

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **FAO No.75/2017**

% **13th July, 2017**

SHIVAM SHARMA Appellant

Through: Mr. Vivek Singh, Advocate.

versus

M/S ALANKIT ASSIGNMENTS LTD. Respondent

Through: Ms. Pratiksha Chaturvedi,
Advocate.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This First Appeal under Section 37 of the Arbitration & Conciliation Act, 1996 (hereinafter referred to as 'the Act') is filed by the appellant/objector impugning the order of the court below dated 8.9.2016 by which objections filed by the appellant under Section 34 of the Act have been dismissed against the Award dated 9.11.2015 passed by the Arbitrator dismissing the claim petition filed by the respondent/claimant.

2. The facts of the case are that the appellant was a constituent/client of the respondent/broker and who was a member of the National Stock Exchange. Disputes and differences arose between

the parties with respect to trades conducted during the year 2015. The case of the appellant was that trades were conducted without his having placed orders for the trades undertaken whereas the respondent had contended that not only the trades were conducted in terms of the instructions of the appellant/objector/client but that with respect to each and every trade the appellant was notified both by email and SMS, and therefore, the appellant cannot contend that he never had given instructions for conducting of the trades. Arbitrator by the Award has held that the appellant was not entitled to contend that trades were conducted without his knowledge and permission/instructions inasmuch as all the trades are duly confirmed to the registered email account of the appellant/client and also by means of SMSs sent to the concerned phone number of the appellant. Accordingly Award was passed rejecting the claims of the appellant.

3. The court below has considered all aspects and held that once the Arbitrator has considered all aspects of merits and arrived at findings which arise from the facts and evidence appearing on record, such an Award cannot be interfered with, and with these observations this Court completely agrees. The relevant observations of the court below are contained in paras 6 and 7 of the impugned judgment of the court below, and which paras read as under:-

“6. Perusal of the impugned award dated 09.11.2015 passed by the Ld. Sole Arbitrator reveals that all the abovesaid aspects have been dealt with by the Ld. Arbitrator. The Ld. Arbitrator has stated that the respondent no.1 relied upon the ledger account, contract notes and SMS messages. The Ld. Arbitrator has come to the conclusion that the respondent no.1 had been sending the account by E-mail and the petitioner herein also received the SMS messages during the disputed period but no objection was raised at all by the petitioner after the receipt of the contract notes received by him during the disputed period. The Ld. Arbitrator has come to the conclusion that the petitioner was fully aware of the trades done in the disputed period in his account but he chose not to raise any objections to the trade. Ld. Arbitrator has further come to the conclusion that there was enough evidence on record to show that the petitioner was fully aware of the trade done during the disputed period but he chose not to object to the same. I am of the opinion that the Ld. Arbitrator has rightly observed that as per the own admission of the petitioner, his father was having a direct contract with the respondent no.1. The father of the petitioner was ringing up on behalf of the petitioner to the respondent no.1. The E-log of the record of the contract notes sent to the petitioner by the respondent no.1 on the registered E-mail address of the petitioner was also filed by the respondent no.1 before the Ld. Arbitrator. Ld. Arbitrator has further observed that there was no dispute of E-mail address of the petitioner. The Ld. Arbitrator has further held that the petitioner had accepted the receipt of SMS and E-mail of the contract notes sent by NSE in this regard.

7. To my mind, the abovesaid observations as contained in the impugned award dated 09.11.2015 passed by th Ld. Sole Arbitrator are based after appreciation of the evidence led by the parties and after a close scrutiny of the documents placed on record by both the parties. To my mind, the petitioner has failed to point out as to how the present petition falls within the ambit and purview of Section 34 of the Arbitration and Conciliation Act. I have no hesitation to hold that the impugned award dated 09.11.2015 passed by the Ld. Arbitrator cannot be said to be against the public policy of India or against the settled principles of law. As a result, the present petition fails and the same is hereby dismissed. The file of the Ld. Arbitrator be sent back against receipt.

File be consigned to Record Room after due compliance.”

(underlining added)

4. The aforesaid conclusions of the court below are unimpeachable inasmuch as the scope of hearing objections under Section 34 of the Act is limited. Once the Arbitrator arrives at findings on the basis of the evidence on record and the documents filed, a court hearing objections under Section 34 of the Act does not sit as an

appellate court to re-apprise the evidence, findings of facts and conclusions which are drawn by the Arbitrator.

5. There is no merit in the appeal. Dismissed.

JULY 13, 2017
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VALMIKI J. MEHTA, J

