

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 28.09.2016

CORAM

THE HONOURABLE MR.JUSTICE RAJIV SHAKDHER

ORIGINAL PETITION NO.536 OF 2012

Mrs.S.Vijayalatha

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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

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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 12.04.2009.

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

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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 12.04.2009, passed in Arbitration case A.M.No.CM/C-0109 of 2008.

2. Notice in this application was issued to the respondents 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 01.03.2013 is indicative of the fact that the service stands completed qua both, respondents 1 and 2.

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

4. The learned Arbitrator, by virtue of the impugned award, has directed the petitioner to pay a sum of Rs.1,56,257.40/- to respondent

No.1, within a period of thirty days, failing which, the amount awarded is to carry interest @ 12% per annum.

5. The sole ground, on which, the petitioner has assailed the award is that, she was not served with the notice of the arbitration proceedings till today. The petitioner avers that she became aware of the impugned award only on 27.07.2011, when she was served with a notice in the Execution Proceedings No.2171 of 2011, filed by respondent No.1.

6. Furthermore, the petitioner avers that she gave a sum of Rs.20,000/- to one Mr.Chandoo, who was associated with respondent no.1. It is stated that she opened only member client agreement along with her husband. It is further submitted that she was not aware of the transaction carried out on her behalf.

7. It is further averred by the petitioner that she had moved an application on 02.02.2012 with the Registry of this Court for issuance of a direction to respondent no.1 to furnish a copy of the impugned award dated 12.04.2009, a request which was declined by the Registry.

8. The petitioner, claims, that till today, she 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/08-81020-B dated 26.11.2008. 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 did not go for closing out when payment was not received on T+2 basis and why he waited for nearly 4 months to sell the shares. The Applicant was advised to send the following information by 07.02.2009:

i. How were orders received from the Respondent for the transactions in dispute?

ii. How were Contract Notes sent to the Respondent? Proof of delivery may be given.

iii. Summary of Pay in/Pay out in the account.

iv. Copy of quarterly statement for the quarter ended 31.3.08 sent to the Respondent.

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

vi. Why closing out was not done on T+2 basis when payment was not received

for shares purchased in January 08?

vii. Comments on applicability of limitation since the claim relating to the transaction on 17.01.08 was filed only on 19.8.08 i.e. beyond the period limitation of six months.”

(emphasis is mine)

10. The aforesaid extract from the award would show 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 12.04.2009.

10.1. As a matter of fact, there is no proceeding sheet file by the learned Arbitrator, which would demonstrate as to what transpired between 23.01.2009 and 12.04.2009.

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 herself.

11. Accordingly, I have no choice, except to set aside the impugned

award. Accordingly, the impugned award dated 12.04.2009 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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