IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.12.2016

Coram

The Hon'ble Mr.Justice T.S. SIVAGNANAM

O.P.No.134 of 2013

Sujatha Pericheri .. Petitioner

vs

1.M/s.Angel Commodities Brooking Pvt. Ltd.,
G-1, Akruti Trade Centre,
Road No.7, MIDC,
Andheri (East) – 400 093
Mumbai.

2.Mr.V.Paul Das,
Sole Arbitrator,
The Arbitration Department,
Multi Commodity Exchange of India Limited,
Doshi Towers, Periyar EVR Salai,
Kilpauk, Chennai – 600 010. .. Respondents

Prayer: Petition is filed under Section 34 of the Arbitration and Conciliation Act, 1996, to set aside the award dated 06.09.2012 passed by the second respondent/Arbitrator in dispute between the petitioner and the first respondent made in Arbitration matter MCX/Legal/677A/12.

For Petitioner : Mr.P.Raja
for Ms.S.Rajini Ramadass

For Respondents : Mr.Derick Sam (for R1)

ORDER

This petition has been filed under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as “the Act”) to set aside the award passed by the second respondent, the Sole Arbitrator dated 06.09.2012.

2.Heard Mr.P.Raja, learned counsel appearing for Ms.S.Rajini Ramadass, learned counsel for the petitioner and Mr.Derick Sam, learned counsel for the first respondent.

3.The claim petition was filed by the first respondent before the learned Arbitrator claiming a sum of Rs.8,45,774.09. The basis of the claim is as follows:

The petitioner registered herself as a constituent with the first respondent by signing a Client Registration Form and executing Member Client Agreement. The Member Client Agreement, Client Registration Form, Risk Disclosure Documents are collectively known as KYC and are formulated as per the rules, regulations and bye-laws of MCX for carrying out trades in commodities derivatives segment of the exchange. The first respondent furnished the required information when the petitioner executed the KYC. On becoming a constituent of the first respondent, the petitioner was allotted a code number for facilitating trade on the exchange and for maintaining accounts in the books of the first respondent. Trading activities were carried out and ultimately on account of the same, the first respondent is said to have suffered losses which have been quantified as Rs.8,45,774.09 and with this claim, they had approached the learned Arbitrator. This claim was opposed by the petitioner stating that it is absolutely false and incorrect and that the cheque for payment was given on request made by a channel partner of the first respondent for collection of securities at that time for filing the application but not for purchase of any commodity. It is stated that one S.Vishnuvardhan approached the petitioner and introduced him as channel partner of the first respondent and explained about their business. Then the petitioner went to the first respondent and registered herself as constituent and cheque was given. It was further stated that the petitioner is not highly educated and she does not have knowledge about share business but believing the words of the channel partner of the first respondent, she entered into the business and at the relevant point of time, her husband was not in India as he was in Libya. Before the learned Arbitrator, the petitioner denied the transaction and contended that at no point of time she had authorised any person to conduct trading activities in commodities but her request was only for purchase of gold bonds.

4.On these pleadings, the learned Arbitrator took up the matter for adjudication and after considering the full facts and also referring to the documents which were furnished by the petitioner held that the contentions raised by the petitioner is absolutely false. The learned Arbitrator has given cogent reasons as to on what date cheques were issued and payments received by the petitioner, etc. Thus, the finding recorded by the learned Arbitrator on the contentions raised by the applicant that she did not authorise such transaction was held to be not established. The award being a cogent with reasons, that portion of the award cannot be interfered under Section 34 of the Act as none of the parameters stand attracted. However, one startling fact which strikes the eye is that the learned Arbitrator having concluded that the transactions were done with the active knowledge and consent of the applicant straight away proceeded to award the entire amount as claimed by the first respondent in the claim statement. The learned Arbitrator has noted that the petitioner denied the claim on 03.01.2012 by addressing the commodity exchange, however it was after the arbitration claim petition filed by the petitioner. When such objection was on record the learned Arbitrator ought to have adjudicated the correctness of such objection, especially when the petitioner was appearing in person and had no legal assistance. In any event, the petitioner came before the learned Arbitrator and filed her reply statement (i.e.) the quantum of amount claimed. Therefore, the learned Arbitrator is duty bound to examine as to whether the first respondent was entitled to the entire claim as made in their claim statement. However, in the impugned award, there is no discussion on the aspect. Therefore, to that extent, the impugned award calls for interference.

5.Accordingly, the original petition is partly allowed and the impugned award is set aside in so far it quantifies the amount of Rs.845,719.94 and the matter is remanded to the learned Arbitrator for fresh consideration to adjudicate on the actual entitlement of the first respondent after hearing the petitioner and the first respondent. It is made clear that the liability of the petitioner as found in the impugned award is confirmed and the award to that extent is upheld and the remand is only to decide on what is the quantum of money the first respondent will be entitled to? No costs.

22.12.2016

cse

T.SIVAGNANAM,J.

cse

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