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

ARBITRATION PETITION NO.619 OF 2010

Mrs. Money Nair ....Petitioner
Vs.
Sharekhan Limited ....Respondent

Mr. Prathamesh Kamat a/w. Mr. T.N. Tripathi and Ms. Sapana Rachure i/b. T.N. Tripathi and Co. for petitioner.
Mr. Prakash Kadam i/b. Mr. Deepak Sharma for respondent.

CORAM : K.R. SHRIRAM, J.
DATE : 23rd AUGUST, 2017

P.C.:

1 Petitioner was a client/constituent of respondent. Petitioner had entered into Client Member Agreement with respondent on 4th April, 2017 and was dealing with respondent for the purpose of buying and selling of shares in both National Stock Exchange and Bombay Stock Exchange.

2 It is the case of petitioner that petitioner bought 2000 shares of Reliance Natural Resources Limited (RNRL) and 2000 shares of Reliance Petroleum Limited (RPL) on 21st January, 2008 and those shares were credited in petitioner's demat account. Respondent, it is alleged by petitioner, without any permission and authority and instructions from petitioner and without the knowledge and consent of petitioner sold on 15th February, 2008 some of the aforementioned shares lying in petitioner's demat account. As soon as petitioner came to know about the same, petitioner called upon respondent to explain how they sold the shares

without petitioner's authority and called upon respondent to reimburse petitioner. According to petitioner, respondent had to pay a sum of Rs.10,51,714.26/- with 12% p.a. interest which was later amended to Rs.10,79,819.40/- with 12% interest per annum.

3 Petitioner had invoked arbitration under the rules and Bye-laws and regulations of the Bombay Stock Exchange. Before the Arbitral Tribunal, respondent also filed counter claim for Rs.15,58,838.93/- with 24% interest per annum. The Arbitral Tribunal allowed the claim of petitioner in its entirety and rejected the claim of respondent in its entirety. Against the Award, respondent herein, preferred an appeal before the Appellate Bench of Bombay Stock Exchange. This appeal was filed on 10th February, 2009. The main challenge of respondent to the Award was that the Award was not a speaking Award and no reasons or findings were given in the Award. The fact that no reasons were given in the Award of 7th January, 2009 is not disputed by anybody. What petitioner did was, soon after passing of the Award of 7th January, 2009, when petitioner noted that no reasons have been given, petitioner moved an application before the Arbitral Tribunal under Bye-law 258 of the Bombay Stock Exchange and asked the Arbitral Tribunal to give reasons for the Award. The Arbitral Tribunal issued a fresh award dated 24th February, 2009 giving reasons. Following that, respondent amended their grounds for their challenge in the appeal filed before the Appellate Bench to challenge the findings as

well.

4 As could be seen from the impugned Award, respondent herein, who were appellants before the Appellate Bench, restricted their challenge on the power of the Arbitral Tribunal to add reasons in the Award. It was contended by respondent that Bye-law 258 (1) (a) of BSE enables the Arbitral Tribunal to carry out corrections in the Award which are minor in nature and plain reading of the said Bye-law contemplates that the Arbitral Tribunal has power to correct only errors in computation or errors of similar nature and the addition reasons in the Award cannot be termed as any of the grounds recognized under Bye-law 258 of BSE.

5 In response, the counsel for petitioner submitted before the Appellate Bench that missing paragraphs of reasons would amount to typographical error or possibly the paragraphs while taking copies of the Award have been missed. The Appellate Bench rejected the submissions of petitioner herein and came to a conclusion that insertion of reasons cannot be termed as computational error or arithmetical error and therefore, the Arbitral Tribunal cannot exercise power under it. I am in agreement with the views of the Appellate Bench.

The Appellate Bench came to a conclusion that, therefore, the Award of 7th January, 2009 has to be considered only as an unreasoned Award and set aside the Award and remanded it back to the Arbitral Tribunal. This order of the Appellate Bench is impugned in this petition.

6 Bye-law 258 is similar to Section 33 of the Arbitration and Conciliation Act, 1996 (the Act). Under Section 33 also the Arbitral Tribunal does not have power to add reasons. But under Section 34(4) of the Act, if it is requested by a party, and the Court finds it appropriate, the Court may adjourn the application made under Section 34(1) for a period of time in order to give the Arbitral Tribunal an opportunity to take such other action as in the opinion of Arbitral Tribunal will eliminate the grounds for setting aside the Award.

7 But in the present case, no such application under Section 34(4) was made before the Appellate Bench. The impugned Award also does not record that any submissions were made by petitioner relying on Sub Section 4 of Section 34 of the Act. Mr. Kamat, counsel for petitioner also agreed that no application was made under Section 34(4) of the Act before the Appellate Bench.

8 Considering the facts and circumstances of the case, in my view, the Appellate Bench has taken the correct decision and there is no need to interfere with the impugned Award.

9 Therefore, petition stands dismissed. No order as to costs.

(K.R. SHRIRAM, J.)