

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 28.09.2016

CORAM

THE HONOURABLE MR.JUSTICE RAJIV SHAKDHER

ORIGINAL PETITION NO.535 OF 2012

Balaji Krishna Kumar

...

Petitioner/Applicant

Versus

1. M/s.Peerless Securities Limited,
No.1, Chowringhee Square-2nd Floor,
Kolkatta,
West Bengal-700 069.

2. Mr.R.Subramanian
Sole Arbitrator,
C/o.National Stock Exchange of India Limited,
2nd Floor, Ispahani Centre,
Door No.123-1234,
Nungambakkam High Road,
Nungambakkam,
Chennai-600 034

...

Respondent/Respondent

PRAYER: Original Petition filed against the award passed by the Learned Arbitrator in Arbitration Case A.M.No.F& O/C-0490 of 2008 dated 16.04.2009.

For Petitioner : Mr.A.Vivin
For Respondent : No appearance

....

ORDER

1. This Petition preferred under Section 34 of the Arbitration and Conciliation Act, 1996 (in short the 1996 Act), lays challenge to the award dated 16.04.2009, passed in Arbitration case A.M.No.F & O/C-0490 of 2008.

2. Notice in this petition was issued by this Court, on 22.08.2012. Since then, service has been effected on both the respondents. Respondent No.1 is the contesting respondent, while the respondent no.2 is the arbitrator, who passed the award.

2.1. The proceedings of the Master dated 04.02.2013 is indicative of the fact that the service stands completed qua both, respondent nos.1 and 2.

3. Despite service, respondent no.1 has not entered appearance.

4. The learned Arbitrator, by virtue of the award, has directed the petitioner to pay a sum of Rs.1,74,204/-, to respondent no.1, within

a period of 30 days, failing which, the amount awarded is to carry interest @12% p.a.

5. The sole ground, on which, the petitioner has assailed the award is, that, he was not served with the notice of the arbitration proceedings till today. It is claimed by the petitioner that the subject transaction was carried out on his behalf by one Mr.Chandroo, who was associated with respondent No.1.

5.1. It is stated by the petitioner that the shares were bought and sold without the knowledge of the petitioner.

6. The petitioner, further avers, in consonance with what is stated above that he became aware of the impugned award only when he was served with a notice in the Execution Petition No.2172 of 2011, filed by respondent no.1. It is stated that notice in the Execution Proceeding was received by the petitioner, on 07.07.2011.

7. Furthermore, the petitioner avers that on 02.02.2012, he had moved an application with the Registry of this Court for issuance of a direction to the respondent No.1 to furnish a copy of the impugned award a request, which was declined by the Registry.

8. The petitioner, claims, that till today, he has not been served the copy of the impugned award.

9. Requisition of arbitral record was made by me, and the same was, accordingly, received. Since, there was no appearance on behalf of respondent No.1, the record was examined with the assistance of the counsel for the petitioner. It appears that there is no document on record, which would show that the petitioner was served with the notice of the arbitration proceedings.

9.1. This fact is also discernable from the following observations made by the learned Arbitrator, in the impugned award itself.

“....NSC sent a copy of the application to the Respondent and sought his reply but the communication was returned undelivered with remark

'refused'. The arbitration matter was allotted to the undersigned as Sole Arbitrator vide letter no.NSC/CRO/ARBN/08-80861-2 dated 25.11.2008. Hearing was convened on 23.01.09 and hearing notice dated 4.12.08 was sent to the Applicant and the Respondent. The hearing notice sent to the Respondent was also returned undelivered. In the above circumstances, the Respondent did not turn up at the hearing. The hearing was attended by an authorized official of the Applicant who made an oral submission narrating brief background of the case and efforts taken by them for recovery. The applicant could clarify why he waited for nearly 4 months to sell the shares held as collateral. The Applicant was advised to send the following information by 15.12.2009:

- i. Copy of the ledge account separately for NSC- F&O, NSE-Cash and BSE.
- ii. How were orders received from the Respondent for the transactions in dispute?
- iii. How were Contract Notes sent to the Respondent? Proof of delivery may be given.
- iv. Initial margin available for position taken in Sasken on 04.01.2008 and 10.01.2008 Summary of Pay in/Pay out in the account.
- v. Summary of Pay in/Pay out in the account
- vi. Copy of quarterly statement for the quarter ended 31.03.2008 sent to the Respondent.

vii. Was any communication received from the Respondent after 1st February 08? (if so copy thereof be furnished)

viii. Comments on applicability of limitation since the claim relating to the transaction on 22.01.08 was filed only on 19.8.08 i.e. beyond the period limitation of six months.

ix. Details of shares available as collateral and why the Applicant waited till 06.06.2008 for selling the shares when the debit balance from Sasken arose on 22.01.08. Value of shares on 22.01.08 and 15.03.08 may please be given. Copy of document giving authority for sale may also be furnished.”

(Emphasis is mine)

10. The aforesaid extract from the award would shows that though notice was sent and hearing was convened on 23.01.2009, the same was not delivered to the petitioner. It appears that no further attempts were made by the Arbitrator to serve the petitioner, as the award was passed on 16.04.2009.

10.1. As a matter of fact, there is no proceeding sheet filed by the learned Arbitrator, which would demonstrate as to what transpired between 23.01.2009 and 16.04.2009.

10.2. In this situation, I am persuaded to hold that the petitioner was not served in the arbitration proceedings, and therefore, did not have sufficient opportunity to defend himself.

11. Accordingly, I have no choice, except to set aside the impugned award. Accordingly, the impugned award dated 16.04.2009 is set aside.

12. This Original Petition is disposed of leaving the parties to bear their own costs.

28.09.2016

arr/sl

RAJIV SHAKDHER, J.

arr/sl

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