Case Citation: (2026) ibclaw.in 6469 HC

Order QR

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 06.10.2026

Pronounced on : 26.10.2026

CORAM

THE HONOURABLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

CNR:{HCMA010953402023}

Arb O.P(COM.DIV.) Nos.354 to 358 of 2023

Arb O.P(COM.DIV.) No.354 of 2023

1. S.Rathna

2. S.Prakash Prabhu

Petitioners in Arb.O.P
(Com.Div.) No.354 of 2023

Arb O.P(COM.DIV.) No. 355 of 2023

CNR:{HCMA010953392023}

1. S.Prakash Prabhu

2.S.Rathna

Petitioners in Arb.O.P
(Com.Div.) No.355 of 2023

Arb O.P(COM.DIV.) No. 356 of 2023

CNR:{HCMA010950172023}

1. S.Rathna

2.S.Prakash Prabhu

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3.S.Sekar

Petitioners in Arb.O.P.
(Com.Div.) No.356 of 2023

Arb O.P(COM.DIV.) No. 357 of 2023

Case QR

CNR:{HCMA010950162023}

1. S.Prakash Prabhu

2.S.Sekar

3.P.Sankar

Petitioners in Arb.O.P.
(Com.Div.) No.357 of 2023

Arb O.P(COM.DIV.) No. 358 of 2023

Case QR

CNR:{HCMA010953382023}

1. S.Prakash Prabhu

2.S.Rathna

3.S.Sekar

Petitioners in Arb.O.P.
(Com.Div.) No.358 of 2023

Vs

M/s.Indo Asia Finance Limited,
Represented by Mrs. Sowmiya

Respondent in all cases

Arb O.P(COM.DIV.) No. 354 of 2023

PRAYER

To set aside the award dated 10.10.2022 in P.A.A.C.P. No.7 of 2021 passed by Sole Arbitrator, Chennai and direct the respondent to pay the costs of the petitioner.

Case Citation: (2026) ibclaw.in 6469 HC

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Arb O.P(COM.DIV.) No. 355 of 2023

PRAYER

To set aside the award dated 10.10.2022 in P.A.A.C.P.No.8 of 2021 passed by Sole Arbitrator, Chennai and direct the respondent to pay the costs of the petitioner.

Arb O.P(COM.DIV.) No. 356 of 2023

PRAYER

To set aside the award dated 10.10.2022 in P.A.A.C.P.No.5 of 2021 passed by Sole Arbitrator, Chennai and direct the respondent to pay the costs of the petitioner.

Arb O.P(COM.DIV.) No. 357 of 2023

PRAYER

To set aside the award dated 10.10.2022 in P.A.A.C.P.No.9 of 2021 passed by Sole Arbitrator, Chennai and direct the respondent to pay the costs of the petitioner.

Arb O.P(COM.DIV.) No. 358 of 2023

PRAYER

To set aside the award dated 10.10.2022 in P.A.A.C.P.No.6 of 2021 passed by Sole Arbitrator, Chennai and direct the respondent to pay the costs of the petitioner.

For Petitioners: Mrs.Hema Sampath,
Senior Counsel for Ms.R.Meenal

For Respondent: Mr.K.V.Babu
For Mr.S.Arun Mathew

COMMON ORDER

A. The Petitions:

All five Arbitration Original Petitions are connected to each other and, as such, are disposed of by this common order.

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2. All these petitions seek to set aside the arbitral awards passed by the Sole Arbitrator under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Act'). The petitioners are all members of the same family and are interchangeably arrayed in the original petitions. The respondent is the same, namely *M/s. Indo Asia Finance Ltd*.

B. The facts in Brief:

3.Arb.O.P. (Com.Div.) No. 354 of 2023 is filed by *S. Rathna, W/o. S.Sekar*, and *Mr. S.Prakash Prabhu, S/o. S.Sekar*. It is stated that the said *Rathna* and *Prakash Prabhu* approached the respondent/company for financing the purchase of two AL Comet vehicles, executed Loan-cum-Hypothecation Agreement No.5029 on 03.09.2007, and obtained a refinance of Rs.14,00,000/-. Thereafter, although they paid some instalments, a total sum of Rs.15,44,600/- remained due as on 11.02.2013. In view of the default, the respondent also claimed additional financial charges of Rs.16,96,801/- and other charges of Rs.2,232/-.

3.1 It is also stated that a separate arbitration agreement was entered into on 03.09.2007. Accordingly, the respondent invoked arbitration and, in accordance with the agreement, appointed Mr M. Ganesan as the Sole Arbitrator. A claim petition No. 3 of 2012 was filed, seeking the above sum with

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subsequent interest. The claim petition was resisted by the petitioners herein by filing a counter statement.

3.2 While the proceedings were pending, it is noted that the original Sole Arbitrator, i.e., Mr. M. Ganesan, died on 12.05.2021. Thereafter, the claimant unilaterally appointed Mr. P. Anbarasan, Advocate, by a letter dated 21.10.2021, to continue the arbitration proceedings initiated against the petitioners herein. Upon such appointment, a preliminary objection under Sections 12 and 13 of the Act, 1996 was filed. It is stated that there are justifiable doubts as to the independence of the Arbitrator. The Arbitrator had failed to disclose his consent to the appointment, and it was also prayed that the preliminary issue should be decided first.

3.3 Under these circumstances, the arbitration proceeded further, and ultimately, an award was passed in P.A.A.C.P. No.7 of 2021 by the said Arbitrator, decreeing the claim for a sum of Rs.32,43,633/- with further interest at the rate of 15% per annum and costs of Rs.7,500/-. Aggrieved by the same, the petitioners have filed this petition to set aside the award.

4. Arb.O.P. (Com. Div.) No. 355 of 2023 is filed by *S.Prakash Prabhu, S/o. S.Sekar*, and *S.Rathna, W/o. S.Sekar*. It is stated that for the purchase of two new AL Comet vehicles, a Loan-cum-Hypothecation Agreement was entered

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into on 03.09.2007, and a sum of Rs.14,00,000/- was refinanced. It is further stated that although the instalments were duly paid, they were delayed, and as per the loan agreement, the respondent/finance company is entitled to additional finance charges at the rate of 36% per annum compounded with monthly rests. Accordingly, claiming a sum of Rs.10,86,002/- as additional finance charges and a sum of Rs.1,143/- towards other charges, the respondent invoked arbitration and appointed Mr. M. Ganesan as the Sole Arbitrator. Thereafter, the respondent filed Claim Petition No. 2 of 2012 on 11.02.2013. The claim petition is resisted by the petitioners herein by filing a counter statement.

4.1 On 16.04.2021, the Arbitrator terminated the arbitral reference, holding that the claimant had not appeared or co-operated since 2012. Thereafter, noting that the Arbitrator had died on 12.05.2021, the respondent unilaterally appointed P. Anbarasan, Advocate, as the Sole Arbitrator. Immediately thereafter, the petitioner filed a preliminary objection challenging the eligibility, neutrality, and maintainability of the arbitration claim. Ultimately, the arbitration proceeded, and the Sole Arbitrator passed an award on 10.10.2022, decreeing the claim of Rs.10,87,145/- with further interest at the rate of 15% per annum.

5. Arb.O.P. (Com. Div.) No. 356 of 2023 is filed by *S.Rathna, W/o.S.Sekar; S.Prakash Prabhu, S/o. S.Sekar;* and *S.Sekar, S/o.Somu Devar.* It

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appears that for the purchase of two AL buses, a Loan-cum-Hypothecation Agreement No.5055 was entered into by the petitioners herein, and a sum of Rs.17,50,000/- was refinanced by the claimant, who claimed that as on 10.10.2007, a sum of Rs.18,02,000/- was due towards the loan amount, a sum of Rs.30,12,130/- towards additional finance charges, and a sum of Rs.4,060/- as other charges. The respondent invoked arbitration and appointed Mr Ganesan as the Sole Arbitrator. The respondent filed claim petition No. 4 of 2012, claiming the aforesaid total sum of Rs. 48,18,190/-. The petitioners resisted the claim petition by filing a counter statement.

5.1 As far as Arb. O.P. (Com. Div.) No. 356 of 2023 is concerned, the loan agreement contained an arbitration clause enabling the lender to unilaterally appoint an Arbitrator. While the arbitration proceedings were pending, the Sole Arbitrator, Mr Ganesan, died on 12.05.2021. Thereafter, by a letter dated 21.10.2021, the respondent appointed the present Arbitrator, Mr P. Anbarasan, Advocate.

5.2 Immediately upon his appointment, a preliminary objection under Sections 12 and 13 of the Act was filed, contending that the arbitrator's impartiality was in doubt, that he failed to make the required disclosure, and that he should not function as an arbitrator. The arbitration proceeded, and by an award dated 10.10.2022 in P.A.A.C.P. No.5 of 2021, the claim amount of

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Rs.48,18,190/- was decreed with further interest at 15% per annum. Challenging the same, the above petition is filed.

6. Arb.O.P. (Com. Div.) No. 357 of 2023 is filed by *S.Prakash Prabhu, S/o.S.Sekar, S. Sekhar, S/o.Somu Devar* and *P. Shankar, S/o.Somu Devar.* It is stated that, for the purchase of one A.L. Comet and one Tata Ace vehicle, a Loan-cum-Hypothecation Agreement No. 4866 was entered into on 30.11.2006, and a sum of Rs. 9,25,000/- was refinanced. Although the loan amounts were paid, the respondent claimed there was a delay in paying the instalments and additional financial charges of Rs. 4,54,836/- and other charges of Rs. 500/-, for a total of Rs. 4,55,336/-, and invoked arbitration and thereafter filed Claim Petition No. 7 of 2012. The respondent resisted the claim petition by filing a counter statement.

6.1 In this case also, on the death of the Sole Arbitrator, Mr. Ganesan, on 12.05.2021, by a letter dated 21.10.2021, the very same Arbitrator, Mr. P. Anbarasan, Advocate, was appointed to continue the arbitration proceedings initiated against the respondent. Similarly, in the other cases, preliminary objections under Sections 12 and 13 of the Act were also filed, and the arbitration continued. By an award dated 10.10.2022, the same Arbitrator decreed the claim of Rs.4,55,336/- with further interest at the rate of 15% per

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annum in the Award bearing reference number P.A.A.C.P. No.9 of 2021. Aggrieved by the same, the petitioner has filed this petition.

7.Arb.O.P. (Com. Div.) No. 358 of 2023 is filed by *S.Prakash Prabhu, S/o. S.Sekar; S.Rathna, W/o. S.Sekar;* and *S.Sekar, S/o. Somu Devar.* It is stated that for the purchase of two Tata vehicles, a Loan-cum-Hypothecation Agreement No. 5056 was entered into on 10.10.2007, and a sum of Rs.17,50,000/- was refinanced to them. Subsequently, as on 11.02.2013, a sum of Rs.17,69,000/- towards the loan amount, additional finance charges of Rs.25,28,980/-, and other charges of Rs.4,525/- were held to be due. Arbitration was invoked, and the said Mr. M. Ganesan was appointed as an Arbitrator. A Claim Petition No. 5 of 2012 was filed. The claim was resisted by filing a counter statement.

7.1 When the arbitration proceedings were pending, as stated supra, the said Mr M.Ganesan died, and Mr P.Anbarasan was appointed, and a preliminary objection was made. The arbitration continued, and by an award dated 10.10.2022, the claim of Rs. 43,02,505/- was decreed with further interest at the rate of 15% per annum, vide award bearing reference number P.A.A.C.P. No. 6 of 2021.

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C. The Arguments:

8. *Mrs Hema Sampath*, the learned Senior Counsel appearing on behalf of the petitioners, would submit that all five awards are identically worded and were passed by the same Sole Arbitrator. Her first contention is that the Sole Arbitrator, appointed in 2021 after the 2015 amendment to the Act, is de jure ineligible, was appointed unilaterally, and violated Section 12(5). Accordingly, the Arbitrator's proceedings are completely illegal and voi*d ab initio,* and the awards are liable to be set aside.

8.1 The second contention made by the learned Senior Counsel is that, except in two hypothecation agreements, the other three agreements do not even contain an arbitration clause. The respondent relies on an unstamped, forged arbitration agreement, and despite the objection being raised, the Arbitrator does not consider it.

8.2 The third contention of the learned Senior Counsel is that in the above five petitions, at least in two transactions, the entire loan amount has been settled in full, and thereafter, by way of an afterthought, additional finance charges are claimed after communicating to the petitioners that the loan amount is discharged. Although the full payment settlement letters could not be produced before the Arbitrator, they are now produced before this Court. Thus, in those cases, no amount was due, and the award is liable to be set aside.

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8.3 In all five cases, if the last date of payment of the installment is taken into account, the claim statement is made beyond the period of three years and therefore is barred by limitation.

8.4 In one case, namely Arb.O.P. (Com.Div.) No. 355 of 2023, the then Arbitrator, Mr Ganesan, passed an award terminating the proceedings. Ignoring this fact and treating the matter as if it were pending, as in other cases, the subsequent Arbitrator continued the proceedings, rendering the said award patently illegal.

8.5 The learned Senior Counsel would submit that if the total sum of money paid by the petitioners in all the five transactions is taken into account, it runs into a sum manifold to the amount advanced, and these are all belated claims made by the respondent company only to extract further money from the petitioners.

8.6 In support of her contentions regarding three agreements, the arbitration agreement is also unstamped, though the Hon'ble Supreme Court of India in **N.N. Global Mercantile Private Limited v. Indo Unique Flame Pvt. Ltd. and others [(2023) 7 SCC 1]** has held that the defect is curable; in this case it remains uncured to date. With reference to limitation, the learned Senior Counsel would rely upon the judgment of the Hon'ble Supreme Court of India

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in **M/s. B and T AG v. Ministry of Defence [(*2023) LiveLaw (SC) 466]***, more specifically Paragraph 55. The learned Senior Counsel would also rely upon the judgment of this Court in N.Munusamy and another vs. Shriram City Union Finance Limited (Arb.O.P. (Com. Div.) No.509 of 2022) to contend that the unilateral appointment of an Arbitrator is illegal and the same can be challenged in a petition under Section 34 of the Act.

8.7 Per contra, Mr K.V. Babu, the learned counsel appearing on behalf of the respondent, would submit that in these cases, the arbitration proceedings commenced prior to the amendment in the year 2015 and therefore, the plea relating to unilateral appointment cannot be raised in the instant cases.

8.8 Secondly, the amount in respect of all five loans was payable in various instalments, and if the last instalment is taken into account, the claim petition falls within the period of three years. The petitioners did not raise the challenge relating to limitation before the Arbitrator. As such, the plea relating to limitation is liable to be rejected.

8.9 The respondent/company is entitled to additional financial charges as per the hypothecation agreement if there is any delay in payment of dues. In none of the five cases did the petitioners make payments in time and discharge the loan.

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8.10 The petitioners did not contest the Arbitrator's bias or impartiality. For the first time, the petitioners cannot raise the Arbitrator's ineligibility or inability by way of these petitions under Section 34 of the Act.

8. 11 In support of his submissions, the learned counsel would rely on the following judgments:

a)Kitiku Imports Trade Pvt. Ltd. v. Savitri Metals Ltd. [MANU/MH/0417/1998];

b)Vijayakumar Raju v. Indusland Bank Ltd. [MANU/TN/3919/2009;

c)Kanodia Infratech Limited v. Dalmia Cement (Bharat) Limited [2021 SCC Online Del 4883];

d)Rung Lal Kalooram v. Kedar Nath Kesriwal [MANU/WB/0441/1921];

e)Shyamal Kumar Roy v. Sushil Kumar Agarwal [MANU/SC/8588/2006];

f)ARG Outlier Media Private Limited v. HT Media Ltd. MANU/DE/4244/2023;

g)Image Infotainment Ltd. v. Labour India Public School and Junior College [2023 SCC Online Mad 5466];

h)Republic of India v. Augusta Westland International Ltd. [MANU/DE/0021/2019];

i)Kotak Mahindra Ltd. v. Shalibhadra Cottrade Pvt. Ltd. [MANU/WB/1245/2024]; and

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j)Dakshin Private Ltd. v. Scm Silks Private Limited [2024 SCC Online Mad 6761].

8. 12 The learned counsel for the respondent would rely upon the judgment in **Kotak Mahindra Ltd. v. Shalibhadra Cottrade Pvt. Ltd. [MANU/WB/1245/2024]** to contend that the conduct of the petitioners in participating in the arbitration and conducting the same would amount to a waiver as contemplated under the proviso to Section 12(5) of the Act and therefore, after participating in the proceedings wholeheartedly, on merits and merely because an award has been passed, the awards cannot be challenged subsequently.

D. Analysis and Findings:

9. I have considered the rival submissions made on either side and perused the material records of the case.

9.1 Firstly, with reference to the unilateral appointment of an Arbitrator, the matter is no longer res integra, having been considered by the Hon'ble Supreme Court of India in **Bhadra International (India) Private Limited & Ors. v. Airports Authority of India, [(2026) SCC Online SC page 7]**. By that judgment, the Hon'ble Supreme Court of India examined the interplay between

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equal treatment of parties and party autonomy, and concluded that the principle of party autonomy does not obliterate the principle of equal treatment of parties, either in the procedure for the appointment of arbitrators or in the arbitral proceedings. The exercise of party autonomy must be in consonance with the principles of equal treatment of the parties, which, by implication, includes the independence and impartiality of the arbitrators.

9.2 The Court then held that the unilateral appointment of a Sole Arbitrator is void *ab initio,* and that a *S*ole Arbitrator so appointed is *de jure* ineligible to act, in terms of Section 12(5) read with the Seventh Schedule of the Act. It further held that any waiver must be by way of an express written agreement, after noting the party's right and voluntarily abandoning it.

9.3 Now, applying the said ratio to the present factual situation, even though the earlier appointment of the Sole Arbitrator, Mr. Ganesan, was made at the commencement of the proceedings in the year 2013, prior to the amendment, it must be seen that in one arbitration, namely Arb.O.P. (Com.Div.) No. 355 of 2023, the earlier proceedings had already concluded, and the Arbitrator was appointed afresh unilaterally in 2021. Even in the other proceedings, when the earlier Arbitrator died on 12.05.2021, the new Arbitrator was appointed unilaterally only after the amendment.

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9.4 Therefore, the dictum of the Hon'ble Supreme Court of India in the above judgment is squarely applicable to the instant case. When unilateral appointment is made by the respondent/company, in which the petitioner never had any say, and despite the preliminary objection raised, though the petitioners did not pursue the same by way of filing an application under Section 14, still, as per the dictum of the Hon'ble Supreme Court, it can be raised even at the stage of filing the application under Section 34 of the Act. Since the issue goes to the root of the matter, the appointment is void *ab initio,* and the consequential awards are liable to be set aside. Thus, it is not necessary to go into the other grounds raised in the applications.

E. The Result:

10. Accordingly, all five awards are liable to be set aside, and the petitions are liable to be allowed. In the result, the Arb.O.P. (Com.Div.) Nos. 354 to 358 of 2023 stand allowed, and the respective awards passed in P.A.A.C.P. Nos. 5 to 9 of 2021, dated 10.10.2022, shall stand set aside. No costs.

26-10-2026

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Index:Yes/No
Speaking/Non-speaking order
Internet:Yes
Neutral Citation:Yes/No

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D.BHARATHA CHAKRAVARTHY J.

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Arb.O.P. (Com.Div.)
Nos.354 to 358 of 2023

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