

IN THE COMMERCIAL COURT AT CITY CIVIL COURT, AHMEDABAD

COMMERCIAL EXECUTION PETITION NO. 709 OF 2022

MAS FINANCIAL SERVICES LTD, THROUGH
AUTHORISED PERSON UMESH R. GANDHI
Address - 6, GROUND FLOOR, NARAYAN
CHAMBER, B/H. PATANG HOTEL, ASHARAM
ROAD, AHMEDABAD

APPLICANT

VERSUS

1) FIROZKHAN ANWARKHAN PATHAN
Address - 18, SAYIEDWADI, SILVAR PARK,
SARKHEJ, AHMEDABAD
2) ABBASALI BISMILLAHALI PATHAN
NEW MUNICIPAL STAFF QUARTER,
JAMALPUR, AHMEDABAD

OPPONENT/S

Appearance:

J V BAROT, Ld. Advocate for the Applicant.

Nobody for the Opponent/s.

ORDER BELOW EXH.1

1. The present Execution Petition is filed by the Decree Holder under Section-36 of the Arbitration & Conciliation Act, 1996. Upon perusal of the award passed in this Execution Petition, learned Sole Arbitrator was unilaterally appointed by the decree holder. Which is in violation of provisions of Section-12(5) of the Arbitration & Conciliation Act, 1996.
2. Today, none appeared for the respective parties before this Court.
3. In the judgement of **Civil Misc. Application No. 25636 of 2023 (Kotak Mahindra Bank Ltd. vs. Narendra Kumar Prajaat)** with allied matters, the Hon'ble High Court of Delhi relied on the judgement of Hon'ble Apex Court reported in **(2019) 5 SCC 755 (Bharat Broadband Network Limited vs. United Telecoms Limited)**, wherein the Hon'ble Court upheld that:-

“Award rendered by a person who ineligible to act as an Arbitrator by virtue of the provisions of Section-12(5) of the Arbitration & Conciliation Act, 1996 is nullity and therefore, cannot be enforced under Section-36 of the Arbitration & Conciliation Act, 1996.”

4. Very Recently Hon'ble High Court of Gujarat on 07.10.2023 has passed a detailed Judgment in the case of **M/s. Rich and Royal** wherein the Hon'ble High Court specifically held that unilateral appointment of Arbitrator is *non est* in the eye of law and the Award rendered by such Arbitrator is not sustainable.
5. In the present Execution Petition, sole Arbitrator appointed by decree holder which is not permissible under Section – 12(5) of the Arbitration & Conciliation Act, 1996. Therefore, this Execution Petition deserves to be dismissed, hence, I pass the following final order:-

-:: O R D E R ::-

- The present Execution Petition stands rejected.
- Parties to bear their respective cost.

Order signed and pronounced in open court today on this 09th Day of November, 2023.

Date : 09.11.2023
Place : Ahmedabad.

J.M.Brahmbhatt)
Judge, Commercial Court,
City Civil Court, Ahmedabad.
Unique ID Code No.GJ00622.