

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.12.2017

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

Original Petition No.176 of 2013

Nitiyananda Rahavan

.. Petitioner

Vs.

1.Way 2 Wealth Brokers Private Limited,
B Wing, Units No.4072,
Oberoi Gardens OH Chandivil Farms Road,
Chandivili Andheri East,
Mumbai - 400 072.

2.S.Subramanian,
Sole Arbitrator,
National Stock Exchange of India Limited,
2nd Floor, Ispahani Centre,
Door No.123-124, Nungambakkam
High Road, Chennai - 34.

.. Respondents

Petition filed under Section 34 of the Arbitration and Conciliation
Act, 1996 to set aside the Award dated 07.01.2009.

For Petitioner : Mr.R.Subramanian

For Respondents : Mr.R.Mubarak Basha for R1

ORDER

Seeking to set aside the award dated 07.01.2009, the present Original Petition has been filed.

2. An agreement was entered into between the petitioner as the client and the first respondent as the stock broker. The first respondent is a member of the National Stock Exchange of India Limited. From the findings rendered by the Tribunal, it appears that there were transactions from the year 2003 onwards.

3. The petitioner made a complaint before the National Stock Exchange of India Limited inter alia alleging that he approached the first respondent for the sale of certain shares. Thereafter, certain monies were asked for and paid. However, they have not been paid in favour of the petitioner. On the direction of the National Stock Exchange of India Limited, the matter was referred to the Tribunal. In the reply to the legal notice issued on behalf of the petitioner and before the Tribunal, the first respondent has contended that there was an agreement inter se parties. This agreement was for the sale and purchase of the shares. It was also agreed that it would include the F and O Segment. The shares were traded on behalf of the petitioner and purchases have been made. All the communications have been

sent to the petitioner. The transactions were made with the consent of the petitioner and in fact, it is the petitioner, who owes some money. The claim is barred by limitation as it was raised even before the National Stock Exchange of India Limited after six months.

4.The Tribunal agreeing with the contentions of the first respondent dismissed the claim petition. Hence the present original petition.

5.Learned counsel appearing for the petitioner would submit that the petitioner did not authorise the transaction. No credit was given for the amount deposited by the petitioner. There is no arbitration agreement inter se parties. The Tribunal did not permit the petitioner to examine and cross-examine the witnesses. Therefore, the award is liable to be set aside.

6.Learned counsel appearing for the first respondent would submit that considering the scope of Section 34 of the Arbitration and Conciliation Act, 1996, no interference is required. There is a clear finding on the fact that the claim is barred by limitation. Even on merits, the petitioner traded in F and O Segment. Merely because

there was some loss, the petitioner is not entitled for the claim made.

7.Coming to the issue of limitation, it is a mixed question of fact and law. The Tribunal found that the petitioner did not raise the plea within the period of limitation. During the hearing, the petitioner has admitted that he came to know of the unauthorised trade in the first week of June, 2006. However, he approached the National Stock Exchange of India Limited only during the month of December, 2007. Therefore, a factual finding has been given that the claim is barred by limitation, which, in the opinion of this Court, cannot be interfered with.

8.Insofar as the issue that arbitration agreement was not in existence, the Tribunal was constituted on the complaint made by the petitioner alone. The petitioner did not raise any semblance of objection either for the constitution or for the subsequent hearing. Even before this Court, the petitioner was unable to produce any document to show that there was no arbitration agreement inter se parties. Thus the said contention is also rejected.

9.On merits, the Tribunal has made reliance upon Ex.A5 and

Exs.R1 and R2. Even under Ex.A5, there was a reference that the payment of Rs.1,50,000/- was towards F and O Account. Therefore, a factual finding was given that the petitioner knowingly traded in the aforesaid segment. Having taken up the risk and lost money, it is not open to the petitioner to contend to the contrary. As rightly held by the Tribunal, as submitted by the learned counsel for the first respondent, the petitioner is trying to change his stand. Though he admitted in his evidence that he was trading from the year 2003 onwards, the entire claim was based upon the plea that he approached the first respondent for sale of his shares. Therefore, the petitioner has not made the claim with clean hands. The receipt of the communication enclosing the documents was found to be correct. The petitioner did admit the couriers having been sent. Therefore, the Tribunal has rightly rejected the contentions of the petitioner that no contract notes were sent through the couriers. As the Tribunal has given its finding based upon facts by giving cogent reasons, no interference is required on merits.

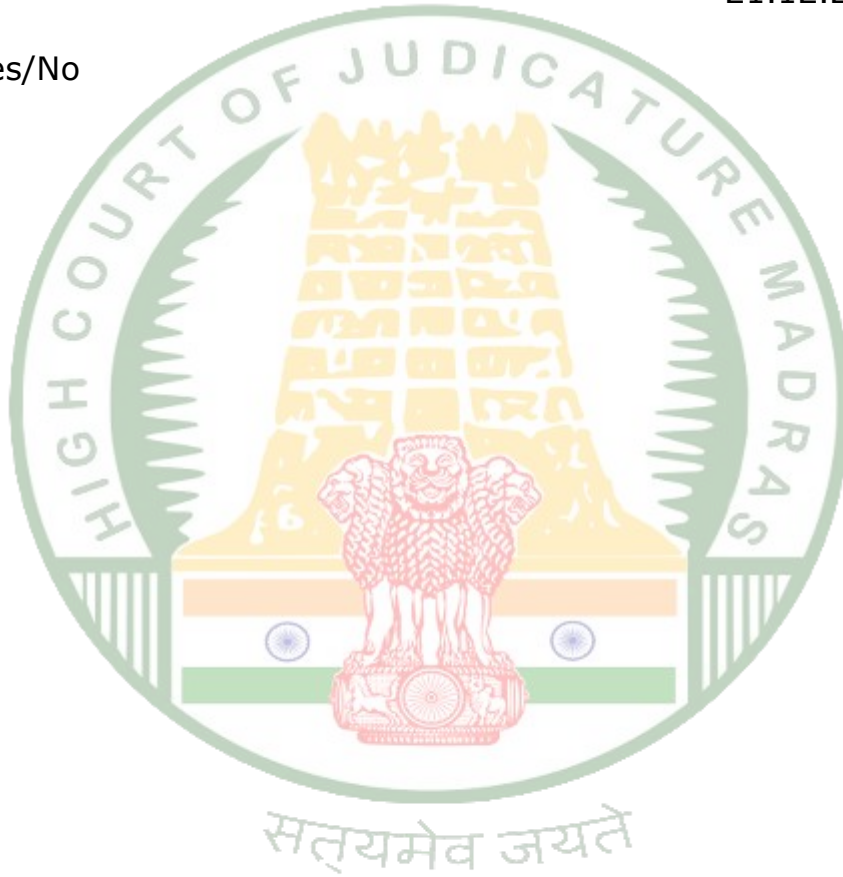
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10.A further submission has been made that the petitioner has not been examined. A perusal of the award would show that the petitioner was actually examined. Even otherwise, he did not ask for

any request for further examination either chief or cross. Hence the said contention also stands rejected. Accordingly, the Original Petition stands dismissed. No costs.

21.12.2017

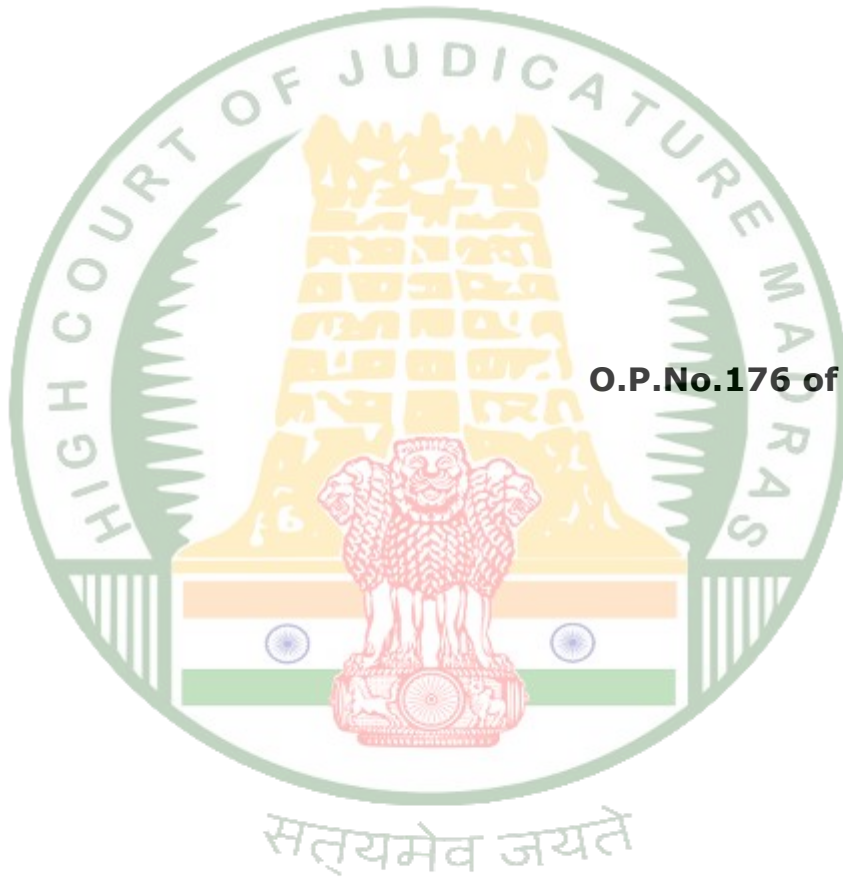
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M.M.SUNDRESH,J.

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