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

ARBITRATION PETITION NO. 104 OF 2015

Satco Capital Markets Ltd.
formerly known as Satco Securities and
financial Services Limited, a trading member
of National Stock Exchange and the Bombay
Stock Exchange, having office at 1st Floor,
Makhija Chambers, Bandra, Mumbai 400 050. ... Petitioner

vs.

Rahul H. Bajaj
adult Mumbai inhabitant, having office at
406 Commerce House, 140 N. M. Road, Fort,
Mumbai 400 023. ... Respondent

Mr. Simil Purohit a/w Mr. A. A. Mukri, Mr. G. M. Agarwal i/by
Purohi & Co., Advocate for the petitioner.
Mr. Kunal Dwarkadas, Advocate for the respondent.

Coram : Smt. R. P. SondurBaldota, J.
Date : 7th January, 2016.

JUDGMENT :

1. This petition filed under Section 34 of the Arbitration and Conciliation Act, 1996, challenges the Arbitral Award dated 30th September, 2014. The petitioner is the original respondent.

2. The petitioner is a Share and Stock Broker with the Bombay Stock Exchange (BSE) and National Stock Exchange (NSE). The respondent and his family members are the constituents of the petitioner. The dispute between the parties had originated in the year 2001 and was the subject matter of two awards, one by the Arbitral Tribunal of BSE and another by the Arbitral Tribunal of NSE. The challenge to the two awards was carried by the parties up to the Apex Court where by the consent order dated 5th February, 2013 the two awards were set aside and the dispute under both the awards was referred to the present Arbitral Tribunal for combined consideration.

3. The combined statement of claim of the respondent before Arbitral Tribunal was to claim (i) delivery of 65,000 shares of Amar Raja Batteries Ltd. (ARBL) against payment along with the corporate benefits thereon, (ii) delivery of 10,000 shares of ARBL along with corporate benefits i.e. 1,50,000 shares, (iii) dividend on 10,000 ARBL shares along with interest and (iv) all corporate benefits on 1,50,000 shares of ARBL. The petitioner had filed its written statement and counter-claim for recovery of (a) Rs.5,35,702.39 ps. along with future interest at the rate of 18% p.a. on Rs.1,71,324.13 ps. and (b) a sum of Rs.11,77,051.66 ps with future interest at the rate of 18% p.a. on Rs.6,28,941.80 ps.

4. By the impugned award the Arbitral Tribunal partly allowed the claim as well as the counter-claim. It directed the petitioner (i) to deliver 1,50,000 shares of ARBL to the respondent within 120 days from the date of the award and all the benefits accrued thereon from the date of the claim till delivery of the shares, (ii) to pay interest at the rate of 12% p.a. on the accrued dividend of 10,000 shares of ARBL and or their equivalent number of shares after issuance of bonus or the split of the said shares from the respective effective dates of accrument of the dividend amount and (iii) pay dividend of Rs.19,83,500/- and interest thereon at the rate of 12% p.a. from the respective effective dates of accrument. The Arbitral Tribunal rejected the respondent's claim for 65,000 shares of ARBL. As regards the counter-claim the Artbitral Tribunal holds, that the petitioner is entitled to the credit of Rs.6,28,941.80 ps.

5. The challenge to the Arbitral Award by the petitioner is limited to delivery of 10,000 shares of ARBL including the corporate benefits accrued thereon. The specific averment made in that regard at para 3 of the petition, reads as under :-

> *"Being aggrieved by the impugned award to the extent that the same allowed the claim of the Respondent for delivery of 10,000 shares of ARBL including the corporate benefits accrued thereon, the Petitioner is filing the present on the following amongst other grounds, each of which are taken in the alternative and without prejudice to one another."*

6. The respondent did not lead oral evidence before the Arbitrator. The petitioner examined one witness, Mr. Rajendra

Babani. The parties filed their respective documentary evidence.

7. The brief statement of the facts alleged by the respondent, which is relevant for the dispute presently under consideration, is that the respondent is an investor and also a trader in shares and securities. He and his family members, at the relevant time, were the largest minority share-holders of ARBL. During his trading activities the respondent had, in settlement No.62 of NSE taken delivery of 10,000 shares of ARBL through the petitioner. These shares were agreed to be kept as collateral security by the respondent with the petitioner. As on 6th March, 2001 i.e. the date on which Settlement No.62 ended with NSE, the respondent had credit balance of Rs.18,16,186.65 ps. in the books of the respondent on the NSE and the credit balance of Rs.4,75,328.94 ps. in the books of the petitioner at BSE. Along with the collateral security of 10,000 shares of ARBL lying with the petitioner of the value of Rs.31,60,000/-, the total aggregate margin available with it was of Rs.54,51,505.50 ps. Then on the next day i.e. on 7th March, 2001 the respondent purchased 65,000 shares of ARBL through the broking card of the petitioner at the NSE, in Settlement No.63, at the average rate of Rs.316.02 per share. The total consideration payable for the shares as per the contract note issued by the petitioner to the respondent was of

Rs.2,05,41,413.69 ps. against the exposure of which, at the relevant time the total margin money available with the petitioner was approximately of Rs.54,51,515.59 ps. which amounted to margin of approximately 24.64%. This margin, according to the respondent was sufficient to secure the petitioner upto the drop in market rate of ARBL shares to Rs.232.15 per share.

8. On 7th March, 2001 SEBI had issued a circular bearing No.PR 39/2001 whereby it had banned all short sales in the market. Any sale effected by any broker was required to be either backed by physical delivery or by a prior purchase position.

9. Owing to certain short-selling in the scrip of ARBL, it's market rate started falling and on 9th March, 2001 it closed at Rs.266.75 ps. per share on the NSE and at Rs.308.40 ps. per share on the BSE. On the very day the petitioner conducted "share badla" of 8,000 shares of ARBL on the BSE out of the 10,000 shares lying with it as and by way of collateral security, without issuing any contract note to the respondent. On 12th March, 2001 even before 10.00 am. the petitioner started selling the purchase position of the respondent and sold 62,281 shares of ARBL out of the 65,000 shares purchased on 7th March, 2001. Thereafter, on 20th March, 2001 it sold the balance 2791 shares. For these sales also no contract notes were forwarded to the respondent.

10. According to the respondent sale of the 65,000 shares of ARBL and the sale of 10,000 shares of ARBL were in violation of the rules, bye-laws, regulation of NSE/BSE and in violation of the circular dated 7th March, 2001 issued by SEBI, banning short sales in the market. The respondent claimed that he and his father, at the relevant time, had outstanding purchase positions in the scrip of ARBL on the broking outfits of various other brokers and since they apprehended that many of their brokers had engaged themselves in selling their purchase positions without their instructions, he and his father filed a complaint with SEBI as also with NSE/BSE for an enquiry into the trading in the scrip of ARBL by all the market participants. The respondent had also written letters to his various brokers requesting them to provide him with the relevant details in respect of the trading conducted by them in the scrip of ARBL for the relevant period. The letter written to the applicant was dated 27th March, 2001. During the course of enquiry conducted by SEBI the petitioner revealed, for the first time, by it's letter dated 28th July, 2001 that it had offloaded the respondent's open position of 65,000 shares of ARBL on NSE on the alleged premise that the respondent had failed to pay Mark to Market loss amounting to Rs.35,00,000/- despite demand. On this disclosure, the respondent on 17th September, 2001 filed complaint against the petitioner with the Investors Services Cell of the BSE. The petitioner by it's letter dated 3rd October, 2001 responded to the complaint claiming that the respondent had, on 10th March, 2001, for his transactions on the NSE, failed to meet the Mark to Market and Gross Exposure Margin obligation of Rs.35,99,300/- and hence it had offloaded 8,000 shares of the applicant lying with it in the "share badla" mechanism on the BSE. The petitioner further claimed that at that time the unpaid margins of the respondent amounted to Rs.61,85,770/- non-payment of which prompted the petitioner to square off the respondent's purchase position of Rs.65,000/- shares of ARBL on the NSE. It was further revealed that the petitioner had sold all the 10,000 shares, (including 8,000 shares offloaded as "share badla") on 12th March, 2001.

11. The petitioner in it's written statement obviously did not dispute any of the sale transactions and set up the same claim as in it's reply to the complaint to Investor's Services Cell. It claimed that on 7th March, 2001 when the respondent purchased 65,000 shares on NSE, the margin requirement for those shares was of Rs.61,85,770/-. When this was adjusted against the then ledger credit of Rs.20,56,964.52 ps., the deficit left was of Rs.41,28,805.48 ps. This deficit was secured by the 10,000/-

shares of ARBL of which the delivery was received. In view of the huge deficit in the margin "share badla" of 8,000 shares was effected on BSE to generate liquidity to cover the deficit. Under the badla transaction by liquidating 8,000 shares, a sum of Rs.24,62,349.74 ps. was generated. After deducting the margin for badla transaction the net amount generated was of Rs.14,10,799.39 ps. resulting in the final short-fall of Rs.28,71,955.74 ps. as on 10th March, 2001. From 9th March, 2001, the price of ARBL shares started falling drastically. The respondent failed to secure the margin losses and provide further margin despite notice to him. Therefore, in order to prevent further loss to the petitioner and correspondingly to the respondent, with the respondent's knowledge and consent, the petitioner started selling the outstanding position of the respondent in ARBL. On 12th March, 2001 the petitioner could sell only 62,281 shares in a price range between Rs.287.75 ps. to Rs.223.90 ps. per share. The balance 2,719 shares could not be sold on that day as the market hit a lower circuit on ARBL stock and there were only sellers. The remaining shares could be sold subsequently on 20th March, 2001. The respondent at no point of time had objected to the sale. He had in fact consented by waiving his objections. This prompt action on the part of the petitioner had saved the respondent from suffering further losses. The petitioner had from time to time provided the contract notes and the bills to the respondent.

12. As already noted hereinabove the only oral evidence in the arbitral proceeding was on behalf of the petitioner. The record of the arbitral proceedings shows that by the minutes dated 4th September, 2013 the learned Arbitrator held that considering the pleadings of the parties, the basic issue in the matter was whether the petitioner was right in selling the respondent's shares on the ground that the margin therefor was not sufficient and that the same was with the knowledge and consent of the respondent. Since there was no dispute that there was some margin available with the petitioner, it was for the petitioner to prove insufficiency of the margin for justifying it's action. Therefore, initial burden of proof was on the petitioner. Accordingly, the petitioner examined it's employee Mr. Babani and the respondent did not lead any oral evidence as according to him there was nothing for rebuttal in the evidence of the witness of the petitioner.

13. In the impugned award the learned Arbitrator at the outset, at para 22, noted the facts as deposed by the witness of the petitioner. The gist of that factual position is as follows :

Mr. Babani joined the service of the petitioner in the year 2006 i.e. after the transactions under dispute were conducted.

His knowledge of transactions came from the then Branch Manager of the petitioner who has not been examined. As per the deposition, ordinarily, the requirement of margin was of 15% but when the market is volatile, the requirement is approximately 30%. The demand for 15% margin of Rs.13,94,315/- was on the basis of the downloaded statement from the stock exchange which downloaded statement was not available for production in evidence. The petitioner used to call for the entire purchase consideration at the end of the settlement. The Mark to Market and margin requirement for the Settlement No.63 of NSE was of Rs.61,85,770/- because the margin was increased to 30% at the stock exchange. As on 7th March, 2001 taking into consideration the ledger credit of Rs.20,53,954.52 ps. and the value of 10,000 shares of ARBL the petitioner had security with it worth Rs.51,00,000/-. There was no basis available for the requirement of margin of Rs.35,74,270/- as on 10th March, 2001. Mr. Babani was not aware of the extent of margin paid to NSE by the petitioner. But he admitted that the margin available with the petitioner on 9th March, 2001 was of Rs.51,00,000/-. He also admitted that the petitioner did not give any notice in writing to the respondent before selling either 10,000 shares or 65,000 shares of ARBL. He was not aware if any contract note was issued to the respondent for sale of the shares or of the deficit as existing on 9th March, 2001 in the margin being of Rs.43,16,335.48p.which included margin and Mark to Market loss.

14. The learned Arbitrator on appreciation of the evidence before it held that on perusal of the relevant portion of the respondent's ledger account and the petitioner's bills annexed to the written statement, the margin requirement was approximately of 10%. This was admitted by the petitioner in his correspondence dated 28th July, 2001. Also the petitioner had failed to produce any material to support it's case that the margin was 15%. Though Mr. Babani deposed that the requirement of margin of 15% was on the basis of the downloaded statement of stock exchange, no such statement had been produced. The record indicated with the total margin available as on 9th March, 2001 was of Rs.49,59,015.59 ps. as against the required margin of Rs.12,00,000/- at the closing. Thus, there was sufficient margin available with the petitioner and it was not necessary for the petitioner to either do the badla transaction or sell 65,000/- shares.

15. As regards the claim of the petitioner that it had issued contract notes in favour of the respondent for the first "share badla" of 8,000 shares on ARBL at BSE and also the subsequent sale of the balance shares on BSE, the learned Arbitrator noted that though the witness of the petitioner had admitted that a broker was bound to issue carried forward contract notes, what were in fact issued were the bills. In view of Regulation No.354 of BSE, issuance of contract note in case of carry forward transaction i.e. badla is mandatory. No such contract note was produced by the petitioner and mere issuance of the bill cannot fulfill the mandatory requirement. Therefore, the sale of 10,000 shares was illegal and void. It was sought to be argued before the learned Arbitrator that under Bye Law 227(a) and (b) of BSE, the petitioner being a broker had a lien over the said shares and therefore was entitled to sell the same. The learned Arbitrator considered the broker's lien at Bye Law 227(a) and the right of the broker to sell at Bye Law 227(b) and held that the Bye Law did not come to the rescue of the petitioner when the sale had taken place without notice in writing to the respondent. He opined that neither the Bye Law 227 nor the Clauses of the agreement could be read to mean that such a step could be taken without notice to the respondent. Another argument advanced before the learned Arbitrator was that if the petitioner were to wait any longer for sale of the shares, the sale could have resulted into extensive loss to the respondent. The argument was countered by the respondent with a submission that in the hindsight one can say several things but the question is what was the position on the date of the sale. He pointed out that the witness of the petitioner had admitted in his deposition that it was not possible to gauge the future rate. The learned Arbitrator has held that what the petitioner did on 9th March, 2001, cannot be justified by what happened subsequently i.e. post 13th March, 2011. On 9th March, 2001, no one knew that the shares would fall down so drastically. Therefore it was not open for the petitioner to contend that it had in fact saved the respondent from potential loss and on that ground justify it's actions.

16. Yet another contention on behalf of the petitioner before the learned Arbitrator was that the respondent's prayer for handing over of the shares amounted to seeking specific performance of agreement of sale of movable property and such a contract cannot be specifically enforced in view of Section 10 of the Specific Relief Act. The learned Arbitrator rejected the argument with a finding that the petitioner held the shares in trust for the respondent. He noted that admittedly the 10,000 shares were given by the respondent to the petitioner as and by way of collateral security. The price of the said shares had already been paid by the respondent. Consequently, the petitioner was holding the shares as the trustee of the respondent and bound to return it to the respondent when demanded. The relief in respect of the 10,000 shares therefore could not be said to be for specific performance of agreement for sale of movable property. The contract for purchase of 10,000 shares having already been performed, the relief was only for return of the shares.

17. For the above reasons the learned Arbitrator held that the sale of 10,000 shares of ARBL by the petitioner was illegal and void. It is an admitted position that the original 10,000 shares have got converted into 1,50,000 shares and had earned dividend of Rs.11,21,000/- as on the date of the filing of the claim. The petitioner was therefore directed to deliver to the respondent 1,50,000 shares of ARBL and the total dividend payable thereon of Rs.19,83,500/- with interest at the rate of 11% p.a. as on the date of the award and also transfer all the benefits accrued on 1,50,000 shares.

18. In order to challenge the above award, the petitioner has filed the present petition under Section 34 of the Act. Before looking into the challenges raised by the petitioner, it would be worthwhile to note the scope, under Section 34 of the Act, of the challenge to the arbitral award in a Civil Court. It is well established position in law that the court does not sit in appeal over the award of the arbitral tribunal by re-assessing or re-appreciating the evidence. An award can be challenged strictly on the grounds mentioned in Section 34(2) of the Act, which is divided into two parts i.e. Sub-Section 2(a) and Sub-Section 2(b), Sub-section 2(a)(i) to 2(a)(v) provide for grounds of challenge arising out of the procedural aspects of the arbitral proceedings. Sub-Section 2(b) provides for grounds arising from the subject matter of the arbitration proceedings, Sub-Section 2(b)(i) is about the subject matter of the dispute not being capable of settlement by arbitration under the law for the time being in force and 2(b)(ii) is about the arbitral award being in conflict with the public policy of the India. Perusal of the challenge taken by the petitioner in the present petition indicates that the challenge to the arbitral award by the petitioner is by resort to Section 34(2) (b)(ii) of the Arbitration Act.

19. Mr. Kunal Dwarkadas, the learned advocate appearing for the respondent refers to the latest decision of the Apex Court in ***Associate Builders Vs. Delhi Development Authority***, ***reported in A.I.R. 2015 Supreme Court, page 620***, which considers the scope of Section 34 of the Act and the concept of public policy thereunder. In the decision, the Apex Court has noted that in it's earlier decision i.e. in ***Renusagar Power Company Limited vs. General Electronics Company***, ***reported in 1994, Supp. (1) SCC, page 644***, a narrower meaning was given to the expression "public policy". It was held therein that an award was liable to be set aside on the ground of being contrary to the public policy of

India if it was contrary to (1) the fundamental policy of Indian Law, (2) the interest of India and (3) justice or morality. This meaning was expanded in the subsequent decision in ***ONGC vs. Saw Pipes,*** reported in ***2003 (5) SCC, page 705***. The wider meaning included challenge to the award on the ground of it being patently illegal. It however clarified that the alleged illegality must go to the root of the matter and if the illegality is of a trivial nature, it cannot be held that award is against the public policy. Award could also be set aside if it is so unfair and unreasonable that it shocks the conscience of the court. Such award is opposed to public policy and is required to be adjudged void. As observed in the decision cited itself, the judgment in Saw Pipes case has been consistently followed till date.

20. The challenge, therefore, to the award of the learned Arbitrator must be looked into against the backdrop of the above legal position. The several grounds of challenge in the petition revolve around and are variations of five objections of the petitioner to the arbitral award. They are broadly (i) sufficiency of the margin on the relevant date, (ii) the claim for the relief of specific performance being not maintainable, (iii) claim being contrary to the bye-laws of the NSE, (iv) the finding of the petitioner being the trustee of the respondent not tenable in law and (v) the only relief capable of claiming is damages.

21. The first ground of challenge to the impugned award relates to the finding of fact by the learned Arbitrator and as such would require reassement or reappreciation of the evidence. As such the finding would be beyond the purview of Section 34 of the Act unless the findings are established to be perverse i.e. either unsupported by the evidence on record or by ignoring the material on record or the finding being based on extraneous material. The petitioner alleges none of the three situations. The ground is of the finding of sufficiency of the margin on the relevant date.

22. Mr. Purohit, the learned advocate for the petitioner submits that the relief of delivery of the shares to the respondent amounts to specific performance of an agreement of sale of movable property. According to him, there can be no dispute that the shares in question are a movable property and argues that hence, the relief sought by the respondent is hit by Section 10 of the Specific Relief Act. In my opinion, the learned Arbitrator has rightly rejected this submission of the petitioner holding that the relief for delivery of the shares sought by the respondent, in the facts and circumstances of the case did not amount to seeking specific performance of a contract for sale of movable property. The learned Arbitrator noted that the 10,000 shares had already been purchased and belonged to the respondent. The price for the said shares had also been paid. They had been left with the appellant only by way of co-lateral security and as such the appellant was holding the same in trust for the respondent subject to the conditions of security. Therefore the relief sought was only a relief for return of the 10,000 shares. It could never have been for specific performance for the contract for purchase of share. The finding for the learned Arbitrator on this aspect is not only plausible but correct in law.

23. The second argument of Mr. Purohit is that the regulations of the Stock Exchange also do not provide for specific performance of "purchase contract". He submits that the claim of the constituent against the broker can only be for accounts of the transactions in share trading, or for damages and therefore all that the respondent could have asked for, was either the monetary value of 10,000 shares or damages. Mr. Purohit refers in this connection to bye-law (8) of the Rules, Bye- laws and Regulations of the NSE. The said bye-law (8) reads as under:

> "Bye Law (8)
>
> Closing out/transfer by Constituent on failure to perform a contract.
>
> It a trading member fails to complete the performance of a contract by delivery or payment in accordance with the provisions of these Bye Laws, Rules, Regulations the <u>constituent shall, after giving notice in writing to the trading member</u>

> and Exchange, close-out such contract through any other trading member of the Exchange or make an application to the Exchange for transfer of contracts to another trading member as soon as possible and any loss or damages sustained as a result of such closing-out or transfer, as the case may be, shall be immediately payable by the defaulting trading member to the constituent. If closing-out or transfer be not effected as provided herein, the damages between the parties shall be determined on such basis as specified by the relevant authority from time to time and the constituent and the trading member shall forfeit all further right of recourse against each other."

According to the petitioner, in view of the above Bye-law, the respondent would be entitled only to loss or damage suffered as a result of failure to complete the contract by delivery. The reference to the bye-law by the petitioner is misconceived since the dispute raised by the respondent was not of failure to perform the contract.

24. The next contention of Mr. Purohit is that the respondent has resorted to approbation and reprobation. Mr. Purohit argues that in the earlier arbitral proceedings, the respondent had claimed compensation of Rs.29,99,232.92 ps. as the monetary equivalent of 10,000 shares and therefore there was no question of he asking for specific performance in respect of those shares. The demand for delivery of shares by the respondent amounted to approbation and reprobation of the claim, which ought not to be permitted. In my opinion, there is no merit in the argument because no such contention had been raised by the petitioner in it's written statement to the statement of claim of the respondent before the learned Arbitrator. Besides, the Apex Court by it's consent order dtd. 5th February, 2013, while setting aside the earlier awards, referred the disputes between the parties for fresh arbitration and a fresh statement of claim had been filed by the respondent by combining two disputes.

25. The next infirmity found by Mr. Purohit in the impugned award is the observation of the learned Arbitrator that the petitioner held 10,000 shares as a trustee of the respondent. His submission that the said observation is contrary to the member client agreement. In view of the agreement, the petitioner as a broker would at the highest be an agent of the respondent and that the principal can never claim specific performance against an agent. He can only claim for damages of the accounts. The other reason, according to Mr. Purohit why the petitioner cannot be said to be a trustee in respect of the shares is that the shares have been given by the respondent to the petitioner as and by way of collateral security. A pledgee does not hold shares as trustee but as a bailee and the respondents could have invoked a tracing action against the petitioner for recovery of 10,000 shares. Since the action taken by the respondent was not a tracing action, he would be entitled to only for the damages. Mr. Purohit relied upon decision of this court in ***Maneklal Mansukhbhai Vs. Jwaladutt Pilani, reported in A.I.R. (34) 1947 Bombay 135,*** in support of his submission that the respondent as a bailor was entitled only for damages. This decision was cited before the learned Arbitrator also. In the said decision, our High court by reference to a decision of House of Lords has observed that:

> "a principal has three rights as against his agent who fails in his duty---- one, to recover damages for want of skill and care and for disregard of the terms of the mandate; second to obtain an account and payment of secret and illicit profits which have come to the hands of the agent as an agent; and, finally, the principal's right to resist the agent's claims for commission and for indemnity against liability incurred as a mandatory by showing that the agent has acted as a principal himself and not merely an agent."

The decision relied upon by Mr. Purohit is distinguishable on facts. In that case, the broker had failed to render the accounts despite repeated demands and the contention of the broker was that the accounts having already been settled, the plaintiff was not entitled to the accounts.

26. Mr. Kunal Dwarkadas on the other hand relies upon decision of the Apex Court in ***Dhian Singh Sobha Singh and another vs. Union of India, reported in A.I.R. 1958, Supreme Court, page 274***, by which the Apex Court has held that the bailor in the event of the non-delivery of the goods by the bailee, on demand made by him in that behalf is entitled at his election to sue the bailee either for wrongful conversion of the goods or wrongful detention thereof and if the bailor pursues his remedy against the bailee for wrongful detention of the goods, it would be no answer for the bailee to say that he was guilty of wrongful conversion of the goods at an earlier date, which fact of conversion was known to the plaintiff. The Apex Court held that it is the option of the plaintiff to pursue either remedy against the bailee, just as it suits him having regard to all the circumstances of the case and the bailee cannot be heard to say anything to the contrary for the simple reason that he cannot take advantage of his own wrong and cannot ask the plaintiff to choose a remedy which may less beneficial to him. Therefore, even if the argument of Mr. Purohit that the petitioner would in effect be a bailee is accepted, it can make no difference to the claim of the respondent.

27. As regards the finding of the learned Arbitrator of the petitioner being trustee in respect of the shares, there can be no infirmity in the same since the observation of the learned Arbitrator is in the context of the argument, on behalf of the petitioner, that the claim of the respondent is in the nature of specific performance of the agreement for purchase of shares. The learned Arbitrator was not defining the relationship between the petitioner and the respondent by the finding.

28. There is no merit in the petition on any of the counts. Hence, the petition is dismissed.

[Smt. R. P. SondurBaldota, J.]