

BDPPS

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
APPEAL NO.508 OF 2016
IN
ARBITRATION PETITION NO.1196 OF 2013**

Maheshbhai Hiralal Champneira Appellant.

V /s

M/s Kotak Securities Ltd. Respondent.

Mr. Mehul Rathod for the Appellant.

Mr. V.K. Ramabhadran, Senior Counsel with Mr. Subra Karmarkar for
the Respondent.

**CORAM: V. M. KANADE &
MRS. SWAPNA JOSHI, JJ.**

DATE: 21st September, 2016

P.C.:- (Per V.M. Kanade, J.)

1. Heard the learned Counsel appearing on behalf of the Appellant and the learned Counsel appearing on behalf of the Respondent.
2. Appellant is aggrieved by the order passed by the learned Single Judge dated 23/06/2014 passed in Arbitration Petition No.1196 of

2013. By the said judgment and order, the learned Single Judge dismissed the appeal filed by the Appellant herein under Section 34 of the Arbitration and Conciliation Act, 1996 and confirmed the order passed by the Arbitral Tribunal and the Appellate Tribunal.

3. Brief facts are that the Appellant is a trader in stocks and futures and Respondent is a stock broker. Grievance of the Appellant is that though he had not given any authority to the Respondent, without his permission certain stocks were purchased and sold which resulted in the Appellant suffering a huge loss. He therefore filed a claim before the Arbitral Tribunal claiming Rs 75 lakhs from the Respondent. The Arbitral Tribunal, however, after going through the material on record, came to the conclusion that the Appellant had executed power of attorney in favour of the Respondent and, secondly, all the contracts notes were dispatched to him after the purchase or sale of the scrips and this transaction was further communicated to him through E-mail and despite knowing about the said transaction, objection was taken by him only after six months and the claim was filed after almost one year. The Arbitral Tribunal therefore dismissed the claim of the Appellant.

4. Appellant, thereafter, preferred an appeal before the Appellate Tribunal in accordance with the Rules and Regulations of the National Stock Exchange. This appeal was also dismissed. Thereafter, he had preferred an appeal under Section 34 before the learned Single Judge, which also has been dismissed.

5. We have heard the learned Counsel appearing on behalf of the Appellant and the learned Counsel appearing on behalf of the Respondent at length.

6. The learned Counsel appearing on behalf of the Appellant has taken us through the Judgment and Order passed by the Arbitral Tribunal, Appellate Tribunal and also through the Judgment and Order passed by the learned Single Judge. He inter alia submitted that the Arbitral Tribunal, Appellate Tribunal as well as the learned Single Judge have not followed the procedure regarding production of the original documents. He submitted that certain CDs were produced by the Respondent in support of its case. He submitted that these transcripts originally were in Gujarathi. However, transcripts which were produced before the Arbitral Tribunal were in English and there were several discrepancies in the said transcripts. He submitted that it was the duty of the Respondent to have produced the original CDs. He submitted that though the order was passed directing the Respondent to produce the original CDs, they were not produced. He submitted that the original CDs would have established the case of the Appellant beyond doubt and in the absence of those CDs, the Tribunal could not have proceeded further and could not have given finding against the Appellant.

7. The learned Counsel appearing on behalf of the Appellant relied on number of Judgments of the Apex Court and this Court in support

of his submissions.

8. It is not possible to accept the said submissions. Appellant has come with a specific case that the Respondent had entered into various transactions without his instructions and therefore he had claimed compensation of Rs 75 lakhs. The burden therefore of establishing that this was done without his instructions was entirely on him. The Arbitral Tribunal, in fact, has not relied on the transcripts of the CDs which were produced by the Respondent and therefore has not taken into consideration the said evidence at all. It cannot be therefore said that the procedure as laid down under CPC and under the Evidence Act has not been followed by the Tribunal. It would have been a different matter if despite the non-production of the original documents/CDs, Tribunal had given a finding against the Appellant but the order reveals that no reference has been made to the said CDs. On the other hand, the other material which is produced on record by the Respondent clearly reveals that all transactions were immediately communicated to the Appellant. Secondly, under the Rules and Regulations framed by the National Stock Exchange if there is any dispute regarding any contract, the same has to be raised within a couple of days. In the present case, this dispute was raised almost after one year. It has also come on record that the Appellant very well knew that by January 2010 he had suffered a loss of Rs 7-8 lakhs and in spite of that he had further asked the Respondent to continue to enter into various transactions. The Arbitral Tribunal therefore came to the conclusion that claim filed by the original Applicant, the

Appellant herein was an afterthought.

9. It is a well settled position in law that scope for interference with the Award passed under Section 37 by the Arbitral Tribunal, Appellate Tribunal and the order passed by the learned Single Judge under Section 34 is very limited. A concurrent finding of fact has been recorded by the Arbitral Tribunal, Appellate Tribunal and which has been confirmed by the learned Single Judge. It will not be therefore possible to interfere with the said finding of fact which is recorded by the Arbitral Tribunal, Appellate Tribunal and confirmed by the learned Single Judge. There cannot be any dispute about the proposition canvassed by the learned Counsel for the Appellant regarding procedure which is to be followed in recording the evidence by relying on the judgments of the Apex Court and this Court. However, these judgments will have no bearing on the facts of the present case since the said documents/CDs have, in fact, not been relied upon by the authorities below. No case is therefore made out for interfering with the order passed by the learned Single Judge.

10. Appeal is dismissed.

(MRS SWAPNA JOSHI, J.)

(V.M. KANADE, J.)