

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION PETITION NO.544 OF 2016

Suresh Deokaranji Chandak		Petitioner
<u>Vs.</u>		
Spa Securities Limited		Respondent

Mr. Vaibhav Joglekar i/by Sahil Mahajan, Advocate for the Petitioner.

Mr. Atul Damle, Senior Advocate a/w Sayali Bhaidkar i/by Aarti P. Bhide, Advocate for the Respondent.

Coram : **Smt. R.P. SondurBaldota, J.**

Date : 21st September , 2016

P.C. :

1 The petition filed under Section 34 of the Arbitration and Conciliation Act challenges the award dtd.3rd May, 2012 passed by the Arbitral Tribunal of National Stock Exchange, Mumbai, allowing the claim of the respondent and the order dtd. 28th October, 2015 passed by the Appellate Bench of the National Stock Exchange, Mumbai rejecting the appeal of the petitioner. The petitioner, who is a Chartered Accountant by profession. The respondent, a Company incorporated under the Companies Act, 1956, is a member of

National Stock Exchange. The petitioner and the respondent entered into Member-Client Agreements dtd.15th May, 2007 for trading in Capital Marketing Segment of National Stock Exchange and Bombay Stock Exchange and Futures and Options Segment of NSE as permitted by the Bye-Laws, Rules and Regulations of NSE, BSE and SEBI. As the constituent of the respondent, the petitioner used to trade in securities market through the agency of the respondent. The respondent invoked arbitration towards it's claim from the petitioner in the sum of Rs.27,58,306.98 alongwith interest @18% per annum from 22th June, 2011 towards the amount as shown due in it's ledger account. The petitioner filed his written statement taking the sole defence of the settlement having been arrived at between the parties, under which the dues were settled in the sum of Rs.10,00,000/-. The parties had agreed that the amount would be paid in instalments by post dated Cheques. According to the petitioner, the settlement was recorded by him by his letter dtd, 11th February, 2008 while forwarding four post dated cheques, each in the sum of Rs.2,50,000/-. When one of the cheques dishonoured, the respondent sent advocate's notice, in which it claimed not only the amount of the cheques but also a sum of Rs.25,58,306.98 towards the total outstanding.

2 During the arbitral proceedings, the respondent had disputed the claim of settlement of the petitioner. Despite the dispute, the petitioner did not lead any evidence on the oral settlement allegedly arrived at between the parties. The petitioner solely relied upon the letter dtd. 11th February, 2008 sent by him. The arbitrator at para 9 of the award has considered in detail defence of the settlement taken by the petitioner. It has observed that there was no evidence whatsoever led by the petitioner on the fact of the oral settlement. It has also observed that the signature appearing on the letter, which is claimed to be a signature of acceptance of the claim of settlement was put thereon only as an acknowledgment of receipt of the letter. Further, the learned Arbitrator observed that it is difficult to believe that the claim as large as Rs.27,58,306.98 was settled in the sum of Rs.10,00,000/-. In the circumstances of the case, this view taken by the arbitrator is not just a plausible view but also the only view that could be taken in the matter. Hence, the petition is dismissed.

3 Pursuant to the order dtd. 23rd March, 2015 passed on the Notice of Motion taken out in Arbitration Petition No.596 of 2013, the petitioner had deposited a sum of Rs.10,00,000/- in this court with liberty to the respondent to

withdraw the amount by furnishing security to the satisfaction of the Prothonotary and Senior Master. Mr. Damle, the learned Senior Counsel for the respondent states that the security furnished by the respondent was of bank guarantee in the sum of Rs.10,00,000/-. In view of the dismissal of the petition, the bank guarantee given by the respondent stands discharged.

(Smt. R.P. SondurBaldota, J.)