IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.01.2017

Coram

The Hon'ble Mr.Justice T.S. SIVAGNANAM

O.P.No.418 of 2010

Mrs.Y.V.Radhika .. Petitioner

vs

1.Angel Broking Ltd.,
G-1, Akruti Trade Centre,
Ground Floor, MIDC Road No.7,
Andheri East, Mumbai – 400 059.

2.Mr.M.V.Gangadharan, Arbitrator,
BSE Investors' service Centre,
4th Floor, Exchange Building,
2nd Line Beach, Chennai – 600 001. .. Respondents

2nd respondent deleted as per order dated 17.06.2016 in O.P.No.418 of 2010.

Prayer: Petition is filed under Section 34(2)(a) of the Arbitration and Conciliation Act, 1996, to set aside the Award of the Arbitrator dated 25.09.2009 made in Reference No.245 of 2009

For Petitioner : Mr.K.Govi Ganesan

For Respondents : Mr.G.Derricksam

ORDER

Heard Mr.K.Govi Ganesan, learned counsel for the petitioner and Mr.G.Derricksam, learned counsel appearing for Mr.Hari Radhakrishnan, learned counsel for the first respondent.

2. This Original Petition is filed by the petitioner under Section 34(2)(a) of the Arbitration and Conciliation Act, 1996, (Act) to set aside the award passed by the Arbitrator, dated 25.09.2009 in reference No.245 of 2009.

3. The facts, which are necessary for the disposal of the petition, are as hereunder:-

(i)The petitioner is a Constituent of the first respondent, which is a registered broker on the file of the stock exchange. The parties are bound by an agreement, dated 02.05.2008, under which the present Arbitration proceeding had been initiated. The first respondent was the claimant before the Arbitrator claiming a sum of Rs.5,19,861.27/-.

(ii)The case of the first respondent before the Arbitrator was that they being a trading member entered into a client constituent agreement with the petitioner dated 02.05.2008, which also contained a risk disclosure document.

As a result, for the trades conducted by the first respondent with the petitioner, a sum of Rs.5,19,861.27/- is claimed as due as per the ledger balance as on 26.02.2009 along with interest @ 18% p.a. Further, it is stated that the petitioner is an online member having access back office system of the first respondent at all time and was trading on her own and as a result of such trades, there arose a debit balance in favour of the first respondent which was subject matter of the claim.

(iii)The petitioner herein filed a counter claim stating that on account of the breach of contract there is a counter claim for Rs.5,90,000/-, as against the first respondent. The Arbitrator considered both the claim as well as counter claim, and by the impugned award, allowed the claim made by the first respondent and partially allowed the counter claim of the petitioner herein to the extent of Rs.90,000/- and passed an award in favour of first respondent for Rs.4,29,861.27/-. This award is impugned in this Original Petition.

4. The learned counsel for the petitioner would submit that the impugned award is bad in law on the following grounds. (1) it is in violation of principles of natural justice, as the petitioner was not afforded reasonable opportunity to submit a rejoinder to the reply filed by the first respondent and

the award has been passed (2) the impugned award is devoid of reasons, and in terms of Section 31 of the Act, the award shall state the reasons upon which it is based, unless the parties agree that no reasons have to be given or it is an agreed award under Section 30 of the Act. Further(3), it is submitted that in terms of Section 18 of the Act, the parties shall be treated with equality and each party should be given full opportunity to present the case. On the above grounds, the learned counsel seeks for setting aside the impugned award.

5. The learned counsel appearing for the first respondent submitted that adequate opportunity was given to the petitioner, she was represented by counsel and only when the second time adjournment was sought for, the Arbitrator refused the same and passed an order and thereafter, proceeded to pass an award in the Arbitration proceedings. Further, it is submitted that the impugned award is an award with reasons and it is incorrect to state that the award is not without reasons. Thirdly, it is contended on merits that the action of the first respondent was fully justified and the KLG scripts could not be sold by the petitioner, when she attempted to do so online on account of the stock exchange having blocked the transaction and obviously if the transactions have been blocked in respect of the said company, then the first respondent also cannot trade in the segment. To establish the same, the copy of the extract

from the website of the BSE, has been produced to show that there has been little or no trading of the shares of M/s.KLG.

6. I have heard the learned counsels appearing for the parties and perused the materials placed on record.

7. The first contention is that the petitioner did not have adequate opportunity before the learned Arbitrator. On a perusal of the order sheet maintained by the Arbitrator and signed by the parties and their respective counsels, on 07.09.2009, the matter was heard by the Arbitrator, in which the both the parties were present and the petitioner's representative herein filed counter claim before the learned Arbitrator and the first respondent herein agreed to file the rejoinder on or before 14.09.2009, which the petitioner's representative agreed to collect on the same day. By consent the case was adjourned to 18.09.2009 at 3.00p.m. On 18.09.2009, both parties were represented by counsels and the petitioner's counsel requested the Arbitrator to give two weeks time for re-joinder, which was rejected. Thereafter, the learned Arbitrator has proceeded to decide the matter on merits.

8. Admittedly, the petitioner herein did not seek for a larger time for filing a rejoinder, when the case was heard on 07.09.2009. That apart, the copy of the re-joinder was filed by the first respondent had to be provided on or before 14.09.2009. Therefore, it is not a case of violation of principles of natural justice and on that ground the impugned award cannot be set aside. Secondly, it has to be seen as to whether the award is devoid of reasons, and whether the contention of the petitioner is that the award in terms of Section 31(3) should contain reasons. On a perusal of the impugned award, it is seen that in paragraphs C(1&2), the Arbitrator has given reasons. Admittedly, the Arbitrator is not a Court. Therefore, we cannot expect that the reason should be as that of the reasons given in judgments or orders by law Courts. On a perusal of the above referred paragraphs, it is evidently clear that the Arbitrator has accepted the stand taken by the first respondent herein and held that the first respondent alone cannot be held responsible for the failure in respect of KLG shares. Similarly, while considering the counter claim also, the Arbitrator was convinced that to an extent the first respondent is entitled for relief and accordingly, restricted the counter claim to Rs.90,000/-. Therefore, the impugned award is not an award of devoid of reasons, but reasons have been given.

9. Further, it was submitted that in terms of Section 18, the parties have to be treated with equality and each party should be given full opportunity to present the case. In the instant case, both the parties have been given full opportunity to present their case and that has been clearly recorded by the learned Arbitrator.

10. Bearing in mind the legal principle that this Court cannot act as an appellate Court over the award of the learned Arbitrator and being satisfied that there is no violation of principles of natural justice and the award is a reasoned award, it calls for no interference.

Accordingly the Original Petition is dismissed.

04.01.2017

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To

M/s.Angel Broking Ltd.,
G-1, Akruti Trade Centre,
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T.SIVAGNANAM,J.

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