

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.12.2017

CORAM

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

O.P.No.222 of 2013

Sri M.Padmanabha Kamath,
S/o Narayana Kamath,
Aged about 82 years,
residing at Bangra Manjeshwar,
Manjeshwara Kerala,
Manjeshwara-671 323

..Petitioner

Vs.

1.M/s Aditya Birla Money Limited,
(Previously Apollo Sindhoori Capital
Investment Limited),
304, Sanu Palace, 3rd and 4th Floor,
M.G.Road, Kodial Bail,
Mangalore-575 003.

2.Mr.S.Jayaraman,
Sole Arbitrator,
C/o National Stock Exchange of India Limited,
8th Floor, Arihant Nitco Park,
90, Dr.Radhakrishnan Salai,
Mylapore, Chennai-600 004.

... Respondents

Original Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996, to set aside the Arbitral Award passed by the learned Arbitrator in A.M.No.CH026/2000 dated 21.03.2001 and allow the

claim of the petitioner as claimed by him and for costs.

For Petitioner : Mr.R.Venkataraman

For 1st Respondent : Mr.Krishna Srinivas for
M/s Ramasubramanian & Associates

ORDER

The petitioner was the client of the first respondent from the year 1999 onwards. The business was with respect to the trading in shares. The trading in shares as a business has got its own peculiarities. On the instructions of the petitioner, the shares were bought by the first respondent. The shares bought were transferred in the account of the petitioner's son. After the said transfer, there were transactions *inter se* parties. The petitioner has also paid certain amount in favour of the first respondent for the purchase of some other shares. The bye laws and guidelines governing required the first respondent to transfer the shares within a period of two days. This was not adhered to. However, the petitioner did not raise any issue over it, but continued with the transactions. The petitioner made a grievance that the

shares were not transferred to him within the time limit mandated. Accordingly, he invoked the arbitration clause.

2. Before the learned Arbitrator, the first respondent has contended that on the instruction of the petitioner, the shares were transferred in favour of his son. The learned Arbitrator passed a detailed award. Observations were made against the petitioner as well as the first respondent. It was held that the petitioner was not keen in invoking the arbitration clause. He was not kept in dark with the conduct of the first respondent in depositing the shares in his son's account. A factual finding has been rendered that the petitioner and his son were doing trading together. The fact that the petitioner was continuously doing business with the first respondent subsequent to the purchase of the disputed shares coupled with no complaint was made in writing were taken note of. The petitioner did not raise any such issue in the letter dated 27.04.2000 written by him to the first respondent and the same was marked as Ex.R3. What he wanted is a return of the shares, which were deposited in his son's account. Thus, he did not raise the issue of non compliance the timely deposit. He also paid Rs.5.5 lakhs in settlement No.14 of

2000 during which time the issue sought to be raised has not been taken up. Accordingly, the learned Arbitrator was pleased to reject the case of the petitioner while awarding a sum of Rs.22,000/- being the interest for the amount of Rs.10 lakhs parted away by the petitioner as a compensation for the delay in making the transfer.

3. Though the arbitration clause satisfies the jurisdiction, the petitioner approached the District Court at Mangalore. The appeal filed in A.S.No.2 of 2003 was dismissed on 31.10.2008. As against which, the petitioner filed M.F.A.No.3315 of 2009 before High Court of Karnataka. A judgment was passed on 24.08.2012, directing the trial Court to return the plaint for presentation before the appropriate Court. Thereafter, raising some more grounds, the petitioner filed the present petition. In the interregnum, 12 years have elapsed.

4. The learned counsel for the petitioner would submit that there is no question of limitation involved. The presentation was made pursuant to the return of the papers by the District Court

at Mangalore. Having given a finding that the first respondent has violated the bye laws and regulation, the Arbitration Tribunal has committed an error. Therefore, the award requires to be set aside.

5. The learned counsel for the first respondent would submit that the petition is barred by limitation. We are not concerned with the return, but fresh petition was filed raising additional grounds. Considering the scope of Section 34 of the Arbitration and Conciliation Act, 1996, no interference is required as the learned Arbitrator has considered the entire materials available on record.

6. This Court is not willing to go into the issue of limitation as Section 14 of the Limitation Act would apply to the proceeding also. However, the petitioner ought not to have approached the I Additional District Court of Dakshina Kannada at Mangalore. Be that as it may, a perusal of the Award would show that it has taken into consideration of relevant materials. Being the claimant, it is for the petitioner to establish his case. The factual

finding has been given on two grounds. One is with respect to the failure of the petitioner to raise this issue at the relevant point of time. The other is with respect to his conduct in transacting with the first respondent even after expiry of the two days period. Incidentally, another finding has been given that the petitioner must have been aware of the deposit made in his son's name. There was no written complaint for the non compliance of the bye law or regulation with respect to the time limit mentioned at the earliest point of time. As rightly pointed out, the petitioner would not have ventured with the subsequent transactions. Therefore, this Court is of the view that no ground is made out for exercising the power under Section 34 of the Arbitration and Conciliation Act, 1996. Accordingly, the original petition stands dismissed. No costs.

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M.M.SUNDRESH,J.

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