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IN THE HIGH COURT OF DELHI AT NEW DELHI

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FAO No. 141/2010 & CM No.6414-15/2010

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4th August, 2011

SH. SUKHBIR SINGH YADAV

..... Appellant

Through: Mr. Gopal Verma, Adv. and
Mr. Jagmohan Sharma, Adv.

VERSUS

M/S MOTILAL OSWAL SECURITIES LTD. & ANR.

..... Respondents

Through: Mr. Manoj V. George and Mr. K.
Gireesh Kumar, Adv.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

VALMIKI J. MEHTA, J (ORAL)

1. The challenge by means of this first appeal under Section 37 of the Arbitration and Conciliation Act, 1996 (in short 'the Act'), is to the impugned judgment dated 7.11.2009 which dismissed the objections of the appellant under Section 34 of the Act.

2. The facts of the case are that the respondent no.1/broker entered into a member client agreement with the appellant/client on 16.2.2006. It was the case of the respondent no.1/claimant in the arbitration

proceedings that after having conducted various trades/transactions, as per the instructions of the appellant, and the appellant having paid monies on two occasions, on account of payments due for the trades done, as on 18.12.2006 there was a debit balance of Rs.1,86,256.74 which was payable by the appellant to the respondent no.1. Since this balance was not paid in spite of repeated communications and reminders arbitration proceedings were invoked and a claim petition was filed for the said amount. The respondent contested the proceedings and took up a defence that the trades were conducted by the respondent no.1 on behalf of the appellant without any notice to or knowledge of the appellant. It was stated that the respondent no.1 carried out unauthorized trades and therefore the respondent no.1 was not entitled to the amount claimed. It was also stated that no contract notes were sent to the appellant. The Arbitrator by his Award dated 16.11.2007 allowed the claim petition and awarded the amount of Rs. 1,86,256.74 to the respondent along with interest.

3. The trial court has dismissed the objections by taking note of the fact that if the trades were without any notice to the appellant or without his knowledge, then there was no reason for the appellant to have made on account payments on two occasions to the respondent no.1 of Rs.30,000/- and Rs.50,000/-. It is also noted by the trial court that the Arbitrator has noticed the fact that the trades were carried out for a very long period from 21.2.2006 till 18.12.2006 and therefore it does not lie in

the mouth of the appellant to allege complete ignorance. The most important aspect which is noted by the Arbitrator for allowing of the claim petition was the stand of the appellant herein that some trades were done by the respondent no.1 without his knowledge but some trades were done with consent thus showing that he cannot take up a stand that all the trades were without the knowledge or consent of the appellant. At no point of time, any notice was sent by the appellant to the respondent no.1 as to which trades was done without approval. Even in the arbitration proceedings except making a bald assertion that certain trades were done with approval and certain trades were done without approval, no details were given of the trades done without approval.

4. The Arbitrator, in the Award, has given the following relevant conclusions to allow the claim petition.

“As already pointed above the respondent states that some of the transactions were with his approval. Those transactions which were with his approval even have not been pointed out. In the absence of the same the arguments which were eloquently put forward on behalf of the respondent loses the significance and thrust. If there were any such transactions details should have been forthcoming indicating as to how the approved transactions were conducted and disown others.

Not only that the claimant's plea that it has regularly been sending contract notes though the respondent denies that he received the same but still the plea of the respondent falls flat because of the reason that during these 10 months it is strange that the respondent never claimed to have the accounts or in this regard to even find out what exactly had transpired. If he was not receiving the account as a normal prudent person he would have insisted for supply of the transactions or even

the statement in this regard. Nothing of the kind is shown to have been done.” (underlining added)

5. The court below has dismissed the objections by making the following observations.

“18. In the light of the above judicial pronouncement, this court has carefully examined the impugned award dated 16.11.2007 and the perusal of the same shows that the Id. arbitrator has considered the entire objections of the petitioner and has discussed each and every aspect of the dispute between the parties. The Id. arbitrator has given findings on every objection of the petitioner and has taken into account all the relevant documents and the material placed on record, by the parties.

19. Perusal of the record further shows that the petitioner has deposited a sum of Rs.50,000/- with the respondent no.1 on 12.5.2006 and the statement of account clearly mentions that the said payment was received by the respondent no.1 as “on account payment”. The statement of account further shows that the payment of Rs.30,000/- was also made by the petitioner on 9.3.2006 as “on account payment”. The period with effect from 9.3.2006 till the payment dated 17.5.2006, a large number of transactions have taken place but the petitioner has failed to lodge any complaint with any authority, regarding the fact that the transactions were being done by the respondent no.1 without his knowledge or consent or without his directions. During the course of arguments, Id. counsel for the petitioner has admitted that the notice for appointment of the arbitrator was received by the petitioner and he has also admitted that there is an arbitration clause in the agreement between the parties.

20. The perusal of the record further shows that the respondent no.1 has placed on record the contract notes duly certified on behalf of the respondent No.1 and the same were duly considered by the arbitrator while passing the award dated 16.11.2007.”

(underlining added)

6. The scope of hearing of objections to an Award is limited. The court hearing objections does not sit as an appellate court and reappraise the findings of facts. Merely because two views are possible, the court hearing objections cannot interfere with the Award unless the Award is wholly perverse, illegal or violative of the principles of natural justice. If the scope of hearing of objections is limited, then surely, the scope of hearing of an appeal against the judgment dismissing objections has to be further limited. Unless there is gross perversity or gross illegality, this court would not interfere in an appeal against a judgment dismissing objections.

7. In view of the established fact on record that certain trades were done with the approval of the appellant and at no point of time, the appellant objected to the so called other trades allegedly done without his approval and not having furnished details even in the arbitration proceedings of the alleged trades done without his approval, I do not find any merit in the appeal. The objections were rightly dismissed by the trial court. The appeal and the applications are accordingly dismissed leaving the parties to bear their own costs. Trial court record be sent back.

AUGUST 04, 2011

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VALMIKI J. MEHTA, J.