

Dinesh Brijmohan Pokhriyal ... Petitioner
Vs.
M/s. Unique Securities ... Respondent

CORAM : R. G. KETKAR, J.
Reserved on : 25TH JUNE, 2015
Pronounced on: 03RD JULY, 2015

Not on Board. At the request of Mr. Apte, taken up in the production Board.

2. Heard Mr. Apte, learned Senior Counsel for petitioner and Mr. Jain, learned Counsel for respondent at length.

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4. In support of this Petition, Mr. Apte strenuously contended that the award made by the Arbitrator on 31.10.2008 in favour of the respondent, hereinafter referred to as decree holder, is nullity. He submitted that the decree holder has obtained award by playing fraud. He submitted that basically, Milan V. Shah acted as a sub-broker and entered into tripartite agreement on 29.03.2006. Mr. Milan V. Shah is not registered as a sub-broker with Securities and Exchange Board of India (SEBI). He submitted that in view of Section 12 of the Securities and Exchange Board of India Act, 1992 (for short 'Act') read with Rule 3 of the Securities and Exchange Board of India (Stock brokers and Sub-brokers) Rules, 1992 (for short 'Rules'), the award made in favour of the judgment debtor is nullity. He invited my attention to the tripartite agreement between stock broker (respondent decree holder), sub-broker (Milan V. Shah) and client (judgment debtor herein).

5. Mr. Apte submitted that while entering into that tripartite agreement, decree holder represented that Mr. Milan V. Shah is registered as a sub-broker with SEBI. He submitted that Mr. Shah has not obtained certificate of registration from SEBI in accordance with the regulations made under the Act. He also cannot buy, sell, deal in securities, unless he holds a certificate granted by the Board under the regulations.

6. Mr. Apte submitted that the judgment debtor filed application at exhibit 17-A for framing issues on the point whether

- a. the award can be executed as a decree?
- b. requisite stamp under Section 35 of the Indian Stamp Act, 1888 is affixed?
- c. necessary court fees is affixed for execution of the decree?
- d. award has been registered within 4 months from the date of

making award under Section 17 of the Registration Act, 1908?

- e. decree holders has right to seize the movable and immovable properties not specifically mentioned in the award?

7. He submitted that the learned trial Judge rejected the application on the ground that the objections raised by the judgment debtor are nothing but to delay the execution proceedings. As far as the order dated 16.04.2015 rejecting the review application is concerned, he submitted that only on the basis of the order passed by this Court in C.R.A. No.322 of 2014 on 29.01.2015, the learned trial Judge rejected the review application. He further submitted that the judgment debtor had made application dated 09.01.2013 under the Right to Information Act, 2005 (for short 'R.T.I. Act') seeking information as regards registration of Mr. Milan V. Shah. In response thereto, by letter dated 18.01.2013, SEBI informed the judgment debtor that Mr. Shah is registered as a sub-broker with effect from 15.02.2007. He submitted that the tripartite agreement was entered into between the parties on 29.03.2006. At that time, Mr. Shah was not registered as a sub-broker. He, therefore, submitted that the award made is nullity. For all these reasons, he submitted that Petition requires consideration and the Darkhast execution proceedings pending before the District Court - 1, Kalyan deserves to be stayed.

8. On the other hand, Mr. Jain submitted that the present Petition is abuse of process of law as also abuse of process of Court. He submitted that Arbitration Award was made on 31.10.2008. The Correction Award under Section 33 of the Arbitration and Conciliation Act, 1996 was made on 26.12.2008. The judgment debtor instituted Arbitration

Petition No.404 of 2009 in this Court. The learned Single Judge dismissed the Petition on 01.04.2011. Mr. Jain invited my attention to the affidavit dated 02.09.2009 of Mr. Paresh V. Popat, the partner of the decree holder filed in the Arbitration Petition and in particular paragraphs 6 (a), (b) and (c) thereof. The judgment debtor instituted Arbitration Appeal No.540 of 2012 challenging order dated 01.04.2011 passed by the learned Single Judge. On 17.08.2012, Arbitration Appeal was dismissed. In the meantime, the judgment creditor instituted Regular Darkhast No.62 of 2011. Judgment debtor filed application exhibit-22 in that Darkhast challenging maintainability. By order dated 28.03.2013, application at exhibit-22 was rejected. On 10.06.2013, judgment debtor filed application exhibit-30 for review. Review Application was rejected on 13.09.2013. Judgment debtor challenged orders dated 28.03.2013 below exhibit-22 and 13.09.2013 below exhibit-3 in Civil Revision Application No.322 of 2014. Revision Application was dismissed by this Court on 29.01.2015.

9. Mr. Jain submitted that in the meantime, on 19.07.2012, the judgment debtor filed application exhibit 17-A under Section 47 read with Section 151 C.P.C. challenging the maintainability of the execution application. By the impugned order dated 31.12.2014, the learned trial Judge rejected the application. Mr. Jain further submitted that perusal of application at exhibit 17-A as also application at exhibit -40 shows that the contentions, which are sought to be raised here, were not raised in those applications. He submitted that plea of fraud has to be pleaded and proved. In the instant case, fraud is not pleaded. He further submitted that the judgment debtor is relying upon the response dated 23.04.2013 of SEBI to the application dated 03.04.2013 made by the judgment debtor under R.T.I. Act. This material was very much available before the trial Court. However, these documents were not

even produced and no argument was advanced based thereon. In short, he submitted that the plea raised in the present Petition are only with a view to prolonging Darkhast proceedings in respect of the Award made on 31.10.2008, which is confirmed by the learned Single Judge as also by the Division Bench of this Court. For all these reasons, he submitted that no case is made out for invocation of powers under Section 115 C.P.C.

10. I have considered the rival submissions made by the learned Counsel appearing for the parties. I have also perused the material on record. As noted earlier, petitioner has challenged the order dated 31.12.2014 dismissing application below exhibit 17-A as also order dated 16.04.2015 below exhibit 40 dismissing review application. Perusal of the application at exhibit 17-A shows that the judgment debtor filed application for framing issues on the point whether

- a. the award can be executed as a decree?
- b. requisite stamp under Section 35 of the Indian Stamp Act, 1888 is affixed?
- c. necessary court fees is affixed for execution of the decree?
- d. award has been registered within 4 months from the date of making award under Section 17 of the Registration Act, 1908?
- e. decree holders has right to seize the movable and immovable properties not specifically mentioned in the award?

11. Petitioner did not plead fraud. Petitioner also did not contend that Mr. Milan V. Shah acted as a sub-broker entered into tripartite agreement on 29.03.2006. Mr. Shah is not registered as a sub-broker with SEBI. In view of Section 12 of the Act read with Rule 3 of the Rules, the award made in favour of the judgment debtor is nullity. Petitioner, therefore, cannot be allowed to raise these contentions for the first time in Writ Petition.

12. That apart, in paragraphs 6 (a) to (c) of affidavit dated 02.09.2009 of Mr. Paresh V. Popat, filed in Arbitration Petition No.404 of 2009, it was stated as under:

“6. Without prejudice to what is stated hereinabove, I say and submit as under:

a. The respondent is a member of the National Stock Exchange of India Ltd.

b. One Mr. Milan V. Shah is a Sub-broker registered with the SEBI and affiliated to the respondent as its sub-broker. The said Mr. Milan V. Shah is also registered with the National Stock Exchange of India Limited as the “Authorised Person” of the respondent. The said Mr. Milan V. Shah, introduced the petitioner to respondent, who expressed his desire to effect transactions in shares and securities through the respondent at National Stock Exchange of India Ltd. Accordingly, a Tripartite Agreement was entered into between the respondent, the said Mr. Milan V. Shah and the petitioner, whereby the petitioner appointed respondent as his share and stock broker to effect transactions in shares and securities in accordance with the Rules, Bye-laws and Regulations of National Stock Exchange of India Ltd. on Cash Market segment. A Member-Client Agreement was entered into between the respondent and the petitioner whereby the petitioner appointed the respondent as his share and stock broker to effect transactions in shares and securities in pursuance to the Rules, Bye-laws and Regulations of National Stock Exchange of India Ltd. on Futures & Options segment.

c. The respondent allotted client code to the petitioner, viz.44011. All the transactions effected by the petitioner through the respondent were effected under the said client code.”

13. Petitioner did not controvert the above contentions. In view thereof, it is not open to the petitioner to raise these contentions.

14. As noted earlier, the award was made on 31.10.2008. The petitioner instituted Arbitration Petition No.404 of 2009, which was dismissed on 01.04.2011. Appeal against that decision, being Arbitration Appeal No.540 of 2012 is also dismissed on 17.08.2012. Perusal of these proceedings shows that petitioner did not advance any argument as regards Mr. Milan V. Shah being not a registered sub-broker. This

contention was available to the petitioner in the earlier round of litigation. That apart, even in the present proceedings, petitioner did not plead fraud. It is also material to note that the petitioner had made application under R.T.I. Act for the first time on 09.01.2013. However, no explanation is given as to why the petitioner did not file application in earlier point of time. In view thereof, I do not find merit in the submissions of Mr. Apte. On the other hand, I find merit in the submission of Mr. Jain that application at exhibit 17-A is made solely with a view to prolonging the execution proceedings.

15. The learned trial Judge, after considering the objections raised in application at exhibit 17-A exhaustively dealt with those objections and rejected all the objections. In paragraph 14, the learned District Judge also observed that the objections raised by the judgment debtor are nothing but to delay the execution proceedings. I, therefore, do not find that the learned District Judge has committed any error in dismissing the application exhibit 17-A on 31.12.2014. As far as the order on Review Application is concerned, the learned District Judge observed in paragraph 6 that all the proposed issues were decided by various applications placed by judgment debtor. There is no material to show that order below exhibit 17-A suffers from any error apparent on the face of the record. I do not find that the learned District Judge has committed any error in dismissing that application. Hence, Petition fails and the same is dismissed.

(R. G. KETKAR, J.)

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