

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

+ **FAO No.309/2017**

% **26<sup>th</sup> July, 2017**

M/S RELIGARE SECURITIES LTD. .... Appellant

Through: Mr. Sachin Mittal, Advocate.

versus

SURENDRA NATH SARIVASTAVA ..... Respondent

**CORAM:**

**HON'BLE MR. JUSTICE VALMIKI J. MEHTA**

To be referred to the Reporter or not?

**VALMIKI J. MEHTA, J (ORAL)**

**C.M. No.26064/2017 (exemption)**

1. Exemption allowed subject to just exceptions.

C.M. stands disposed of.

**C.M. No.26065/2017 (for condonation of delay)**

2. For the reasons stated in the application, delay of 16 days in filing the appeal is condoned.

C.M. stands disposed of.

**FAO No.309/2017 and C.M. No.26063/2017 (stay)**

3. This First Appeal under Section 37 of the Arbitration & Conciliation Act, 1996 (hereinafter referred to as 'the Act') impugns

the judgment of the court below dated 28.3.2017 by which the objections filed by the appellant under Section 34 of the Act have been dismissed.

4. The facts of the case are that the respondent filed a claim petition in the arbitration seeking an amount of Rs 9,26,020.67/- from the present appellant, the respondent in the arbitration proceedings. Out of the aforesaid amount, a sum of Rs 7,26,020.67/- was the amount claimed towards losses on account of unauthorized trades by the appellant in the account of the respondent and the amount of Rs 2 lacs was on account of assured return which the respondent was promised by the appellant. The case of the appellant in the arbitration proceedings was that all the trades were done with the knowledge, consent and information to the respondent. Whereas the Arbitration Tribunal comprising of a single member by his Award dated 21.9.2012 accepted the pleas of the appellant and dismissed the claim petition filed by the respondent, however, the Appellate Arbitration Tribunal vide its Award dated 13.3.2013 accepted the appeal filed by the respondent and allowed his claim petition to the extent of Rs 7,26,020.67/-. It was held by the Appellate Arbitration Tribunal that

the appellant failed to lead any evidence that any instructions were issued by the respondent for carrying out trades in his account. The existence of instructions was necessary because the respondent was not an online trading member. The Appellate Arbitration Tribunal therefore concluded that the F&O trades were being done in spite of there not being clear instructions to do so. The appellant denied having maintained any record of telephonic orders of confirmatory calls or SMSs and these were therefore never produced by the appellant in the arbitration proceedings. The Appellate Arbitration Tribunal also notes that it is not the case of the appellant that the respondent used to visit the appellant's office almost daily and used to spend time for placing orders at the branch of the appellant. The Appellate Arbitration Tribunal also concluded that simply sending of statement of accounts much after the transactions were complete, cannot be taken as confirmation with respect to issuing of instructions for carrying out the trades. Accordingly the claim petition filed by the respondent was allowed by the Appellate Arbitration Tribunal by observing as under:-

“5. We have given very careful thought to the matter, and have perused the material brought on record. It is seen that between the period 17-07-2010 (when the appellant joined as a client) and 25-11-2010 (The

date of the last trade), that is, a period of 4 months, the entire capital of the appellant has been wiped out. Considering that the Trading Members trade with the constituents' fund and not their own, it is incumbent upon them to show with un-impeachable evidence that the entire trading has been done strictly in accordance with the constituent's instructions. No such evidence has been forthcoming in the present case. It has been admitted even by the respondent Trading member that the appellant was not an on-line trader. That being so, it was necessary for the respondent Trading Member to explain how the orders for the F&O trades were placed. The respondent has denied having maintained a recording of telephonic orders; no record of any confirmatory calls or SMSs has ever been produced or even claimed to have been kept. Nor has it been claimed that the appellant used to visit the branch office almost daily and spend time in placing orders on one-to-one basis with the Relationship Manager. The respondent's sole contention in this regard is that since the receipt of contract notes has not been denied and since the constituent did not object to any F&O trade it must be presumed that the trades were as per his instructions. We are not at all impressed with this argument. First of all, we find that the appellant has, at least in two letters dated 05-10-2010 and 15-10-2010 addressed to the Regional Manager and the Deputy General Manager, respectively, has complained to the respondent company about the various acts of commission and omission, including the issue that F&O trades were being done in spite of his clear instructions not to do so. No explanation has been forthcoming from the respondent Trading Member as to how these complaints were dealt with. In these circumstances it cannot be urged-as the respondent has sought to do-that the appellant accepted the F&O trades and did not raise any objection. In any event, acceptance of trades after these have been entered cannot make the trades as having been authorized trades as long as the Trading Member does not produce evidence to show that instructions for the trade were received prior to the trade having been made.

6. A word now about the observation that if the appellant accepted the trades in the cash segment, he cannot repudiate those in the F&O segment. We do not find any inconsistency in the appellant's stand. He had always claimed that he had transferred the shares so that these could be sold at favourable rates. Therefore, his acceptance of trades in the cash segment was quite logical. Regarding the pay-outs received by him, these are seen to be of very small amounts (Rs.11,000/-, 15,000/- and 12,833.02) compared to the value of shares which he had transferred with the clear understanding that these would be sold. In the impugned Award it has been stated that the last pay-out was of the exact amount standing to his credit, but we do not think this can be held against the appellant; we note that this last pay-out was made on 09-12-2010, that is, after the last trade, and apparently was intended to settle the credit in his account.

7. In the light of what has been stated above, we hold that the appellant's claim of Rs.7,26,020.67/- has merit and deserves to succeed.

His further claim of Rs.2,00,000/- on account of assured returns promised to him cannot be accepted, as there cannot be any question of assured returns in the stock market. The appeal is, thus, partly allowed to the extent of Rs.7,26,020.67.”

5. The aforesaid findings and conclusions of the Appellate Arbitration Tribunal have been upheld by the court below as per para 5 of the impugned judgment and which para more or less reproduces the discussion and reasoning contained in paras 5 and 6 of the Appellate Arbitration Award dated 13.3.2013.

6. It is settled law that once the Arbitration Tribunal takes a decision on the basis of the evidence appearing on the record of the arbitration proceedings, and the view taken is one possible and plausible view, unless such view is completely perverse being based on no evidence or is *ex facie* against the law, a court hearing objections under Section 34 of the Act does not have power to interfere with the Award. Once the Court hearing objections under Section 34 of the Act cannot interfere with such an Award, the scope of hearing before this appellate Court against an impugned order which has dismissed the objections is further limited and this Court also as a court of appeal cannot interfere with the impugned judgment dismissing the objections.

7. Learned counsel for the appellant firstly argued that the Appellate Arbitration Tribunal has wrongly given an amount of Rs 7,26,020.67/- because the appellant had returned certain amount of shares to the respondent, however, I find that no such plea has been dealt with in the Appellate Arbitration Award dated 13.3.2013, and nor has the appellant filed any reply to the grounds of appeal in the Appellate Arbitration Tribunal body that the amount of Rs 7,26,020.67/- was liable to be reduced by which specific amount of which specific shares and which were credited/paid to the present respondent. Also, in the grounds of appeal filed under Section 34 of the Act, the appellant has only generally stated for reduction of the amount of Rs 7,26,026.07/- without mentioning once again what is the specific amount by which the claim amount had to be reduced, why and on account of which particulars. This argument of the appellant is therefore rejected.

8. Learned counsel for the appellant then argued that the impugned judgment has to be set aside as the court below has relied upon an MCX circular with respect to requirement of keeping evidence of placing orders, but the transactions in question were not

carried out in the MCX but on National Stock Exchange, and to which argument it is noted that obviously mentioning of an MCX circular by the court below is a mistake because this MCX circular has not even been relied upon by the Tribunal and which Tribunal conducted the proceedings admittedly in accordance with the National Stock Exchange Rules and Regulations. In any case, it has otherwise come on record as a finding of fact that respondent had not given any instructions to the appellant for carrying trades and which finding of fact is based upon the evidence led in the arbitration proceedings, and therefore, neither the court below hearing objections under Section 34 of the Act and nor can this Court as an appellate court interfere with such an Award containing the reasoning and discussion of the Arbitration Tribunal taking one possible and plausible view.

9. Dismissed.

**JULY 26, 2017**  
Ne

**VALMIKI J. MEHTA, J**