

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION PETITION NO. 291 OF 2015

Bonanza Portfolio Ltd.

..... Petitioner

VERSUS

Ms.Jyoti Gokuldas Vora & Anr.

..... Respondents

Mr.Rajiv Narula, i/b. Jhangiani Narula & Associates for the Petitioner.

Mr.S.U.Kamdar, Senior Advocate, a/w. Mr.J.J.Bhatt, i/b. Rinku Valunju for the Respondents.

CORAM : R.D. DHANUKA, J.

DATED : 6th JULY, 2015

P.C.

By this petition filed under section 34 of the Arbitration and Conciliation Act, 1996, the petitioner has impugned the impugned arbitral award rendered by the appellate bench on 29th July, 2014 thereby dismissing the appeal filed by the petitioner and upholding the award rendered by the lower arbitral tribunal.

2. Respondent no.1 was a constituent of the petitioner who is a trading member. Respondent no.2 was admittedly a sub-broker of the petitioner. It is not in dispute that respondent no.2 had shifted to New Zealand long ago. The disputed transaction has taken place between the petitioner and respondent no.1. After respondent no.2 shifted to New Zealand, the father of the respondent no.2 was carrying out various transactions on behalf of the petitioner with the respondent no.1. The petitioner being a broker was all throughout aware of the transactions carried out by the father of the sub-broker on behalf of the sub-broker. The petitioner was earning brokerage on all such transactions.

3. It was the case of the respondent no.1 that large number of transactions were

carried out by the father of the sub-broker to the knowledge of the petitioner without any authorization from the respondent no.1. It is the case of the respondent no.1 that though even according to the petitioner, there was shortfall of the margin money, no such margin money was ever demanded. The respondent no.1 came to know about unauthorized transaction much later. Several shares of the respondent no.1 were sold by the said sub-broker acting on behalf of the petitioner no.1. The petitioner failed to produce any authority letter, confirmation or voice recording etc.

4. Respondent no.1 accordingly filed a claim before the learned arbitrator. On 2nd May, 2014, the learned arbitrator after recording various findings of fact has directed the petitioner broker to make payment. The said award was impugned by the petitioner by filing an appeal which is dismissed by an order dated 29th July, 2014.

5. Learned counsel for the petitioner submits that though various SMS were received by the respondent no.1 and was aware of the transactions carried out by the sub-broker, the respondent no.1 did not raise any objection and thus could not have made any claim by disputing the transactions carried out allegedly without any authority. Mr.Narula, learned counsel appearing for the petitioner placed reliance on the statement made by the respondent no.1 admitting some of the SMSs received from the depository and also from the petitioner. Mr.Kamdar, learned senior counsel for the respondent supported the findings recorded by both the tribunal and submits that finding of facts being not perverse, no interference is permissible with such finding of fact.

6. A perusal of award rendered by the appellate arbitral tribunal it is clear that the appellate arbitral tribunal has rendered a finding of fact that various transactions were carried out by the father of the sub-broker to the knowledge of

the petitioner which were without any authority from the respondent no.1. It is held that the father of sub-broker for all practical intent and purpose the de-facto sub-broker for his daughter who was the de-jure sub-broker with the knowledge of the petitioner. It is held that since there was no authority with the father to place trades, the trades were unauthorized trades. Though various opportunities were given by both the tribunal to the petitioner to produce various records including the authority letter from the respondent no.1, the petitioner failed to produce various records for consideration of the arbitral tribunal. The arbitral tribunal has also rendered a finding that the petitioner broker was responsible for the transactions unauthorizedly carried out by the sub-broker. The tribunal also has accepted the submission of the respondent that the petitioner has failed to produce the confirmation of transaction from the respondent and also the voice recording.

7. The lower arbitral tribunal as well as appellate tribunal have considered the documents produced by both the parties and have rightly rendered a finding that the petitioners though was rendered an opportunity to produce the authority letter from respondent no.1 before carrying out transactions not having produced, have held that the petitioner was liable to pay the amount as claimed by the respondent no.1. There is no merit in the submission of the petitioner that the respondent no.1 had received SMS regularly or that the same were relating to disputed transaction.

8. In my view, the findings rendered by the appellate arbitral tribunal are after considering the documents and pleadings produced by the parties which in my view are not perverse and thus no interference with such finding of fact is permissible under section 34 of the Arbitration and Conciliation Act, 1996. The petition is devoid of merits and is accordingly dismissed. No order as to costs.

[R.D. DHANUKA, J.]