

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.11.2017

CORAM

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH

O.P.No.191 of 2010

A.Srinivasan

119-B, Mundagakanni Amman Koil Street,
Mylapore, Chennai-600 004.

..Petitioner

Vs.

M/s Anand Rathi Financial Services Ltd.,
4th floor, Silver Metropolis, Jai Coach Compound,
Western Express Highway, Goregaon(E),
Mumbai-400 063.

... Respondent

Original Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996, to set aside the impugned Award dated 16.11.2009 passed in Reference No.90 of 2009 on the file of Bombay Stock Exchange, Regional Office at 4th Floor, Exchange Building, 11/2nd Line Beach, Chennai-6000 001.

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For Petitioner : Mr.K.Ramanraj

For Respondents : Mr.Rajesh Vivekananthan

ORDER

The respondent was a trading member of Bombay Stock Exchange Limited and the petitioner is the constituent of the respondent. The petitioner was enrolled vide application dated 12.07.2007. Thereafter, the respondent was executing transactions in shares on the instruction of the petitioner till 19.09.2008. As there was substantial due on account of various transactions carried out on the instruction of the petitioner and pursuant to the communication sent, which were received but not answered to, the arbitration clause was accordingly invoked.

2. During the first hearing held on 06.08.2009, the petitioner did appear in person. Thereafter, the petitioner was represented by an authorised representative. The learned Arbitrator took note of the fact that the petitioner attended the office of the respondent on various dates as seen from the attendance register filed under Ex.C. The petitioner made a counter claim. The award was passed against the petitioner by taking into consideration of the materials available before the learned Arbitrator. Challenging the same, the present original petition has been filed.

3. It is the contention of the learned counsel appearing for the petitioner that there is a violation of Section 24(3) of the Arbitration and Conciliation Act, 1996. Though the contract notes were relied upon, they have not been served on the petitioner. An incidental submission has been made that the petitioner has not authorised the respondent to enter into the transactions resulting in the loss. In support of his contention, reliance has been made on the following judgments.

1. NARESH KANAYALAL RAJWANI AND OTHERS
VS. M/S CITY FINANCIAL CONSUMER FINANCE
INDIA LTD., AND ANOTHER in Arbitration
Petition No.427 of 2013 dated 17.08.2015;
and
2. RAJNIKANT B.VORA V. FINCRUISE CREDIT
SERVICES PVT. LTD., in Arbitration Petition
No.1399 of 2014 dated 23.03.2015.

4. This Court does not find any merit in this petition. As rightly recorded by the Arbitral Tribunal, the petitioner did not raise any such contention till the last hearing. There were communication *inter se* as seen from the letter of the petitioner himself dated 12.03.2008. The

petitioner did not raise any objection earlier. The business in trading has got its own peculiarities. It is being done on trust and faith. It is suffice to place on record the letter dated 12.03.2008, admittedly written by the petitioner as recorded by the learned Arbitrator.

"When your courier service brings the contract notes I am at your Alwarpet Branch and there will be no one in my resident (sic) to receive the contracts. Please therefore advise your courier service to drop the contracts inside my house or alternately send the contract notes to Alwarpet Branch during trading hours so that I can collect them in person". This clearly establishes that the respondent has preferred to collect the Contract Notes in the Branch of the Applicant itself and repudiating the receipt of contract notes later is not acceptable. It may also be seen that though the Applicant has filed the Arbitration reference in February 2009 and a copy of which was also sent to the respondent he has not raised such dispute of non receipt of contract notes till the last date of hearing."

5. From the above, both the contentions of the petitioner are liable to be rejected. The petitioner was quite aware of the contract notes. That is the reason why, he did not raise any serious objection on the earlier occasion. It is not, as if, the Arbitrator has passed an award based upon the contract notes. The petitioner has raised the contention of non furnishing of the contract notes only at the later point of time. That is the reason why the Arbitral Tribunal has directed the respondent to produce them. The compliance of Section 24 of the Arbitration and Conciliation Act, 1996, has to be seen in its own context. The mechanical application is not required, but the provision has to be applied to the facts and circumstances of each case. As rightly recorded by the learned Arbitrator, it is only an after thought coming from the petitioner. The learned Arbitrator merely called for the evidence to satisfy himself as to whether the documents have been served on the petitioner earlier or not in the form of contract notes. Therefore, no reliance has been made on the contract notes as against the letter of the petitioner dated 12.03.2008. In fact, the learned Arbitrator, taken into consideration the other circumstances while passing the award including unexplained silence on the part of the petitioner. Hence, this Court is of the view that the decision relied

upon did not have any application to the case on hand. Accordingly, the original petition stands dismissed. No costs.

16.11.2017

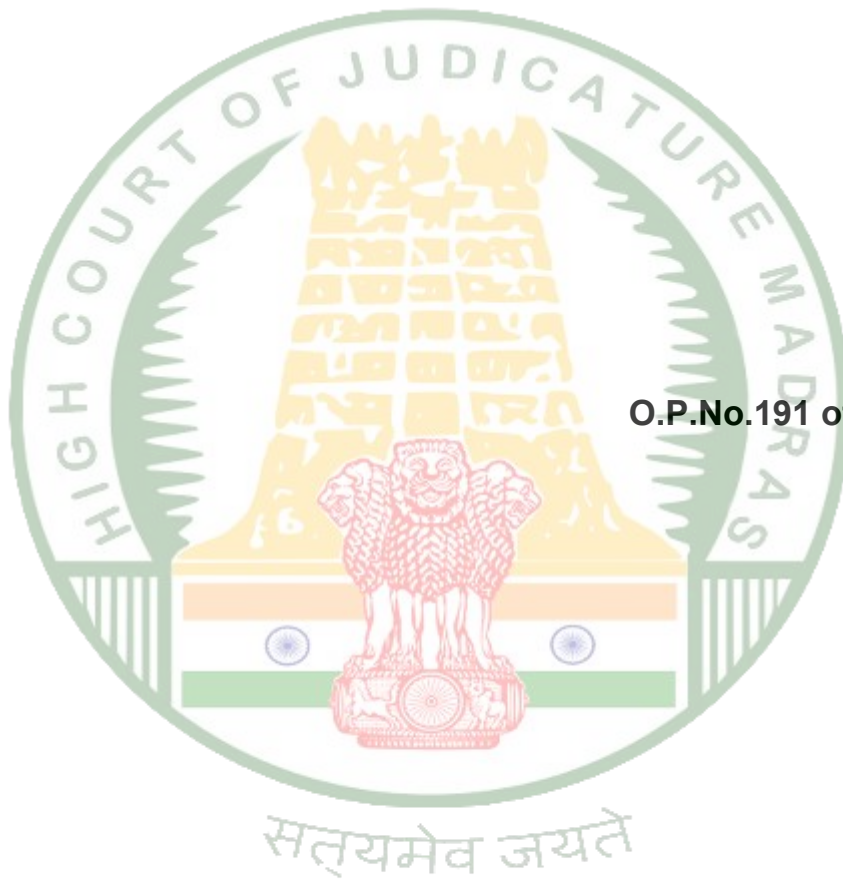
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M.M.SUNDRESH,J.

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