

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.11.2017

CORAM

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

O.P.No.445 of 2010

C.Radhakrishnan
Petitioner

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Vs.

1.M/s.Anand Rathi Share
and Stock Brokers Ltd.,
Shubham Centre, B2, 5th Floor,
Cardinal Gracious Road,
Chakala, Andheri (E),
Mumbai-400 099.

2.R.Subramanian
Sole Arbitrator
NSEIL, II Floor,
Ispahani Centre,
Door Nos.123-124,
Nungambakkam High Road,
Nungambakkam,
Chennai 600 034.

Respondents

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Petition filed under Section 34 of the Arbitration & Conciliation Act, 1996 to set aside the award dated 17.07.2009 passed by the learned Sole Arbitrator.

For Petitioner : Mr.A.S.Baalaji

For Respondents : No appearance
ORDER

This Original Petition is filed under Section 34 of the Arbitration & Conciliation Act, 1996, to set aside the award dated 17.07.2009 passed by the learned Sole Arbitrator.

2. The petitioner executed a member-client agreement with the 1st respondent on 23.04.2008 and was trading with the Coimbatore Branch of the 1st respondent in F & O segment as also cash segment of National Stock Exchange.

3. The 1st respondent effected transactions through National Stock Exchange for the petitioner in shares and securities and for the transactions contract notes and settlement wise bills were issued. The petitioner did not raise any dispute in respect of the said contract notes, as there was due payable by the petitioner. After issuance of notice, arbitration clause was invoked.

4. Before the learned Arbitrator, the petitioner raised a counter claim for a sum of Rs.2,50,000/-. The learned Arbitrator granted the claim of the 1st respondent for a sum of Rs.1,05,997/-, while rejecting the counter claim. Challenging the same, the present

petition has been filed.

5. The learned counsel appearing for the petitioner would submit that there was no authorization given by the petitioner. Further, the counter claim has not been considered, in the proper perspective and therefore, the petition will have to be allowed.

6. Despite notice having been served, none appears for the respondents.

7. The learned Arbitrator took into consideration all the ledger entries along with the contract notes. The fact that the petitioner has made a payment of Rs.25,000/- on 13.05.2008 was also taken into consideration for coming to the conclusion that the contention of the petitioner that the 1st respondent has indulged in unauthorized trading contrary to instruction given to the staff was not correct. The general tactics in the trade is that it was carried on by taking note of the oral instructions. The fact that contract notes for the trade were duly sent by the 1st respondent and at that point of time, no objection was raised by the petitioner after receipt of the same, has been considered by the learned Arbitrator. Therefore, the the petitioner, crying sour grapes, after suffering a loss in the trade

undertaken by the first respondent on his behalf, cannot be accepted.

7.Coming to the counter claim, it was held that what was available to the credit of the petitioner was only Rs.15,286/-. Freezing of the account, due to the debit balance by the 1st respondent was not seriously questioned by the petitioner. Therefore, it was rightly held that the counter claim was only an after thought. After all, in exercise of the power under Section 34 of the Arbitration & Conciliation Act, 1996, this Court is only constraint to deal with the case within the parameters available. These parameters not being available, no interference is required. Accordingly, this Original Petition stands dismissed.

02.11.2017

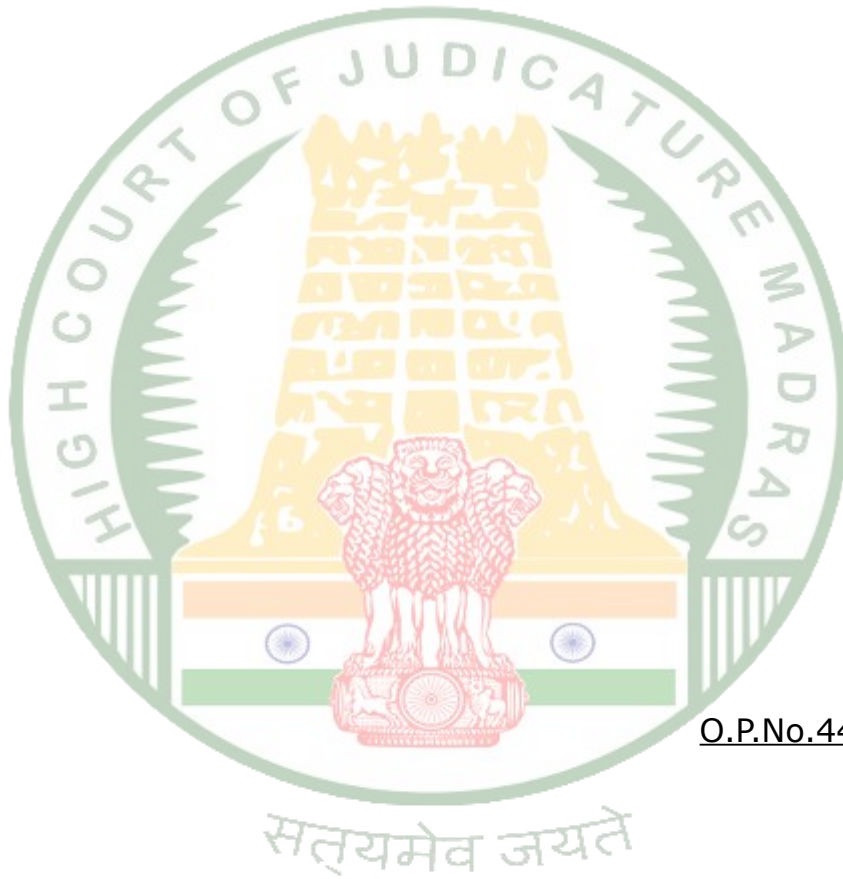
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M.M.SUNDRESH, J.

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