

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

+

FAO No.188/2008

%

13th July, 2011

M/S. OM PARKASH MALIK (HUF)

..... Appellant

Through: Mr. S.K.Maniktala, Advocate with Mr.
Alok Tripathi, Advocate.

VERSUS

ADROIT FINANCIAL SERVICES PVT. LTD.

..... Respondent

Through: Mr. Ajay Kumar Gupta, Advocate.

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 Arbitration & Conciliation Act, 1996 (hereinafter referred to as 'the Act') is to the impugned order dated 12.2.2008 by which the objections of the appellant under Section 34 of the Act were dismissed by the trial Court. The trial Court has upheld the Award dated 22.4.2005 passed by the sole Arbitrator acting under the Bye Laws, Rules and Regulations of the National Stock Exchange of India Ltd. The facts of the case are that the respondent/claimant a broker filed a claim for recovery against the appellant/constituent for an amount of

Rs.16,44,451/- alongwith interest besides other charges for the V-SAT equipment installed with the appellant. There was a relationship of member and constituent i.e. broker and sub-broker alleged by the respondent. The claim of the respondent/member/broker was allowed by the Arbitrator. Some of the relevant findings and observations made by the Arbitrator are contained in paras 12, 13 and 18 to 20 and the same read as under:-

“12. The applicant has denied that the Agreement in question is a forged one or has been prepared by superimposing it over another agreement form. They have submitted that certain columns were left blank initially e.g. depository participant as well as the D-Mat account which was issued later in August/September 2003 and filled in but that Respondent was well aware of these. They have also not denied that the code AK-I was allotted to Shri A.K. Jain in May, 2003 and was filled in later on to quickly identify the person, as there could be other persons by the same name. Shri Ajay Gupta, AR of Applicant has submitted that while it is correct that one Shri M.M. Verma had introduced the Respondent, Shri O.P. Malik, to them, it is also a fact that in addition, Shri A.K. Jain had also introduced the Respondent whose name appears in the Introduction column in the Agreement signed by the parties. They have submitted that the portions left blank were filled in with the consent of the Respondent. According to the Applicant, Mr. Verma sometimes visited the office but never looked after the branch or introduced any client

to the branch, which was mostly done by the Respondent.

13. The Respondent, Shri Malik himself, has stated in his reply dated 15-12-2004 that he had met Mr. Atul Gupta, Director of the Claimant Company in November 2002 as he was desirous of becoming a sub-broker. He has also submitted a document from the Punjab National Bank to show that he had issued three cheques in favour of Applicant Company on 7-2-2003, 14-2-2003 and 10-3-2003 for a total amount of Rs.7.5 lacs. The Applicant company states that Respondent actually paid Rs.8.5 lacs instead of Rs.7.5 lacs, as mentioned by Respondent which has been credited in his margin account. There is a reference by both the parties to an amount, Rs.2,17,750/- which was paid by the Respondent to the Applicant. While the respondent states that this amount was paid by cheque as security deposit for installation of V-SAT at his premises, the Applicant submits that he had agreed that the total amount shall be credited to his running account which was done, as per Respondents request (Annexure A-1). The Applicant's AR has submitted that after adjusting these amounts as well as other amounts through sale of shares as credit amount, a balance of Rs.16,44,451.04 P is still outstanding against the Respondent which he has to pay. The Respondent has not produced other relevant documents or controverted the above claimed amount given in the Statement of Account.

18. In the reply filed by the Respondent and in the subsequent applications submitted by him during the

hearing, Shri Malik has taken the plea that the Agreement dated 12-11-2002 annexed by the Applicant is a forged and fraudulent document which was never entered into between the parties. According to him the entire document has been fabricated by the Applicant company, and hence, the Arbitrator has no jurisdiction to entertain such a dispute. Respondent has relied on the judgment of the Hon'ble Supreme Court in **S P Chengalvaraya (Dead) Vs. Jaganath (Dead)** 1994 Rajdhani Law Reporter (SC 102). In this case the Supreme Court has held that a litigant who approaches the Court is bound to produce all relevant documents to the litigation executed by him. It was also held that a person whose case is based on falsehood can be summarily thrown out at any stage of the litigation and has no right to approach the Court. The Respondent has repeatedly contended that the contract documents and the arbitration agreement relied upon by the Applicant are invalid and tainted by fraud. It is settled law that fraud vitiates any transaction. However, it is also settled law that the mere allegations of fraud without clear and sufficient proof of the offence will not suffice.

19. Admittedly in the present case, the Respondent, Shri O.P. Malik does not deny that he has been having financial transactions with the Applicant company for a number of years. He has *inter alia*, submitted in his reply that in November, 2002, he had met Mr. Atul Gupta, a Director of the Claimant company as he was desirous of becoming a sub-broker. He has also allowed the installation of the V-SAT in the branch

office at his premise, paid of an amount of Rs.2,17,750/- by a cheque (Para 8 of the reply), which he states was his security deposit and the Applicant claims was credited to his running account by cheque received dated 25-11-04. The Respondent has also submitted that he had made payments by cheque for several lakhs of Rupees in favour of the Applicant Company. From Statement of Account of the Respondent, annexed to the Claim Statement it is seen that, inter alia, credit has been given to him for an amount of Rs.8,50,000/00 (P 63) and Rs.2,17,750/00 (Pages 68 and 76). The Respondent has also submitted a form signed by him to the Applicant requesting/authorizing them to maintain a Running Account (P 29 of Rejoinder) and this amount has been shown as credit in his account. Respondent's contention that this amount was paid as security deposit by him for installation of V-SAT in his premises has not at all been established. The latter amount is stated to have been received by cheque dated 25-11-2002 by the Applicant and the Respondent has been given credit for this amount in the particulars. Therefore, on a careful perusal of the relevant documents and averments made by the parties, there is no doubt that the Applicant and Respondent have signed a Member and Constituent Agreement dated 12-11-2002. The Respondent has not denied that his signature appears on this document and has also averred that he has issued several cheques and had financial transactions with the Applicant Company. He has also stated that the branch office started functioning on 6-2-2003. The Hon'ble Supreme Court in

Bharati Knitting Co. Vs. DHL Worldwide Express

(JT 1996 (6) S.C. 254) has held that “when a party to the contract disputes the binding nature of the signed document, it is for him to prove the terms in the contract or circumstances of the present case, the Respondent has failed to establish that he is not bound by the contract in question or any other terms and circumstances in which he had signed the documents.

20. In this connection, it is relevant to note that the Respondent in his reply dated 15-12-2005 has annexed a letter from the Applicant dated 27-5-2004, wherein they gave asked him to clear the debit balance of Rs.16,44,451.04 P immediately within three days, failing which they will take suitable legal action. This is the same amount claimed by the Applicant in the present case. The Respondent had pointed out that in this letter the Applicant has referred to the MCA as sated “25-11-2002” and not “12-11-2002” as given in the claim statement. The AR of the Applicant again referred to this as an “inadvertent mistake” on their part as they had erroneously noted the date of the cheque received from the Respondent for the aforesaid amount of Rs.2,17,750/- i.e. on 25-11-2002, instead of the correct date of MCA which is 12-11-2002. However, it is also relevant to note that the Respondent had neither disputed the actual amount claimed or given any earlier reply to this letter, as submitted by him during the hearing.”(emphasis added)

2. The trial Court has also noted that transactions have taken place between the parties from 2003 to 2004 and during which period the appellant never took up a stand that there was no agreement at all entered into between the parties. The relevant observations of the trial Court read as under:-

“Before this Court too, the objector has not succeeded in establishing forgery or fraud. Fraud in terms of contract occurs where false documents have been created and the party to the fraud has gained and the victim of fraud has suffered damage. In the present case the objector had acted on the MCA having conducted business over a period of time gaining from the transactions till the situation arose where the objector fell short of liability to the member i.e. respondent No.1 and the present dispute arose. As regards the allegation of forgery none of the interpolations constitute forgery as no element of dishonesty existed. In the present case, the interpolations in the agreement are factually correct relating to client code and D-MAT account number. The objector does not dispute the authenticity of these facts and he only claims that the numbers have been allotted in the year 2003. Between 2003 and the time in May 2004 when the present dispute arose the present objector never raised objections with the members/respondent No.1 regarding these facts being entered into the agreement and continued to carry out transactions on the basis of the MCA. It is also not the case of the objector that the D-MAT account mentioned was never used in these transactions. Again there is

nothing to show how the respondent no.1/member gained by these interpolations wrongly and how wrongful loss has been cause to the objector. Thus, no case of fraud and forgery have been made out by the present objector.

Rather it appears that once the present objector was faced with the prospect of the liability it has raised an objection of fraud and forgery without foundation. Having acted on the agreement and having benefited from the same, the objector cannot now wriggle out of his liability by calling the same agreement tainted. The conclusion of the Ld. Arbitrator in this regard cannot be therefore faulted as being perverse to review the Arbitrator's award under Section 34 of the Arbitration Act." (emphasis added)

3. Learned counsel for the appellant very vehemently argued that agreement in question is forged and fabricated and therefore no liability could have been fastened upon the appellant on this basis. On being pointed out as to whether in the reply filed to the claim petition in the arbitration proceedings, the appellant had specifically denied his signatures, nothing was pointed out to me on behalf of the appellant showing that the signatures of the appellant were alleged to be forged and fabricated.

In view of the above, there is no perversity whatsoever in the findings of the Arbitrator and of the Court below that a person who

has conducted many transactions over a long period should not be allowed to dispute the factum of having entered into the agreement.

4. The second argument urged by the learned counsel for the appellant is that the statement of account filed by the respondent was believed without calling upon the respondent to lead evidence. Strict provisions of the Evidence Act, 1872 do not apply to the arbitration proceedings in view of Section 19 of the Arbitration and Conciliation Act, 1996. The Arbitrator has considered various correspondences and other documents and the circumstances of the case to fasten liability upon the appellant. I completely agree with the observations of the trial Court that the objector is now endeavouring to somehow or the other wriggle out of his liability with respect to various transactions conducted between him and the respondent.

5. So far as the issue with respect to S-VAT equipment charges are concerned, the trial Court has rightly held that the Arbitrator fastened liability upon the appellant because equipment was not returned by the appellant to the respondent after termination of the agreement and therefore the respondent had to pay charges to the National Stock Exchange for the said equipment.

6. The scope of hearing objections to an Award under Section 34 of the Act is limited. Unless there is gross perversity or illegality in the Award, a Court hearing objections cannot interfere under Section

34. The issue as to apprising of evidence and adopting one view out of the two views cannot be said to be filed in the category of perversity or illegality for a Court to interfere under Section 34 of the Act. If the scope of objections to an Award is limited, then, surely the scope of hearing an appeal against the objections is further limited. This Court cannot be converted into an Arbitrator or a Court hearing objections under Section 34.

7. In view of the above, I do not find any merit in the appeal which is accordingly dismissed, leaving the parties to bear their own costs.

JULY 13, 2011

VALMIKI J. MEHTA, J.

Ne