

Order below Ex - 1

I have gone through the Execution Petition and the documents filed along with execution petition. I have gone through the record of the case. I have gone through the provision of Section 11 and Section 12 of Arbitration and Conciliation Act, 1996. On perusal of the record of the case, the decree holder have brought on record the arbitral award. On perusal of the arbitral award the said award had been passed by sole arbitrator. There is nothing in Arbitral Award or on the record of this case to show that Arbitrator was appointed with the consent of both the parties. **Therefore, any of the parties to agreement is not entitle to take the consent of another party regarding appointment of Arbitrator on his own according to the law parties are entitle to appoint in named third person as a Arbitrator at the time of execution of agreement with regard to any dispute differences or claims if it arise between the parties in future. But any of the parties not entitle to enter into the procedure for taking the consent much less mere intimating of another party for appointing the Arbitrator in future. It reveals from the facts stated in the award that the parties to the agreement have not appointed the name sole Arbitrator but later on by the claimant himself unilaterally.** As the sole named Arbitrator was not appointed at the time of execution of agreement between the parties and the sole arbitrator was appointed without following the provisions of Section 11 and 12 of the Act. Therefore, the unilaterally appointed Arbitrator is ineligible in the eyes of law and he has no jurisdiction to adjudicate the dispute between the parties. In view of the recent judgment of Hon'ble Delhi High Court in the case of Kotak Mahindra Bank Vs. Narendra Kumar Prajapati reported in 2023(0) AIJEL - DC

the Award passed by the Arbitrator has inherent lack of jurisdiction to adjudicate the dispute between the parties. Therefore, the impugned award is nullity. In view of this the Award passed by the unilaterally appointed arbitrator is void and this Executing Court is not bound to execute an Award which is not enforceable under law. Hence, the present Execution petition is rejected with no order as to cost.

Date: 11/01/2024

Kheda

(Maheshkumar Chimanlal Patel)
Principal Senior Civil Judge
Kheda
GJ01199