

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 20.12.2016

Coram :

The Honourable Mr.Justice **T.S.SIVAGNANAM**

Original Petition No.213 of 2009

T.Muthusamy

...Petitioner

Vs

1.M/s.J.R.G.Securities Ltd.,
J.R.G.House, Ashoka Road,
Kaloor, Kochi.

2.V.Natarajan

...Respondents

PETITION under Section 34 of the Arbitration and Conciliation Act, 1996 to set aside the award dated 15.11.2008 in so far as the rejection of the claim of the petitioner and consequently, directing the first respondent to pay the sum of Rs.6,00,000/- together with interest at the rate of 18% per annum to the petitioner herein.

For Petitioner : Mr.M.S.Velusamy
For Respondents : Mr.G.Derrick Sam for R1

ORDER

Heard Mr.M.S.Velusamy, learned counsel for the petitioner and Mr.G.Derrick Sam, learned counsel appearing for the first respondent.

2. 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 15.11.2008, in so far as the non-consideration of the petitioner's counter claim, wherein, the petitioner sought for a direction to the first respondent to pay a sum of Rs.6,00,000/- together with interest at the rate of 18% per annum.

3. The undisputed facts are that the petitioner engaged the services of the first respondent, who was a Member of the National Stock Exchange and in the course of business transaction, the petitioner had paid a sum of Rs.6,00,000/- to the first respondent. According to the petitioner, signatures are obtained in blank papers and in printed formats. The petitioner was not aware as to for what purpose, those signatures were obtained. Ultimately, the first respondent had defrauded the petitioner and not stopping with that, the first respondent claimed a sum of Rs.1,57,476/- from the petitioner. This matter was referred to for arbitration by the first respondent and the second respondent was appointed as Arbitrator to arbitrate the dispute.

4. When the matter was taken up by the Arbitrator, the petitioner filed

counter claim for Rs.6,00,000/-. The Arbitrator passed the impugned Award, by which, the contention raised by the first respondent in their claim petition stood rejected. However, the second respondent did not consider the counter claim made by the petitioner, though in the body of the Award, all the findings are in favour of the petitioner. Therefore, the petitioner has filed this petition, challenging the Award under Section 34 of the Act.

5. On a perusal of the impugned Award, it is seen that all the findings rendered by the Arbitrator are against the first respondent and at this stage, it would be relevant to take note of the following findings rendered by the Arbitrator:-

"This is a very unsatisfactory explanation for those credit and debit figures reflected in the Ledger. No accounting system or practice will allow entries to be made without a valid instrument. Further the reversal of cheque credit entry, for non receipt of promised cheque, was not done immediately but after a gap of more than a fortnight. Hence it appears to be a ridiculous and false stand taken by the applicant in regard to this issue possibly to cover up the wrong doings of their employees and has to be rejected. No satisfactory explanation has been forthcoming from the applicant for the entries of those two cheques in the Ledger and employee involvement in that connection for continuing the trades in the respondent's Account for business growth and earning brokerage is a good possibility. In this

connection I accept the arguments advanced by the respondent in his letters dated 23rd and 31-1-2008 and 5-2-2008 to JRG that Tirunelveli Branch officials of the applicant have mishandled his account, handled F & O trades without his knowledge. "

6. If the above finding has to be taken into consideration, then the resultant and consequence would be is to order the counter claim of the petitioner. However, there is no reasoning given by the Arbitrator in that regard. It is sufficient to hold that the impugned Award to that extent is illegal. Accordingly, the Original Petition is allowed and the impugned Award is set aside, only with respect to non-rendering of any finding on the petitioner's counter claim and the matter is remanded to the Arbitrator for fresh consideration, who shall take into consideration the findings already rendered in the Award and consider the counter claim made by the petitioner in accordance with law. Since the Award is of the year 2008, the Arbitrator shall re-do the exercise within a period of three months from the date of receipt of a copy of this order.

20.12.2016

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T.S.SIVAGNANAM,J.

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