In the High Court of Judicature at Madras

Reserved on 02.2.2017	Delivered on : 08/2/2017

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Original Petition No.362 of 2009

Mr.Kare Thatha Rao ...Petitioner

Vs

1.M/s.India Infoline Ltd., (Trading Member),
Member NSC, having its regd. Office
at No.75, Nirlon Complex Off, Western
Express Highway, Guregaon (E),
Mumbai-63.

2.Mr.V.Natarajan, Sole Arbitrator, office of
the National Stock Exchange of India Ltd.,
II Floor, Ispahani Centre, Door 123-124,
Nungambakkam High Road,
Nungambakkam, Chennai-34. ...Respondents

PETITION under Section 34(2)(a)(v) of the Arbitration and Conciliation Act, 1996 to set aside the award dated 13.9.2008 passed by the second respondent in his proceedings in Arbitration Matter No.CM/C/0029-2008.

For Petitioner : Mr.S.Sathishrajan
For Respondent : No appearance

ORDER

Heard Mr.S.Satishrajan, learned counsel for the petitioner. None appears for the first respondent and therefore, their name is printed in the cause list.

2. This petition has been filed under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter called the Act) challenging the award passed by the

second respondent/sole Arbitrator dated 13.9.2008 on a claim petition filed by the first respondent.

3. The petitioner entered into a broker client agreement with the first respondent on 14.9.2007 for carrying out trades through M/s.India Infoline Limited in the National Stock Exchange (NSE). The petitioner had a debit balance of Rs.18,82,205.23 Ps in the NSE F&O segment and a credit balance of Rs.15,84,555.62 Ps in NSE cash segment as on 20.4.2008 as a result of the trades carried out by them over the period. Thus, the net balance arrived at in the respondent's favour amounts to Rs.2,97,649.71 Ps. With this document along with the ledger account statement from 26.9.2007 to 04.7.2008, the first respondent filed a claim petition before the learned Arbitrator to declare that they are entitled to recover the said sum along with interest at the rate of 18% per annum for the delayed period. This amount was the debit balance, which was reflected in the ledger account of the first respondent, liable to be paid by the petitioner.

4. The petitioner filed their objections denying the liability as false and incorrect. Further, an allegation was made that fraud has been played by one Mr.Rupesh Kumar, who was alleged to be an agent of the first respondent, with an intention to earn more commission and he did many transactions and was ultimately removed from the services of the first respondent. It has been further stated that the petitioner has receipts issued by the first respondent for having deposited an amount of Rs.15 lakhs and that it is the first respondent, which has to pay the petitioner an amount of Rs.13.90 lakhs together with interest at the rate of 24% per annum to the petitioner.

5. Subsequently, additional objections were filed by the petitioner alleging that the first respondent forged the signature as that of the petitioner and it constituted a criminal offence and that the petitioner reserved his right to initiate action before the competent court of law. It appears that a private complaint was lodged before the Additional Civil Judge (Junior Division) and JMFC, Hospet in P.C.No.56 of 2008 under Section 200 of the Criminal Procedure Code, in which, the branch manager of the first respondent was arrayed as the first accused along with other accused.

6. It is further seen that the petitioner filed an affidavit before the learned Arbitrator requesting him to stay all further proceedings till the criminal case is completed. Nevertheless, the petitioner appears to have not pursued the matter, as he had participated in the arbitration proceedings, which took place on 2.7.2008 and 12.8.2008. The Arbitrator recorded that clarifications on various points, which required elucidations were obtained from both parties during the hearing and they were also permitted to make additional submissions as may be required. Further, the Arbitrator recorded that apart from the documents originally filed by the first respondent herein/ applicant along with the claim petition dated 22.4.2008, they made additional submissions on 19.7.2008 and 13.8.2008 and that the petitioner herein/respondent handed over his statement of defence at the time of hearing on 2.7.2008, followed by further submissions on 31.7.2008 and 28.8.2008.

7. Before the learned Arbitrator, two contentions were raised by the petitioner namely

(i) that the arbitration proceedings could not have been initiated at Chennai and that therefore, the arbitral award is vitiated; and

(ii) that it is the first respondent, which has to pay to the petitioner herein and not vice versa and the factual submissions, which were made in the counter affidavit, were reiterated.

The Arbitrator, after considering the submissions and documents placed, passed the award holding that the petitioner herein should pay a sum of Rs.2,97,649.61 Ps.

8. The petitioner's case before this Court is also on identical grounds, firstly on the ground of jurisdiction with regard to the venue of arbitration. The second ground raised by the petitioner is that his stand was not appreciated properly and that though documents were marked, no reasons have been assigned in the award passed by the learned Arbitrator. The petitioner entered into an agreement dated 14.9.2007. The said agreement states that the parties shall, in respect of all disputes and differences that may arise between them, abide by the provisions relating to arbitration and conciliation specified in the by-laws (of the first respondent). It was pointed out that Clause 12 of the agreement states that the parties hereto agree to submit to the exclusive jurisdiction of the courts and the place has been left blank, which will go to show that the learned Arbitrator has no jurisdiction.

9. The petitioner has confused two issues, firstly the arbitration proceedings and secondly the jurisdiction of the court. Arbitration proceedings have been agreed to be in terms of the by-laws of the NSE. At this distance of time, the petitioner cannot state that a copy of the by-laws was not furnished to him. If he wanted a copy of the by-laws, a request should have been made prior to the signing of the agreement. The jurisdiction of the court is of no consequence in this proceedings, as what is put to challenge is the award passed by the learned Arbitrator on the ground that arbitration could not have been held in Chennai. Thus, the contentions raised by the petitioner do not merit acceptance.

10. The award clearly states that the petitioner is a heavy trader and executed a large number of transactions through the first respondent and that the ledger copies, contract notes, transaction statement summary and the accounts statements were placed before the learned Arbitrator, who rightly held that the petitioner herein cannot simply deny the same without any basis or facts to support his contentions.

11. The learned Arbitrator further observed that the contract note copies contained full details of all the transactions executed on behalf of their client such as contract number, order number and order time, etc., and they were addressed to the petitioner herein at the address provided in the agreement. Apart from that, the petitioner had issued receipts for the payments received and accounted them in the ledger. In addition to that, there were other cheques issued, which were reversed and therefore, it was held that all these disproved the contentions of the petitioner that he placed orders on different dates only to the extent of Rs.60,000/- and did not place any orders thereafter. There was no answer by the petitioner as to why he had continued to issue several cheques to the first respondent after the said date. Thus, the award is a reasoned award and that the petitioner has not made out any grounds to interfere with the award of the learned Arbitrator under Section 34 of the Act.

12. Accordingly, the above original petition is dismissed.

08/2/2017

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T.S.SIVAGNANAM,J

RS

P.D.ORDER IN
O.P.No.362 of 2009

08/2/2017