

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION PETITION NO. 1244 OF 2014

Mr.Jaya Prakash Jathana

..... Petitioner

VERSUS

ICICI Securities Ltd. & Anr.

..... Respondents

Mr.Akshay Shinde for the Petitioner.

Mr.Prabhu Velar, i/b. Joby Mathew & Associates for Respondent No.1.

CORAM : R.D. DHANUKA, J.

DATED : 9th FEBRUARY, 2015

P.C.

By this petition filed under section 34 of the Arbitration and Conciliation Act, 1996, the petitioner has impugned the arbitral award dated 26th May, 2014 passed in appeal arising out of the interim award dated 24th February, 2014 passed by the lower arbitral tribunal.

2. The petitioner was the original claimant before the arbitral tribunal. The respondents herein were the original respondents. The petitioner had filed a claim against the respondents. By an arbitral award dated 25th February, 2014, the claim of the petitioner came to be rejected. By an award dated 26th May, 2014, the appellate bench of the arbitral tribunal dismissed the appeal filed by the petitioner.

3. Learned counsel appearing for the petitioner states that though there were specific allegations made by the petitioner against Mr.Amit Kumar who was employee of the respondent no.1 who had induced the petitioner to carry out the transactions and had assured 4% per month profit, the arbitral tribunal did not take

any steps to enforce the presence of Mr.Amit Kumar in the arbitral proceedings.

4. A perusal of the arbitral award rendered by the sole arbitrator on 25th February, 2014 indicates that the only grievance of the petitioner was that the claims were carried out on the advice of Mr.Amit Kumar who was an employee of respondent no.1. Before the learned arbitrator, the petitioner confirmed having transferred the shares from the preliminary account and had never challenged any such transaction in this account. The petitioner also confirmed having knowledge of the transactions and the losses suffered in his account. The respondent no.1 had produced the ledger account. A perusal of the award made by the appellate bench on 26th May, 2014 makes it clear that the appellate bench has disbelieved the story of the petitioner that any assurance was given by Mr.Amit Kumar, the employee of the respondent no.1.

5. The appellate tribunal in my view has rightly accepted the submission of the respondent no.1 that no such assurance would be given to the petitioner by an employee under the agreement entered into between the parties. The petitioner never denied the receipt of contract notes and/or any of the transaction. It is held that even if the employee of the respondent no.1 would have given any advice to the petitioner, the final decision was obviously of the petitioner. The petitioner before the appellate tribunal admitted that he had consented for all the transactions but urged that he was persuaded to do so by the said employee Mr.Amit Kumar. In my view the learned arbitrator as well as the appellate tribunal have rightly rendered a finding that the employee of the broker could not have given any such assurance on behalf of the respondent no.1. The petitioner was fully aware of all the transactions and never raised any objection. There is no merit in the petition. The findings of fact rendered by the learned arbitrator as well as the appellate

bench cannot be interfered with since the same are not perverse.

6. I, therefore, pass the following order :-

- (a) Arbitration Petition is dismissed.
- (b) There shall be no order as to costs.

[R.D. DHANUKA, J.]