IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.11.2017

CORAM

THE HONOURABLE MR. **JUSTICE M.M.SUNDRESH**

Original Petition No.215 of 2017

M/s.Financial Leaders Commodities
rep. By its Managing Partner
No.44/45, Sapphire Square,
Post Box Road, Purasawalkam,
Chennai – 7. .. Petitioner

Vs.

Abdul Hai Armar .. Respondent

Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 to set aside the Award dated 11.07.2016 made by the Arbitrator in Arbitration Matter No.MCS/ARB/3781A/2016.

For Petitioner : Mr.K.V.Sanjeev Kumar

For Respondent : Mr.E.Murugan

ORDER

Seeking to set aside the award dated 11.07.2001 in Arbitration Matter No.MCS/ARB/3781A/2016, the present Original Petition has been filed.

2.The petitioner was the applicant before the Arbitral Tribunal. The respondent was the client with the petitioner as trading member. The sum and substance of the case of the respondent is that the petitioner indulged in unauthorised trading resulting in the loss. A complaint was filed before the Exchange, which referred the matter to the Investor Grievance Resolution Panel (IGRP). This panel found that the petitioner was responsible, which in turn, prompted it to invoke the arbitration clause.

3.The learned Arbitrator, while fixing the onus on the petitioner to prove that the transaction is authorised, was pleased to hold that the records would reveal that the petitioner did not get the authorisation from the respondent. The mere fact that the brother of the respondent was the employee of the petitioner would not absolve its liability.

4.Learned counsel appearing for the petitioner would submit that the risk disclosure document signed by the respondent would clearly show that there was no guarantee of profit and he would be responsible for the loss that would occur in the transaction being the client of the petitioner. The respondent did authorise his brother to act as an agent. Therefore, the award will have to be set aside.

5.This Court does not find any merit in this petition. Risk disclosure document has no relevancy to the case on hand. The very basis of the respondent's case is that the petitioner indulged in the transaction by trading without authorisation. The mere fact that the respondent's brother was an employee cannot be a ground to absolve the petitioner from its liability. After all, the agreement is between the petitioner and the respondent. There is no material to hold that the respondent has authorised his brother to trade on his behalf. Further, there is no dispute on the risen liabilities *inter se* the petitioner and the respondent *qua* the agreement. When there is no dispute on the agreement and the relationship between the parties, the petitioner cannot wriggle out of it and contend to the contrary. The fact that the respondent's brother was the employee of the petitioner would only militate against the petitioner. After all, the Tribunal has considered the materials available on record and gave a factual finding which is not amenable to be interfered with under Section 34 of the Arbitration and Conciliation Act, 1996. Accordingly, the Original Petition stands dismissed. No costs.

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Index:Yes/No
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M.M.SUNDRESH,J.

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