

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.10.2017

CORAM

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

O.P.No.91 of 2010

Manju Devi

..Petitioner

Vs.

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

2.Mr.P.M.Venkata Subramanian,
Sole Arbitrator,
National Stock Exchange of India Ltd.,
II 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 dated 08.10.2008 passed by the second respondent pertaining to disputes between the petitioner and the first respondent in A.M.No.F&O-C-0049/2008.

For Petitioner : Mr.R.Thirugnanam for
Mr.T.Rajmohan

For Respondents : No appearance

ORDER

The first respondent herein is a trading member with the petitioner as the constituent. The petitioner became the client of the first respondent after completing the due formalities in the month of June 2017. In the course of the trade *inter se* between the petitioner and the first respondent, there was an outstanding balance of Rs.18,15,022.53 payable by the petitioner.

2.As the petitioner has not paid the said amount, the first respondent invoked the arbitration clause. The learned Arbitrator proceeded to pass an Award against the petitioner after holding that the petitioner had received the arbitration papers as well as hearing notice as confirmed by the officials of the National Stock Exchange of India Limited.

3. The learned counsel appearing for the petitioner would make only one submission. It is submitted that the petitioner was not at all put on notice at the time of appointing the learned Arbitrator, during the course of hearing and after the award was passed in serving the copy of it. Therefore, the petition filed under Section 34 of the Arbitration and Conciliation Act, 1996, has to be allowed as required under sub clause 2

for want of notice by setting aside the award passed.

4. The original petition is of the year 2010. It stood adjourned from time to time. An affidavit of service was filed and the Registry has recorded the completion of service by an order dated 12.04.2010. On 27.07.2017, the learned counsel for both parties were present and on their request, the matter stood adjourned to 08.08.2017. On 08.08.2017, it was held that there was no appearance on behalf of the first respondent and the name of Mr.Namasivayam, whose vakalath was returned, was directed to be deleted at the request of the party and posted the matter for hearing on 16.08.2017.

5. When the matter was listed on 16.08.2017, the learned counsel Mr.Umashankar submitted that though he has filed caveat in the matter, the brief has been entrusted to Mr.Namasivayam. Accordingly, the name of Mr.Umashankar was directed to be deleted after taking note of the absence of the learned counsel Mr.Namasivayam and adjourned the matter to 21.08.2017.

6. On 21.08.2017, though the name of one other learned counsel by name Mr.J.Antony Jesuraja was printed in the cause list, none appears

on behalf of him. Hence, the matter stood posted to 04.09.2017. On 04.09.2017, there was no representation for the first respondent and it was again posted to 11.09.2017. On 11.09.2017, a representation was made by the learned counsel for the first respondent that he was in the process of handing over the brief to the first respondent. Therefore, the matter stood posted to 03.10.2017 for the engagement of a new counsel.

7. When the matter was taken up for hearing on 03.10.2017, once again there was no representation. Noting the conduct of the first respondent, this Court adjourned the matter to 04.10.2017. Unfortunately, even today i.e., on 04.10.2017, there is no representation on behalf of the first respondent. Hence, this Court is inclined to proceed with the matter on merits. The respondent was duly served and thus aware of the proceedings.

9. As rightly submitted by the learned counsel for the petitioner, the Award has proceeded on the statement said to have been made by the officials of the National Stock Exchange of India Limited. In other words, the learned Arbitrator did not verify as to whether the notices have been served on three different stages on the petitioner. We are concerned with the stages 1 and 2. It is the specific case of the petitioner that even at the

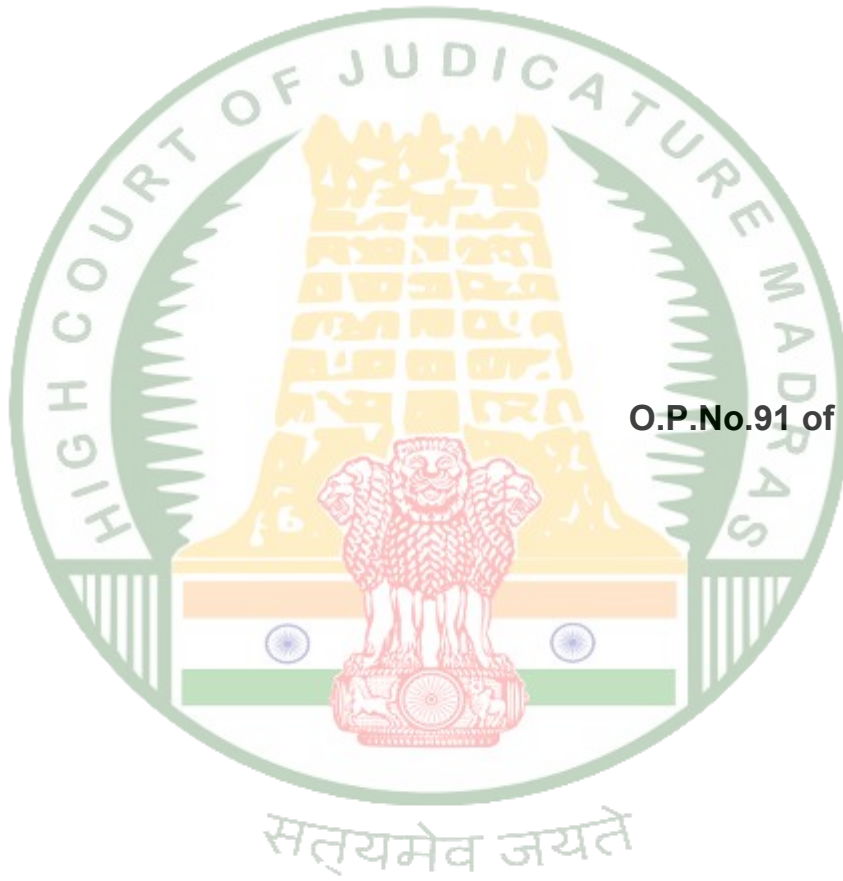
time of appointing the Arbitrator and during proceedings, she was not put on notice. There is nothing on record to disprove the said assertion made. It is the duty of the learned Arbitrator to verify and record that notices have been served. For such a satisfaction, a mere statement by the officials of the National Stock Exchange of India Limited cannot be the basis in the absence of records to prove the service of notices on the petitioner. Unfortunately, in the absence of the learned counsel for the first respondent, this Court is unable to reject the contention of the petitioner in this regard. Suffice it to state that there is absolutely no material available to discredit the contention of the petitioner for want of notice.

10. In such view of the matter, this Court is inclined to set aside the award passed by the second respondent viz., the learned Arbitrator. Accordingly, the award passed in A.M.No.F&O-C-0049/2008 dated 08.10.2008 is set aside and the original petition is allowed.

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M.M.SUNDRESH,J.



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