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IN THE HIGH COURT OF DELHI AT NEW DELHI

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FAO No.198/2007

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9th September, 2011

MRS. ANITA MANTRI

.....Appellant
Through: Mr. Ranjan Kumar, Advocate
with Mr. Manju Kumar,
Advocate and Mr. Rohini Kumar,
Advocate.

VERSUS

M/S. KARVY STOCK BROKING LIMITED & ANR. Respondents
Through: Mr. A.K. Chhabra, Advocate for
the respondent No.1.

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? **Yes**
3. Whether the judgment should be reported in the Digest? **Yes**

VALMIKI J. MEHTA, J (ORAL)

1. The challenge by means of this First Appeal under Section 37 of the Arbitration & Conciliation Act, 1996 (hereinafter referred to as 'the Act'), is to the impugned order of the Court below dated 1.3.2007, and by which order the Court below has dismissed the objections of the

appellant herein under Section 34 of the Act against the additional Award dated 28.6.2005 and which additional Award was passed in addition to the first Award dated 31.3.2005.

2. The facts of the case are that disputes arose between the appellant/constituent and the respondent No.1/member/broker with respect to certain dealings between them as regards sale/purchase of shares. The respondent No.1 invoked arbitration proceedings which resulted in the Award dated 31.3.2005 in favour of respondent No.1 for an amount of Rs.55,323/- alongwith interest. The appellant is said to have made payment of this amount under the Award to the respondent No.1 and thereafter the respondent No.1 moved an application under Section 33 (1) of the Act for correction of the Award because a particular relief which the respondent No.1 claimed it was entitled to was not granted in the Award dated 31.3.2005. This application under Section 33(1) of the Act was in the form of a letter dated 29.4.2005 sent by the respondent No.1 to the Arbitrator and a copy of which is said to have been sent to the appellant herein.

3. Admittedly, the additional Award dated 28.6.2005 was passed without issuing any notice to the appellant calling her for any hearing or filing any response. By the additional Award dated 28.6.2005,

the respondent No.1 was granted the relief whereby the appellant was directed to transfer certain shares to the respondent No.1 who was thereafter to re-transfer the same to the husband of the appellant.

4. Before the Court below, the main grievance which was urged on behalf of the appellant, and which is also an issue which is argued before me, was that the additional Award which was passed on 28.6.2005 was violative of principles of natural justice because an additional relief was granted by the additional Award dated 28.6.2005 without issuing any notice to the appellant, without calling for any response or hearing any arguments on behalf of the appellant.

5. As per the arbitration record, it is an undisputed fact that the Arbitrator did not give any hearing to the appellant after receipt of the letter dated 29.4.2005 of the respondent No.1. The issue is that whether the Arbitrator can pass an additional Award giving a new relief which is not granted by the first Award without issuing any notice to the appellant. In order to appreciate the issue, it is necessary to refer to Sections 18 and 33 of the Act, and which provisions read as under:-

“18. Equal treatment of parties.- The parties shall be treated with equality and each party shall be given a full opportunity to present his case.

33. Correction and interpretation of award; additional award.-(1) Within thirty days from the receipt of the arbitral

award, unless another period of time has been agreed upon by the parties-

(a) a party, with notice to the other party, may request the arbitral tribunal to correct any computation errors, any clerical or typographical errors or any other errors of a similar nature occurring in the award;

(b) if so agreed by the parties, a party, with notice to the other party, may request the arbitral tribunal to give an interpretation of a specific point or part of the award.

(2) If the arbitral tribunal considers the request made under sub-section (1) to be justified, it shall make the correction or give the interpretation within thirty days from the receipt of the request and the interpretation shall form part of the arbitral award.

(3) The arbitral tribunal may correct any error of the type referred to in clause (a) of sub-section (1), on its own initiative, within thirty days from the date of the arbitral award.

(4) Unless otherwise agreed by the parties, a party with notice to the other party, may request, within thirty days from the receipt of the arbitral award, the arbitral tribunal to make an additional arbitral award as to claims presented in the arbitral proceedings but omitted from the arbitral award.

(5) If the arbitral tribunal considers the request made under sub-section (4) to be justified, it shall make the additional arbitral award within sixty days from the receipt of such request.

(6) The arbitral tribunal may extend, if necessary, the period of time within which it shall make a correction, give an interpretation or make an additional arbitral award under sub-section (2) or sub-section (5).

(7) Section 31 shall apply to a correction or interpretation of the arbitral award or to an additional arbitral award made under this section."

6. In view of Section 18, it cannot be disputed that quasi judicial proceedings such as before the Arbitrator have to be conducted in accordance with the principles of natural justice. It was necessary that

before any additional Award was passed by the Arbitrator giving an additional relief that notice ought to have been issued to the appellant calling for her response with respect to the contention of the respondent No.1 raised in the letter dated 29.4.2005 and also hear the parties. It is necessary to bear in mind the difference between the provision of Section 33(1) of the Act as compared to Section 33(4) of the Act. The provision of Section 33(1) for making of certain corrections, is similar to Section 152 of CPC and both of which provisions pertain to correction of clerical or typographical errors or other errors of similar nature. The provision of Section 33(4) is similar to the provisions of Section 114 and Order 47 CPC providing for review that the reliefs/claims which have been wrongly omitted to have been granted from an Award, should be granted. A reference to the additional Award dated 28.6.2005 leaves no manner of doubt that an additional relief/claim has been allowed, and therefore the action of the Arbitrator was really under Section 33(4). May be in the peculiar facts of a case where the clerical or typographical error or some other error is of such a nature that actually no notice was required, may be in the facts of that case it can be said that correction can be made under Section 33(1) without notice, however, the same cannot be said to an application which is really an application under Section 33(4) for

granting of an additional relief. Since no notice for hearing was given or no response was called for from the appellant by the Arbitrator before passing the additional Award dated 28.6.2005 pursuant to the letter dated 29.4.2005 of the respondent No.1, both the Arbitrator and the Court below have fallen into an error of law. In fact, the impugned order glosses over the fact that notice of hearing by the Arbitrator was never given to the appellant pursuant to the letter of the respondent no.1 dated 29.4.2005. There is also no discussion in the impugned order with respect to the difference in cases falling under Section 33(1) and Section 33(4) of the Act.

7. Accordingly, the impugned order and the additional Award dated 28.6.2005 are set aside and the matter is remanded back to the Arbitrator for a decision on the letter of the respondent No.1 dated 29.4.2005. The Arbitrator will issue notice to both the parties, call for their response and hear arguments before proceedings to pass an order on the letter of the respondent No.1 dated 29.4.2005.

At this stage, I may note the submission made on behalf of the counsel for the respondent No.1 that as on today possibly the subject shares may in fact no longer be with respondent No.1 and the additional Award may already have been implemented. If that be so, it is open to

the Arbitrator to pass necessary consequential orders or further orders or additional Award so as to cover the eventuality which may have arisen subject of course to the fact that the Arbitrator deciding in favour of the appellant by rejecting the letter dated 29.4.2005. However, I may hasten to add that I am making no observations on the merits of the matter with respect to allowing or disallowing the relief claimed for by the respondent No.1 in terms of its letter dated 29.4.2005 and the Arbitrator will decide the matter on merits uninfluenced by any observations which may have been made in the present order.

8. Accordingly, while allowing the appeal and remanding the matter back to the Arbitrator to take a fresh decision in accordance with law on the letter dated 29.4.2005, it is directed that the Arbitrator shall make an endeavour to ensure that the matter is disposed of within a period of three months of the date when both the parties first appear before him/her. I may clarify that if the original Arbitrator is not available counsel for the both the parties agree that it will be open to the respondent No.2 herein to appoint a fresh/substitute Arbitrator.

Appeal is disposed of with the aforesaid observations by remanding the matter back to the Arbitrator. The arbitration record be given dasti to the representative of the Arbitrator or the respondent No.2

by the Registry of this Court when asked for and till which time, the arbitration record would remain with this Court.

SEPTEMBER 09, 2011
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VALMIKI J. MEHTA, J.