

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.10.2017

CORAM

The Honourable MR. JUSTICE M.M.SUNDRESH

Original Petition No.519 of 2010

Prithi.D.

... Petitioner

..VS..

1. M/s Kotak Securities Ltd.,
"Bakhtawar", I Floor,
229, Nariman Point,
Mumbai 400 021.

2. M.V.Badrinath
Sole Arbitrator,
National Stock Exchange of India Ltd.,
II Floor, Ispahani Centre,
Door No.123-124, Nungambakkam High Road,
Nungambakkam, Chennai 600 034.

... Respondents

सत्यमेव जयते

Original Petition is filed under Section 34 of the Arbitration and Conciliation Act, 1996 to set aside the Award of the 2nd respondent dated 15.12.2008 pertaining to disputes between the petitioner and the 1st respondent in A.M.No.F&O-C-0184/2008.

For Petitioner

: Mr.T.Raja Mohan

For 1st respondent

: No appearance

ORDER

This Original Petition is filed under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the Act), to set aside the Award of the 2nd respondent dated 15.12.2008 pertaining to disputes between the petitioner and the 1st respondent in A.M.No.F&O-C-0184/2008.

2. The matter stood adjourned from time to time. From the record, it appears that the Vakalat was filed on behalf of the 1st respondent, however, the said Vakalat was returned. Thereafter, once again the counsel had entered appearance for R1. Therefore, by order dated 04.02.2011, the learned Master was pleased to hold that notice has been duly served.

3. When the matter was posted for hearing on 10.10.2017, there was no representation on behalf of the respondent No.1. Hence, the matter was adjourned to today (11.10.2017). Today, when the matter is taken up for hearing, learned counsel appearing for the 1st respondent would submit that change of vakalat has been given long back, thereafter, a counsel has filed Vakalat, which which also returned and counsels name are also printed in the cause list. Hence, this Court is inclined to proceed with the matter on merits.

4. The 1st respondent is a Corporate Member of the National Stock Exchange. The petitioner duly registered with the 1st respondent pursuant to a member-client agreement. The petitioner carried on trade from time to time. There was a negative mark on her outstanding position in view of market loss. After the issuance of notices, the 1st respondent asked the petitioner to make the payment. The cheque issued was bounced. Under those circumstances, the 1st respondent made a claim of Rs.1,80,780/- along with interest.

5. The learned Arbitrator, during the hearing made a recording that the petitioner was not present despite notice served. The service of notice was ascertained from the National Stock Exchange. Accordingly, an award was passed for a sum of Rs.1,80,780.44 along with interest at 18% p.a. The said award is sought to be predicated on the sole ground that the mandate to Section 34(2) of the Act has not been complied with as the petitioner was put on notice.

6. The learned counsel for the petitioner would submit that it is the duty of the learned Arbitrator to verify the service of notice. A mere statement from the National Stock Exchange per se would not be sufficient.

7. This Court is of the view that except the statement recorded by the learned Arbitrator, there is no material available on record to substantiate the service of notice. Though it is the duty of the petitioner to substantiate before this Court on the service of notice, it is also equally incumbent on the learned Arbitrator to place on record the service of notice. In other words, a satisfaction has to come from the records, but not from a statement made by the officials of the National Stock Exchange.

8. Unfortunately, none appears for the 1st respondent, though the matter was adjourned from time to time on numerous occasions. Now, the erstwhile counsel reports no instructions and none appears for the counsel who filed change of vakalat, though returned, on the last few occasions. In such view of the matter, this Court is inclined to set aside the award on the premise that the petitioner was not put on notice in the proceedings before the Arbitrator.

9. Accordingly, the Award of the 2nd respondent dated 15.12.2008 stands set aside and the Original Petition is allowed.

11.10.2017

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M.M.SUNDRESH,J

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