* IN THE HIGH COURT OF DELHI AT NEW DELHI

\+ **FAO No. 188/2017**

% **26th April, 2017**

SURENDER KUMAR GUPTA ..... Appellant

Through: In person.

versus

MOTI LAL OSWAL SECURITIES LIMITED ..... Respondent

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

C.M. Appl. No. 15514/2017

Exemption allowed, subject to all just exceptions.

C.M. stands disposed of.

FAO No. 188/2017

1. This first appeal under Section 37 of the Arbitration and Conciliation Act, 1996 impugns the judgment of the Court below dated 29.3.2017 dismissing the objections filed by the appellant under Section 34 of the Arbitration and Conciliation Act.

2. By the objections, the appellant had challenged the award of the panel of three arbitrators dated 10.2.2016 rejecting the claim petition. The Award of the arbitrators dated 10.2.2016 achieved

finality on dismissing of the appeal by the appellate award dated 30.5.2016 of the panel of three arbitrators. The issue in the arbitration proceeding was the case of the appellant that the respondent, a stock broker with whom the appellant was registered, conducted unauthorised trades in the appellant's account, and accordingly the appellant is entitled to refund of the total loss caused of Rs.52,75,052/-.

3. The impugned awards dated 10.2.2016 and 30.5.2016, as also the impugned judgment gives the following conclusions for holding the claim petition of the appellant in the arbitration as being misconceived:-

(i) Appellant claimed that transactions/trades were done in his account without his consent but this case was false, inasmuch as, respondent filed in the arbitration proceedings documents such as e-log reflecting the delivery of e-mails of the appellant at the registered e-mail id of the appellant as regards the trades, SMS log reflecting the delivery of SMSs to the registered mobile number of the appellant as regards the trades, and a CD containing the sample voice recording of the appellant containing directions as regards the trades to be conducted. These documents were not questioned during the course of the arbitration proceedings and it is so noted by the arbitrators in the original award dated 10.2.2016 as under:-

> "The respondent in reply to the applicaotn of amendment denied that allegation. The respondent trading member also claimed that he has visited the office of the respondent trading member. The trading member has also filed documents as mentioned below:

1.	**Annexure** II-A copy of KYC-MCA executed by the Applicant.	
2.	**Annexure** III-A copy of E-Log reflecting delivery of emails to the registered email id of the Applicant	
3.	**Annexure** IV-A copyof SMS-Log reflecting delivery of SMS to the registered Mobile no. of the Applicant	
4.	**Annexure** V- A CD containing sample Voice recordings.	
5.	**Annexure** VI- A copy of IGRP minutes dated July 31, 2015.	
6.	**Annexure** VII- A copy of POD reflecting deliverly of Welcome Kit to the Applicant.	

> These documents had not been questioned during the course of argument. As such, this is not reason to discard the version of the respondent in peculiar circumstances of this case." (underlining added)

Therefore, it was clear that when trades were conducted by the respondent for the appellant details of the same were sent to the appellant both by e-mail as also by SMSs, and therefore appellant cannot question the trades as being unauthorised.

(ii) It is also required to be noted that the voice recording was played before the IGRP members and which showed the active participation of the appellant in trading.

(iii) The arbitration tribunal in its original award dated 10.2.2016 notes that the appellant at different points of time had been changing stands with respect to amounts which he is entitled to. In the claim petition dated 4.8.2015 the appellant/claimant claimed the loss suffered by him of Rs.34,08,000/-. Thereafter the statement of the appellant Sh.S.K. Gupta was recorded on 17.12.2015 which showed that actually there was also a further loss of Rs.13,25,000/- and which was in addition to the original claim of Rs.34,08,000/-. Appellant moved an application accordingly for amendment but since it was moved at a belated stage it was dismissed and the arbitrators had given liberty to the appellant to file a fresh claim with respect to any additional amount which was not the subject matter of the arbitration proceedings. Again then on 10.11.2015, the appellant amended his actual loss figure to a figure of Rs.52,75,052/-. Accordingly, it has been rightly found by the arbitration tribunal that appellant could not be believed as he was repeatedly changing his stands with respect to the loss suffered by him, i.e firstly he claimed Rs.34,08,000/- in his letter of claim, to this he added loss of Rs.13,25,000/- and ultimately he raised his claim to the loss figure of Rs.52,75,052/-.

(iv) Though the contention of the appellant was that trades were conducted without his instructions, however, it is seen that the appellant had regularly gone to the office of the respondent for placing orders, inasmuch as, a copy of the visitor's register was filed by the respondent showing the presence of the appellant on different days in the office of the respondent. Accordingly, the arbitration tribunal held, and rightly so, that it could not be argued by the appellant that the trades conducted by the respondent were beyond his instructions.

(v) The arbitration tribunal in the appellate award dated 30.5.2016 has observed that if the case of the appellant was that three agents/employees of the respondent, namely Smt. Shashi, Sh. Sh. Mritunjay, Ankur have conducted unauthorized trades and that appellant was being threatened by these three employees that more unauthorized trades will be conducted, then why appellant did not straightaway stop trading, and which he did not do, and thus such facts falsify the assertions of the appellant of unauthorized trades having been conducted.

4. It is therefore seen that various documents were filed by the respondent, being e-mails, SMSs, visitors register and voice recordings alongwith the transcripts, and all of which documents showed that appellant was actively participating in the trades, and hence it was not permissible for the appellant to argue that transactions/trades in his account were unauthorized.

5. During the course of arguments, this Court put a query to the appellant, who argued his case in person, that once there are e-mails which were sent to the appellant by the respondent then how could the

appellant contend that appellant was not aware of the trades, and to this query appellant argued that he was not given the password with respect to the account for operating the account and also that the appellant is not conversant with computers and hence he could not access the account. Clearly once again the appellant is making statements which cannot be believed, inasmuch as, it has not been the case of the appellant in the arbitration proceedings that he did not have the password for operating his account. Also the appellant cannot argue with credibility that he cannot operate computers at this day and age, and that therefore the e-mails received by him should not be looked into.

6. The law with respect to hearing of objections under Section 34 of the Arbitration and Conciliation Act is well settled. Only if there is a clear illegality in law or a completely perverse finding or an issue of public policy that courts will interfere with the awards. In the present case, the awards of the arbitrator as also the impugned judgment give valid reasons, as stated above, for dismissing the claim petition of the appellant and also for rejecting of the objections under Section 34 of the Arbitration and Conciliation Act. Hence, there is no merit in this appeal, and the same is therefore dismissed.

APRIL 26, 2017/ AK/ib **VALMIKI J. MEHTA, J**