Liberty is granted to the parties to the dispute to initiate fresh arbitration in accordance with law. Consequently, connected application is closed.

05.02.2025

vsi

Index : Yes / No

Internet : Yes / No



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ABDUL QUDDHOSE,J.

vsi

To

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