

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

ARBITRATION PETITION NO.902 OF 2013

Rashmi Aditya Gupta	...	Petitioner
Versus		
Mangal Keshav Securities Ltd		
And Another	...	Respondents

.....

Mr. Cherag Balsara a/w Simil Purohit, Mihir Mody and Namrata Shah
Saurastri I/b K. Ashar & Co. for the Petitioner.

Mr. Dilip Rai I/b Ms. Aruna Singh for Respondent No.1.

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CORAM : S.C.GUPTE, J.

DATE : 26 NOVEMBER 2018

P. C. :

. Heard learned Counsel for the parties.

2 This arbitration petition challenges an award passed by a Sole Arbitrator in an arbitration reference held under the Bye-laws, Rules and Regulations of National Stock Exchange of India Ltd. ('NSE'). The Petitioner in the present petition, who was Respondent No.1 before the learned arbitrator, is a constituent of Respondent No.1 herein, who is a trading member and who was one of the applicants before the learned arbitrator. The applicants' claim in the reference was in respect of amounts owed by the Petitioner herein as their constituent towards the futures option transactions entered into on her behalf. The case of the Petitioner herein before the learned arbitrator was that she was only

having dealings with Respondent No.1 herein for share purchase on delivery basis and never in F & O segment. It was the case of the Petitioner that the transactions purportedly entered into on her behalf by Respondent No.1 were unauthorised and she was not liable to pay for the same. It was submitted that Regulation 3.10(a) of NSE F & O Trading Regulations made it mandatory for a trading member to obtain a margin of such minimum percentage as the relevant authority may determine from time to time and since no such margin was kept by the Petitioner with Respondent No.1, the latter could not have taken any position on her behalf in F & O segment. It was also submitted that the alleged transactions effected by the Respondents in her account were contrary to the terms of the contract as well as regulations of NSE and were, therefore, void.

3 The learned arbitrator rejected the Petitioner's contentions, noting *inter alia* that the Petitioner had admitted that she had received contract notes not only for purchase of shares on delivery basis, but also in respect of the subsequent F & O transactions; although she had received all documents (which included the contract notes), it was her case that she did not comprehend those documents. The learned arbitrator observed that the story of the Petitioner did not inspire any confidence. Her case that she did not comprehend F & O trade and had no financial capacity to deal in it and could not have been party to any such transactions did not appeal to the learned arbitrator. The learned arbitrator observed that the KYC documents showed that the Petitioner was a commerce graduate, having income between Rupees 5 to 10 lacs and a portfolio of a market value of about Rs.50 lacs. The learned arbitrator noted that the documents showed that she had experience in share market of three years and shown

interest in trading in both segments, that is to say, including F & O segment. The learned arbitrator noted that the Petitioner was also a director in three private companies. In the face of these facts, the learned arbitrator did not believe her story that she was not in a position to comprehend or understand the purport of the contract notes admittedly issued to her by Respondent No.1 and which she did receive from time to time. So far as the requirement of Regulation 3.10 is concerned, the learned arbitrator noted that the record of the case showed that certain shares were kept by the Petitioner with Respondent No.1 for being utilized towards the margin for F & O trades and these were sufficient to satisfy the margin requirements under the regulation. The learned arbitrator noted that the Petitioner had never asked for return of these shares purchased by her at BSE on a delivery basis for a very long time. So also, she had not filed any arbitral reference or complaint demanding return of these shares. The learned arbitrator noticed that the Petitioner proceeded to ask for these shares only when Respondent No.1 wrote to her demanding payment of her outstanding dues in F & O segment. These are clearly possible views, supported by evidence on record and do not call for any interference under Section 34 of the Arbitration and Conciliation Act, 1996.

4 Learned Counsel for the Petitioner contends that the requirement of Regulation 3.10(a) is of margin amount in cash and does not admit of any margin in the form of shares. Learned Counsel, relying on the judgment in the case of **Kritika Nagpal Vs. Geojit Financial Services Ltd.**¹, submits that Regulation 3.10(a) framed NSE indicates that the intent and purpose of demanding margin money is to enable the trading member to

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expeditiously reimburse himself for the shares transacted in; in the event the credit balance in the account of the constituent is not sufficient for the purpose of carrying out the derivatives contract, then in case of any default, a trading member is bound to close out the transaction with a view to mitigate the loss and then recover the same from the margin money. Learned Counsel submits that if the trading member chooses not to demand margin money, and yet permits the constituent to carry out transactions, the same would be at the risk and cost of the trading member and in such a situation, he cannot be allowed to recover any alleged loss suffered by him from the constituent. In the first place, this judgment does not talk about margin money only in cash. In fact, it talks about “*security provided by the constituent*” in the same breath. In other words, it does countenance provision of security by a constituent in lieu of margin money in cash. Be that as it may be, if the arbitrator were to hold so, that is certainly a possible view. If the arbitrator considers the shares admittedly kept by the constituent with the trading member and which account for the value of the margin money required to be kept for F & O transactions, as in fulfillment of Regulation 3.10(a), his view cannot be termed as something which no fair or judiciously minded person could arrive at or which would shock the conscience of the court.

5 Alternatively, learned Counsel for the Petitioner submits that the financial statement issued by Respondent No.1, and which forms part of the record of the case, shows that with effect from about 11 September 2008, there was a debit balance in the account of the Petitioner. Learned Counsel submits that this indicates that the shares purportedly kept by the Petitioner with Respondent No.1 as margin money had been exhausted by

then and it was no longer permissible for the latter to thereafter continue to transact in F & O segment on behalf of the Petitioner on the strength of the shares as margin money. There is nothing to indicate that the debit balance arrived at in these financial statements for the particular period is worked out after taking into account the value of the shares kept deposited with Respondent No.1 in lieu of margin requirements. Anyway, these are matters of evidence. If the learned arbitrator takes a particular view, namely, that at the relevant time Respondent No.1 had the requisite shares, which would account for margin money requirements under Regulation 3.10(a), that exhibits a possible view. It is not a view which is not supported by any evidence or a view formed after taking into account irrelevant material or after disregarding relevant material.

6 So far as the interpretation of the contract between the parties in the light of the stock exchange regulations is concerned, once again, the learned arbitrator takes a view which is a possible view and which can be sustained in the face of the material on record. The interpretation of contract, as held by the Supreme Court in the case of **Associate Builders V Delhi Development Authority**², is clearly within the province of the arbitrator and so long the arbitrator takes a possible view of the contract, it is not permissible to any court to overturn the award under Section 34 of the Arbitration and Conciliation Act, 1996.

7 In the premises, there is no merit in the challenge to the impugned

² AIR 2015 SC 620

award. The Arbitration Petition is, accordingly, dismissed. In the facts of the case, there shall, however, be no order as to costs.

(S.C. GUPTE, J.)