IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO.553 OF 2009

Prashant S.Vengurlekar ….Petitioner

V/s.

India Bulls Securities Ltd. ....Respondents

Mr.Swanand Ganoo i/by Sagar V.Kasar for the petitioner.

None for respondents.

CORAM : K.R.SHRIRAM,J
DATE : 17.11.2016

P.C.:-

1 This petition is filed challenging an award dated 8.4.2009 passed by the sole Arbitrator rejecting the claim of the petitioner.

2 The petitioner was having a trading account with the respondent and had a client ID No.10871790 and trading code C-103898. The respondent was a trading member of the National Stock Exchange of India. On 17.10.2007 the petitioner had in his name in his account with the respondents, shares of Himachal Future-(3207), Nocil-(4000) and RNRL(6000) (the said shares) on delivery basis. These shares were purchased by the respondents on behalf of the petitioner under a member constituent agreement dated 5.9.2005. Between 4.10.2007 to 11.10.2007, it is the case of the petitioner that he had a debit balance which as on 11.10.2007 stood at Rs.1,64,420.94. On 12.10.2007 the account of the petitioner had a

credit balance of Rs.766.14. Mr.Ganoo submits that on 12.10.2007 the respondent purchased on behalf of the petitioner the said shares. On 17.10.2007 admittedly, the petitioner had a debit balance of Rs.5,75,373.29. On 17.10.2007, the respondents sold off all these shares and squared off the account of the petitioner. It is the case of the petitioner that there was a separate margin agreement that was entered into between the petitioner and the respondents whereby the petitioner had time to make payment within 7 days which according to the petitioner would then mean by 19.10.2007. Therefore, the respondents could not have sold the shares and due to the sale the petitioner suffered loss in the sum of Rs.17,85,491/- as the prices of the said shares went up substantially later.

3 During the arbitration proceedings, I am told that the respondents informed the arbitrator that there was no such margin agreement. Mr.Ganoo also on instructions states that no such margin agreement was ever produced before the arbitrator. At the same time, Mr.Ganoo agrees with the observation made by the arbitrator that in the normal course, the applicant is supposed to settle his account on T + 2 basis (excluding Saturday and Sunday) which means the trading date + 2 additional days. Therefore, since the petitioner is unable to show that this normal period of T + 2 basis has been altered to 7 days by a margin agreement, I cannot accept

that such an agreement was ever entered into between the parties. T + 2 would have expired on 16.10.2007 since 12.10.2007, on which the said shares were purchased, was a Friday. The respondents have sold the shares on 17.10.2007, a day after the petitioner was to make the payment as the petitioner's account was on delivery basis. The respondents have sold the shares since the petitioner did not pay the debit balance of Rs.5,75,959/-.

4 The counsel for the petitioner submitted that the arbitrator has erred in accepting that the respondents had even sent warning e-mails to the petitioner on 13.10.2007 and 16.10.2007, whereas, no such e-mails have been received by the petitioner. The counsel relied upon a return path e-mail sent by yahoo to state that such an account psvengurlekar@yahoo.com, to which the respondents have claimed to have sent the two e-mails did not even exist.

I am not inclined to accept this submission of the counsel because :- (a) counsel in fairness agrees that the constituent agreement did not provide for any e-mail warnings to be sent before the respondents could have squared of the account and (b) the e-mails which were sent by the respondents are of 13.10.2007 and 16.10.2007 whereas the petitioner is relying on return path e-mail from yahoo which is dated 5.8.2008. It is possible that the account may have been closed in the interregnum. In any event the petitioner is also not able to show that he had, when the trading agreement was entered into with the respondents, provided his e-mail id to the respondents where mails could be sent to the petitioner.

5 Mr.Ganoo also relied on Regulation 3.11 of National Stock Exchange which reads as under :-

> *“NSE REGULATION 3.11 READS AS CONSTITUENT IN DEFAULT*
> *If a Constituent fails to make payment of consideration to the trading member in respect of any one or more securities purchased by him before the pay in date notified by the Exchange from time to time, the Trading Member shall be at liberty to sell the securities received in pay-out, in proportion to the amount not received, after taking into account any amount lying to the credit of the Constituent, by selling equivalent securities at any time on the Exchange not later than the fifth trading day reckoned from the date of pay-in. If the trading member has not sold the securities for any reason whatsoever, such securities shall be deemed to have been closed out at the close out price declared bjanuary-2016y the Exchange for the fifth trading day. The loss, if any, on account of the close out shall be to the account of the Constituent.......”*

Relying on the clause Mr.Ganoo submitted in the alternative that at the most the respondents could have sold only such number of said shares to recover Rs.5,75,959/- and not the entire said shares which they have done.

First of all, admittedly, the respondents have sold the said shares for Rs.6,88,168/- whereby the petitioner has made a profit of Rs.1,12,209/-. At the same time, there is nothing on record to show that even such submissions were made before the learned arbitrator.

The statement of claim is silent on this and there are no notes of submissions made where the petitioner could show that this point was raised before the learned arbitrator. Therefore, I cannot accept this submission.

6 In the circumstances, I see no reason why the award should be interfered with. Therefore, petition stands dismissed with no order as to costs.

(K.R.SHRIRAM,J)

KJ