IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION PETITION NO. 1121 OF 2014

Mrs. Kavita Shah ….. Petitioner
VERSUS
Stochastic Securities Pvt. Ltd. ….. Respondents

Mr.Sudhir Talsania, Senior Advocate, a/w. Mrs.Rinku S.Valanju, Mr.Sagar Sheth for the Petitioner.
Mr.Simil Purohit, a/w. Mr.Ajay Khandhar, i/b. Mr.Ajay N.Khandhar for the Respondents.

CORAM : R.D. DHANUKA, J.
DATED : 21st SEPTEMBER, 2015

P.C.

By this petition filed under section 34 of the Arbitration and Conciliation Act, 1996 the petitioner seeks to impugn the arbitral award dated 26th December, 2013 rendered by the appellate bench of the National Stock Exchange Limited rejecting the appeal filed by the petitioner. The petitioner was a constituent of the respondents who is a registered broker.

2. Mr.Talsania, learned senior counsel appearing for the petitioner invited my attention to some of the observations made by the lower arbitral tribunal and would submit that the entire award of the lower arbitral tribunal is based on the preponderence of probabilities and not based on any proof. He submits that the petitioner has never issued any instructions to square off the transactions. He submits that though the petitioner had issued a cheques of Rs. 6.5 lacs in favour of the respondent broker, the said amount was given for the purpose of holding F & O

transaction. He submits that since the respondent had squared of the transaction, the petitioner had issued instructions to her bank to stop payment.

3. Mr.Talsania, learned senior counsel placed reliance on the judgment of this court in ***Arbitration Petition No.438 of 2013*** delivered on 3rd December, 2013 in case of ***Networth Stock Broking Ltd. vs. Vishnu Govind Dubhashi*** and submits that since the respondent had failed to produce any proof of the instructions given by the petitioner for squaring of the transaction, the learned arbitrator could not have dismissed the claim made by the petitioner.

4. Mr.Purohit, learned counsel appearing for the respondent on the other hand submits that the arbitral award rendered by the lower arbitral tribunal has merged with the award rendered by the appellate bench which is rendered on 26th December, 2013. He submits that there was no dispute between the parties about the F&O transaction upto 21st January, 2008 when the account of the petitioner showed a debit balance of Rs.8,34,656.47 towards MTM loss. He submits that though the respondent had called upon the petitioner to deposit the entire amount, the petitioner only issued a cheque of Rs.6.5 lacs and that also was dishonoured. He submits that since the petitioner did not deposit the entire shortfall on 22nd January, 2008, the respondent was entitled to square off the transaction. He submits that the Stock Exchange had already raised a demand in respect of the said amount upon the respondent broker.

5. It is submitted by the learned counsel that both the tribunal have rendered a finding of fact against the petitioner which are not perverse and thus this court cannot interfere with such finding of facts under section 34 of the Arbitration and Conciliation Act, 1996.

6. A perusal of the record indicates that there was no dispute between the parties about the F&O transaction upto 21st January, 2008. The ledger account of the petitioner as on 21st January, 2008 showed debit balance of Rs.8,34,656.47 towards MTM loss. It was the case of the petitioner herself that the respondent had demanded not the entire amount of Rs. Rs.8,34,656.47 but had demanded only Rs.6.5 lacs. It is not in dispute that the said cheque of Rs.6.5 lacs issued by the petitioner was ultimately was not honoured in view of the instructions of the petitioner. No payment was thus made by the petitioner in respect of the debit balance of Rs.8,34,656.47 towards MTM loss. In my view the respondent was thus justified in squaring of the transaction on 22nd January, 2008.

7. A perusal of the award rendered by the appellate bench clearly indicates that the petitioner had never raised any objection that the transaction were carried out by the respondent without the instructions from the petitioner. The appellate bench has considered the correspondence exchanged between the parties and has rendered a finding of fact that even in the letter dated 14th February, 2008 addressed by the petitioner to the respondent, no such issue was raised by the petitioner about the alleged unauthorized acts of the respondent. Only for the first time on 23rd February, 2008 the petitioner came out with the contention of the unauthorized squaring off of the open positions and liquidation of collaterals of the respondent. The appellate bench has held that the series of events and the conduct of the petitioner re-inforces their views that the transactions of squaring off and liquidation were done under the instructions of the petitioner and were not unauthorized as contended by the petitioner. The appellate bench has accordingly confirmed the order passed by the lower appellate tribunal.

8. It is contended by the learned senior counsel that since the respondent had

already squared off the transaction, the petitioner had instructed her banker not to release the payment. It is also contended that the petitioner had credit balance in her bank account to clear those cheques. In my view, the petitioner did not raise this contention before any of the arbitral tribunal and thus cannot be considered at this stage.

9. In my view the tribunals had considered the documents and the evidence produced by the parties and have rendered the finding of fact which in my view are not perverse and thus no interference with the impugned award is thus warranted. Petition is devoid of merits and is accordingly dismissed. No order as to costs.

10. Learned senior counsel at this stage submits that the petitioner has inadvertently paid excess court fees. Office is directed to examine this issue and if any excess payment is made, the same shall be refunded to the petitioner.

[R.D. DHANUKA, J.]

CERTIFICATE

Certified to be true and correct copy of the original signed order.