

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.11.2017

CORAM

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

Original Petition No.635 of 2015

M/s.Aditya Birla Commodities Booking
Limited, Ali Towers,
No.53, Greams Road, Chennai - 6. .. Petitioner

Vs.

1.Vinod Kumar Sahal

2.A.V.Haridasan,
Sole Arbitrator,
11, Second Street,
Jagadambal Colony,
Royapettah, Chennai - 14. .. Respondents

Petition filed under Section 34 of the Arbitration and Conciliation
Act, 1996 to set aside the Award passed by the second respondent
dated 14.01.2015.

For Petitioner : Mr.Shivathanu Mohan
for M/s.S.Ramasubramanian
Associates

For Respondents : No appearance for R1

ORDER

Seeking to set aside the award dated 14.01.2015 passed by the second respondent, the present Original Petition has been filed.

2.The respondent opened an account with the petitioner. The transaction is one of commodity exchange. The sum and substance of the case of the respondent is that the petitioner acted contrary to the instructions given to buy the commodity but instead sold and thus causing a loss of Rs.3 lakhs. The other contention is that there is another sum of Rs.2,40,000/- lying in the account of the respondent and therefore the same will have to be returned.

3.The petitioner made a specific contention that the sale has been made with the consent of the respondent and this can be evidenced by payment of Rs.3 lakhs subsequently in favour of the petitioner. On the second issue, it has been stated that even as per the statement of account produced by the respondent, there is no amount available in his account. A specific stand has already been taken in the reply statement.

4.The learned Arbitrator passed a cryptic order apportioning the liability between the petitioner and the respondent. It has been stated that inasmuch as a sum of Rs.3 lakhs has been sent and received, the action of the petitioner in effecting the sale instead of purchase would amount to ratification to certain extent. On the second issue, with respect to return of a sum of Rs.2,40,000/-, no finding has been given.

5.Heard the learned counsel appearing for the petitioner. Despite service of notice and the name of the first respondent having been printed in the cause list, none appears for the first respondent.

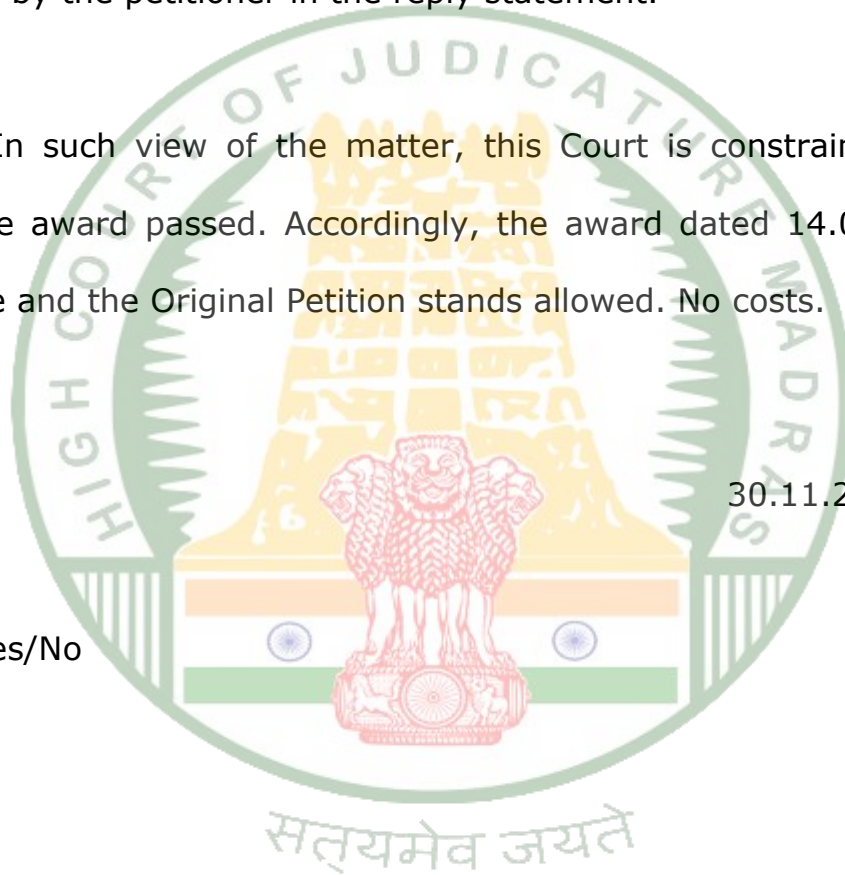
6.This Court finds considerable force in the submission made. The learned Arbitrator cannot act on mere conjectures and surmises. Having given a factual finding that a sum of Rs.3 lakhs was sent by the respondent and received by the petitioner, there cannot be a contrary finding that the petitioner has acted against the instruction given. Even assuming that the petitioner has sold the commodity instead of purchase, the ratification would disentitle the respondent from making the claim on that basis. The very object of ratification would amount to closing the issue. Therefore, it is not open to the respondent to raise it

thereafter having acquiescent himself with the action of the petitioner. On the second issue, there is absolutely no finding. If it is the case of the respondent, being the claimant, that a sum of Rs.2,40,000/- is still due, it is for him to substantiate it with evidence especially in the teeth of denial by the petitioner in the reply statement.

7.In such view of the matter, this Court is constrained to set aside the award passed. Accordingly, the award dated 14.01.2015 is set aside and the Original Petition stands allowed. No costs.

30.11.2017

Index:Yes/No
mmi



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M.M.SUNDRESH,J.

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