

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.11.2017

CORAM

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH

O.P.No.909 of 2010

Mrs.Jayanthi

..Petitioner

Vs.

1.M/s Geojit BNP Paribas Financial Services Limited,
5th Floor, Finance Tower, Kaloor,
Cochin-682 017.

2.Mr.M.S.Pratap,
Arbitrator,
C/o National Stock Exchange of India Limited,
2nd Floor, Ispahani Centre, Door No.123-124,
Nungambakkam High Road, Nungambakkam,
Chennai-600 034.

.. Respondents

Original Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996, to set aside the Award bearing Arbitration Matter (AM)No.CM/C-0024/2010 dated 29.07.2010 of the second respondent and direct the first respondent to pay the cost of this petition.

For Petitioner : Mr.Balan Haridas

For Respondents : No appearance

ORDER

This original petition has been filed seeking to set aside the award dated 29.07.2010 passed by the learned Arbitrator.

2.The first respondent was operating as a registered Stock Broker with the National Stock Exchange of India. The petitioner has registered herself as a client on 06.11.2008. There was an agreement viz., Member-Client Agreement between the parties. The claim has been made through the Arbitrator for the amount payable by the petitioner. The petitioner raised many grounds denying the claim made. She has stated that she did not authorise the trade between 20.07.2009 and 15.09.2009. The claim is barred by limitation. The contract note was not issued to her.

3.The learned Arbitrator, having found that there are enough materials to accept the claim with respect to the transaction made on behalf of the petitioner and placing reliance upon Exs.A5 and A7, has awarded a sum of Rs.1,07,512/- being the debit balance available in her account.

4. Heard the learned counsel appearing for the petitioner. Despite notice having been served on the respondents, none appears on their behalf.

5. The learned counsel for the petitioner submits that there is no material to hold that she has given an authorisation. The claim is barred by limitation. There is no sufficient money in the account and therefore, it is not known as to how the first respondent has entered into the trading without money being given by the petitioner. The e-mails sent by the petitioner has not been received. In any case, the interest levied is excessive.

6. We are dealing with trading in the stock exchange. The trading has got its own peculiarities. The fact that the petitioner has registered herself as a client through Member-Client Agreement is not in dispute. The further fact is that the first respondent is trading on behalf of the petitioner.

7. The learned Arbitrator took into consideration the contract note and the ledger statement, though the petitioner has sought to deny them, and held that in the absence of any material, the same cannot be accepted.

8. The service through the certificate of posting creates a presumption. The petitioner has not objected to any of the trades as mentioned in the contract note or else sent to her. She did not claim

contract notes. Thus, this Court does not find any merit in this petition and the award passed in favour of the first respondent for Rs.1,07,512/- is confirmed.

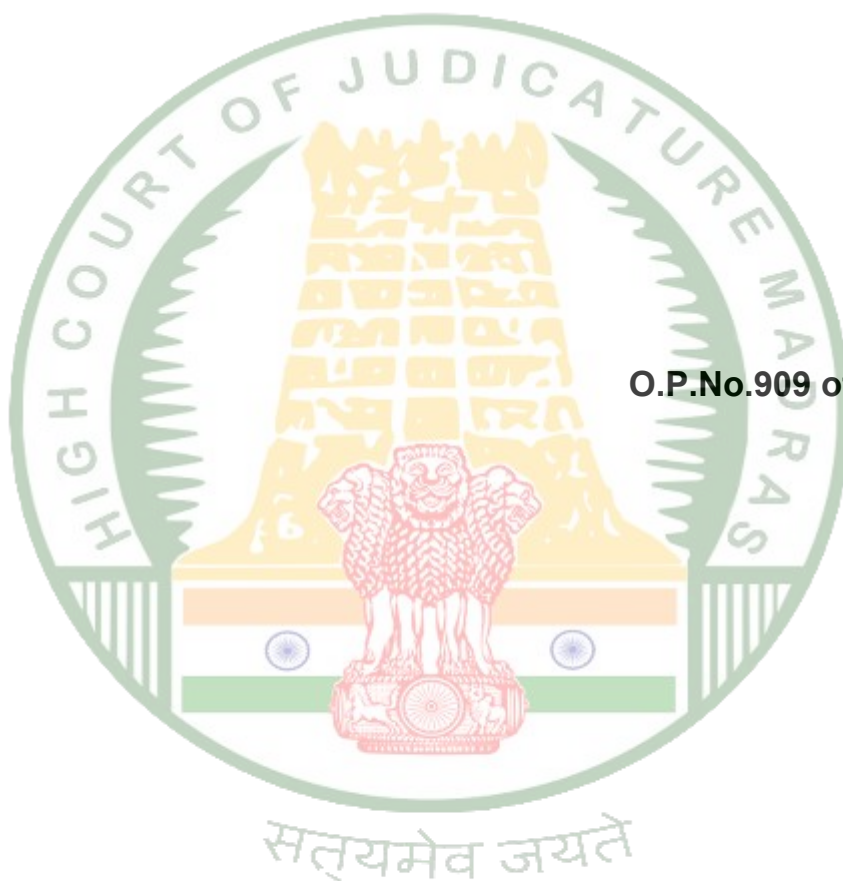
9. Insofar as limitation issue is concerned, the learned Arbitrator rightly took into consideration the date on which notice demanding payment was sent as a date of reckoning. This notice was received by the petitioner on 17.11.2009, though sent on 13.11.2009. Thus, the application having been filed on 25.03.2010 and taking the relevant date as 13.11.2009, it was rightly held that no question of limitation is involved.

10. The learned counsel for the petitioner submits that considering the fact that the petitioner is a housewife, the interest may be reduced. The learned Arbitrator did not give any specific reason for awarding 12% interest. Considering the same, the rate of interest awarded at 12% is modified to 6% per annum. Accordingly, the interest awarded at 12% per annum on Rs.1,07,512/- is modified to 6% per annum. In all other respects, the award is confirmed and the original petition stands dismissed.

09.11.2017

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M.M.SUNDRESH,J.



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