

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

+ Date of Decision: 10.10.2012

% FAO (OS) No.234/2012

VINAY KUMAR AGGARWAL Appellant
Through: Mr. P.S. Rana, Advocate

versus

PACE STOCK BROKING SERVICES PVT. LTD..... Respondent
Through: Mr. Rajesh Rai, Advocate

CORAM:
HON'BLE MR. JUSTICE SANJAY KISHAN KAUL
HON'BLE MR. JUSTICE VIPIN SANGHI

VIPIN SANGHI, J.

1. The present appeal is directed against order dated 31.01.2012 passed in O.M.P. 67/2012, whereby the learned Single Judge has dismissed the objections filed by the appellant herein to the arbitral award dated 18.05.2011 and the award dated 17.11.2011 passed by the appellate tribunal, under Section 34 of the Arbitration and Conciliation Act, 1996 (for short, “the Act”).

2. The appellant herein, the sole proprietor of Shri Sai Associates, had opened a trading account with the respondent, a stock broker registered with the Securities Exchange Board of India (SEBI) and a trading member of the National Stock Exchange (hereinafter referred to as the “Exchange”) by executing a Member-Client agreement. At about the same time, another agreement was executed between the parties, wherein the appellant was appointed as the Business partner of the respondent to provide administrative and other ancillary services and manage the branch office of the respondent at Bareilly.

3. The appellant-claimant raised a claim against the respondent, firstly, on account of alleged unauthorised debits in his account by the respondent and, secondly, on account of loss suffered by him due to the alleged unauthorised sale of 2000 shares of Tata Steel by the respondent.

4. The Arbitral Tribunal appointed by the Exchange did not delve into the controversy with regard to the alleged unauthorised debits- on the premise that the same arose out of the Business Partner agreement entered into between the parties, over which the tribunal had no jurisdiction. Reference in this regard was made to Chapter IX of the Regulations of the Exchange. The tribunal also took note an undisputed transaction between the

parties, wherein the appellant had accepted an amount of Rs. 1,60,000/- without protest towards full and final settlement. As regards the allegation of unauthorised sale of shares by the respondent, the tribunal upon appreciation of evidence, being a recorded conversation between the parties along with a transcript led before it, came to the conclusion that the said shares had been sold with the consent of the appellant. In view of the same, the claim of the appellant was dismissed.

5. Against the said dismissal, the appellant filed an appeal before the Appellate Tribunal as constituted under the Regulations of the Exchange. In addition to the aforementioned grievances, the appellant urged that he was pressurised/coerced to sell the shares. The Appellate tribunal rejected the said plea, observing that the said contention was never raised in the original arbitral proceedings and that the same could not be raised for the first time in appeal. Even otherwise, the Appellate tribunal observed that the appellant had led no evidence in support of the said contention and as such the same was meritless. Finding no reason to interfere with the findings and conclusions arrived at by the arbitral tribunal, the appeal came to be dismissed by the Appellate tribunal.

6. The appellant, thereafter, filed objections to the award of the arbitral tribunal and that of the Appellate Tribunal under Section 34 of the Act. The learned Single Judge vide the impugned order has held that the arbitral tribunal and the appellate tribunal had considered the rival submissions of the parties and upon appreciation of evidence reached a conclusive finding, with no error to warrant any interference. Learned Single Judge, while placing reliance upon various decisions of the Supreme Court, observed that the jurisdiction of the Court to interfere with the award made by an arbitrator is very limited and that the court while entertaining an objection petition cannot sit as a court of appeal and re-appreciate evidence. The said objections, ultimately, came to be dismissed.

7. By way of the present appeal, the appellant herein seeks to assail the impugned order and the arbitral awards.

8. Learned Counsel for the appellant submits that the tribunal had rightly held that it did not have jurisdiction other than over the member-client agreement between the parties, and as such the business partner agreement had no bearing and was outside the scope of adjudication. However, at the same time it referred to the business partner agreement, brought on record by the respondent and not the appellant, to hold that the

instructions given by Shri Sai Associates were instructions given by the Appellant in context of his claim of the unauthorised debits by the respondent. It is submitted that any dealing done by Shri Sai Associates cannot be considered as dealing done by the appellant since the Unique Client Code and identification, by virtue of the member-client agreement, was given to the appellant and not to Shri Sai Associates.

9. It is further submitted that there was no occasion for the appellant to authorise the selling of shares as there was credit in his account and the same required no set-off. The recorded conversation between the parties relied upon by the respondent as such was forged and fabricated and did not contain any direction from the appellant.

10. Having perused the record and heard learned counsel for the parties, we find no reason to interfere with the impugned order and the arbitral awards. The findings of fact which form the basis of the impugned awards are duly supported by evidence brought on record. In the award dated 18.05.2011 the Tribunal observed:

“The dispute however still was raised with respect to shares of Tata Steel. The respondent’s contention, as already referred to above, is that the said 2000 shares of Tata Steel were sold with the consent of the claimant.

The respondent has produced a copy of the recorded conversation with its transcription. During the course of submissions the claimant's representative did not have the courage to deny the same. Perusal of the same clearly leads one to hold that the sale of the same was with the consent of the claimant.

Not only that pertaining to the said trading account it appears that matter had already been settled between the parties.

Annexure R-12 is the copy of the receipt given by the claimant, it reads:

“Dear Sir,

Please refer to my trading account code (SC01) in the name of Vinay Kumar Aggarwal. I would request you to please reverse the debit entry amounting to Rs.1,60,357 dated 28- 03-2009 from my above mentioned account. After the reversal of this entry, my financial and securities balances with you and with Pace Stock Broking Services Pvt. And Pace Commodity Brokers Pvt. Ltd. will be NIL.”

In pursuance to the same, according to the respondent a cheque of Rs.1,60,000/- in favour of the applicant dated 11th November, 2009 was issued which is stated to have been encashed. This has not been denied in the rejoinder that has been filed. Once full and final settlement has been arrived or once it has been stated that reversal of the said entry that has been done and the cheque has been encashed without any protest, it is too late in the day now to take up an issue that the shares of Tata Steel were sold without his consent. Keeping in view the tape recording and the said receipt it must be held that claim is without merit.

For these reasons the claim must fail and is accordingly, dismissed.”

The learned Single Judge after noticing the above, has also noted the following observations from the appellate award:

“10. Lastly, it has been submitted that the appellant was pressurized or coerced to sell Tata Steel shares. We are of the opinion that the submission does not merit any serious thought. The appellant did not raise the contention in the original arbitral proceedings. It is well settled that the party cannot be allowed to argue any new fact in the appeal. It also bears notice that the issue has been pressed after expiry of more than two years of the sale of shares. Even now, apart from the bald statement there is no evidence before us to support the allegation.

11. The appellant in the memo of appeal did not dispute the finding of the Arbitral Tribunal to the effect that he was paid an amount of Rs.1,60,000/- as full and final settlement of his claim. However, in the rejoinder filed during the course of hearing the appellant denied that any statement was arrived at and asserted that the dispute survived. In our view, the evidence available on record discloses us to take a view different from that arrived at in the impugned award after due discussion.”

11. The contention of the appellant that the debits of the account by the respondent had not been sanctioned by the appellant in his individual capacity and as such were not authorised has no merit whatsoever. The said objection had been considered and rightly rejected by the Appellate tribunal, which held that the proprietorship firm could not be considered as an entity

separate from its owner. The documents on record showed that the appellant in his transactions with the respondent had represented himself as the sole proprietor of Shri Sai Associates. The Tribunal has relied on the full and final settlement led in evidence before it under which the appellant had received Rs. 1,60,000/-.

12. As regards the submission that the respondent had unauthorisedly sold the shares of the appellant, it is pertinent to mention that the arbitral tribunal upon appreciation of evidence led before it, as aforementioned, reached a conclusive finding and held the same against the appellant herein. In view of the limited scope of interference by a court while entertaining objections to an arbitral award, the learned Single Judge rightly held that it could not be said that the awards suffered from a gross error apparent or that there was absence of evidence to substantiate the findings.

13. In view of the aforesaid, the impugned order and the arbitral award are upheld and the present appeal is dismissed.

VIPIN SANGHI, J.

SANJAY KISHAN KAUL, J.

OCTOBER 10, 2012

sr