

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **FAO(OS) 434 OF 2008**

% **Judgment reserved on: 09.01.2009**
Judgment delivered on: 15.01.2009

Commander S.P.Suri(Retd.) Appellant
Through: Appellant in person

versus

M/s Alankit Assignments Limited Respondent
Through: Mr. D. C. Chauhan, Advocate
for respondent No.1.

CORAM:

HON'BLE MR. JUSTICE MUKUL MUDGAL
HON'BLE MR. JUSTICE VIPIN SANGHI

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| 1. Whether the Reporters of local papers may be allowed to see the judgment? | No |
| 2. To be referred to Reporter or not? | No |
| 3. Whether the judgment should be reported in the Digest? | No |

VIPIN SANGHI, J.

1. The present appeal is directed against the judgment delivered by a learned single Judge of this Court in OMP No.395/2005 dated 27.8.2008, whereby he has dismissed the objections preferred by the appellant to the award of a three member arbitral tribunal constituted under the bye-laws, rules and regulations of the National Stock Exchange of India Limited in A.M.No.D012/05.

2. By the aforesaid award the Tribunal dismissed the claim of the appellant and allowed the counterclaim of the respondent for Rs.17,72,631.59, after deducting an amount of Rs. 15 lakhs lying with the respondent as margin money. The Tribunal rejected the respondent's claim for interest, and also imposed costs on the appellant to the tune of Rs.10,000/-, in favour of the respondent. Before the learned single Judge, the counsel for the respondent clarified that there was a calculation error. The figure of Rs.32,72,631/- held to be due to the respondent (before adjustment of margin money of Rs. 15,00,000/-), according to the respondent should have been noted as Rs.32,28,968/-. The learned single Judge accordingly modified the award to the aforesaid extent, while dismissing the objections raised by the appellant.

3. The submission of the appellant, who appears in person, is that he had only invested an amount of Rs. 15 lakhs with the respondent on an understanding that he would earn assured interest on the deposit. It is the appellant's case that the respondent, on its own, opened a trading account and a demat account in the name of the appellant, and undertook sale and purchase of shares in the said account without the instructions of the appellant. It is his case that interest was, in fact, credited to his account on one occasion by the respondent.

4. We have heard the appellant and gone through the award of the Tribunal as also the judgment of the Ld. Single Judge. We find that the arbitral Tribunal and the learned single Judge have dealt with the aforesaid case of the appellant in detail and have disbelieved the same. It was held by the Tribunal, and also taken note of by the learned single Judge, that the version put forth by the appellant/claimant was not supported by documents. Agreements between the parties established the relationship between the respondent and the appellant as that of a broker and a trader/purchaser/seller of shares. The version of the appellant that he had merely invested the money with the respondent on an assurance of a minimum guaranteed return on investment, was held to be contrary to the SEBI/NSE Rules which prohibit the making of any such assurance to a customer by a broker.

5. The appellant maintained an e-Speed account, and was possessed of the password for the said account which enabled him to not only view the status of his demat account with the respondent, but also to give instructions to the respondent to purchase/sell shares. The appellant had, in fact, issued two cheques amounting to Rs.62 lakhs (approximately) towards discharge of his liability which had been dishonoured on presentation. There was no basis for the appellant's claim that these cheques were given on account of "Accounting Generally", and on an assurance by the respondent that they would not be presented for encashment.

6. The case of the appellant that the amount of Rs.1.07 lakhs and Rs.10,000/- was credited to his account by the respondent on account of interest on the amount of Rs.15 lakhs deposited with the respondent was disputed by the respondent. The case of the respondent was that the said amount was advanced as a loan to enable the appellant to tide over his difficult financial position. Moreover, there was voluminous documentary evidence to the contrary to show that the amount of Rs. 15,00,000/- was deposited by the appellant for the purpose of undertaking purchase and sale of shares, and not by way of an interest bearing investment. The learned single Judge in the impugned judgment has culled out the relevant evidence to reject the aforesaid submission of the appellant by, inter alia, taking note of the following facts :-

- a) The amount of Rs.14.4 lakhs was paid in a staggered manner through different cheques over a period of about two months between 17.1.2004 and 16.3.2004. The purchase of shares in the account of the objector began even earlier to the deposits being made.
- b) The appellant entered into an agreement dated 2.1.2004 for trading in securities and was assigned a specific client ID for this purpose. He maintained a separate demat account for which he entered into a separate agreement with the respondent. As aforesaid he also entered into an agreement for availing of the e-Speed facility to enable

issuance of instructions to the respondent and to keep a constant watch on his portfolio of investments.

- c) The appellant, admittedly, had been carrying on sale and purchase of shares even before entering into the aforesaid agreements with the respondent. His wife and brother-in-law were also dealing in shares. He was not a novice in this field.
- d) Pertinently the appellant had issued two cheques of Rs.30 lakhs and 32,32,645.31 to square off his liability as on 31.3.2004. This, to our mind, clearly shows that the appellant was indulging in speculative purchase and selling of shares in the stock market through the respondent broker. This also clearly belies the appellant's claim that he had merely invested on the sum of Rs.15 lakhs on the assurance of a fixed return and that it was the respondents who were indulging in buying and selling of shares in the name of the appellant without his knowledge or involvement. This also shows that the appellant was aware of, and acknowledged his liability to the tune of Rs. 32,32,645.31 owed to the respondent. If there was any truth in the aforesaid case of the appellant, there was no occasion for him to have issued the aforesaid two cheques of about Rs.62 lakhs which, by no means, is a small amount.

- e) The appellant himself, admittedly, being involved in the purchase and sale of shares would be well aware of the risks in the share market and the fact that the share market invariably sees upswings and downswings. In these circumstances, the learned single Judge held that it was difficult to accept the appellant's contention that he was assured a hefty return of 24% per annum on his investment. In any case no document or any cogent material has been brought on record to substantiate the aforesaid claim.
- f) The respondent raised a demand of Rs.1,08,56,840.24 which was the debit balance in the account of the appellant vide letter dated 30.6.2004. The appellant did not make payment of the same. The shares held by the appellant were transferred to his pool account on his instructions and sold for a value of Rs.74,84,208.65 leaving an outstanding balance of Rs,32,72,651.59. Pertinently in his reply dated 8.7.2004 to the aforesaid demand, the respondent did not claim that he had made an investment on an assured or fixed return. Even in his further reply dated 22.7.2004, he made no such claim. Once again while replying to the legal notice dated 14.7.2004, on 30.7.2004, no such claim was made by the appellant. This claim was made for the first time on 30.8.2004 when he

stated that the respondent should pay a fixed return of 2% per month plus sharing of profit, if any, irrespective of losses.

7. In our view, the learned single Judge rightly held that the arrangement claimed by the appellant was too good to be true. The learned single Judge also observed that the appellant never questioned the deposit of the cheques of approximately Rs.62 lakhs, as aforesaid, which also belies the stand of the appellant.

8. In view of the aforesaid position, we find that there is absolutely no error either in the award or in the view taken by the learned single Judge with which we are primarily concerned. The learned single Judge, has examined the case of the appellant thread-bare and has found the same to be false. We see no reason to differ from the view taken by the learned single Judge. The award appears to be fair and reasonable.

9. The jurisdiction of the Court while examining the award under the 1996 Act is supervisory. Intervention is envisaged only on limited grounds like fraud or bias of the arbitrator, violation of principles of natural justice, or where the award is in violation of public policy (See *Mc Dermot Int. Inc. Vs. Burn Standard Co. Ltd.* (2006) 11 SCC 181). The impugned award cannot be said to be opposed to public policy, as it is not shown how the award is patently arbitrary or patently illegal i.e. in violation of statutory provisions, much less that any such

arbitrariness or illegality goes to the root of the matter. The aforesaid findings of fact, recorded by the Arbitral Tribunal are based on the materials / documents produced before it. The Arbitral Tribunal is the final judge of the facts and it is not for this court to sit in appeal over the findings of fact recorded by the Tribunal by resorting to re-appreciation of evidence. It cannot be said that the said findings have been arrived at without any material or basis whatsoever. It is not for this court to assess the sufficiency or insufficiency of the evidence before the Tribunal, and so long as the view of the Tribunal is a plausible view, this court would not interfere, even if a different view could be taken on the material evidence before the Tribunal. Accordingly, the appeal is dismissed and the judgment of the learned single Judge is affirmed. The appeal stands disposed of in the aforesaid terms.

(VIPIN SANGHI)
JUDGE

(MUKUL MUDGAL)
JUDGE

January 15, 2009
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