

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

COMMERCIAL ARBITRATION PETITION NO.388 OF 2017

Ramakant Vasudev Pail	..	Petitioner
Vs.		
M/s.Angel Broking Pvt. Ltd. & Ors.	..	Respondents

Mr.Amrut Joshi a/w Ms.Deepa Mane a/w Ms.Akshata Nail a/w
Mr.Krishna Patel i/by M/s.D.M. Legal for the petitioner.
Mr.Vikramsingh Yadav a/w Mr.Parikshit Desai for the respondent nos.1
and 2.

CORAM : R.D. DHANUKA, J.
DATE : 11th April 2018

P.C.:

. By this arbitration petition filed under Section 34 of the Arbitration and Conciliation Act, 1996, the petitioner has impugned the order dated 12th April 2017 passed by the appellate bench of the arbitral tribunal thereby dismissing the appeal filed by the petitioner against the arbitral award rendered by the arbitral tribunal. The petitioner was a constituent of the respondents who is a registered broker of the Bombay Stock Exchange Ltd. The petitioner had filed a claim against the respondents by invoking arbitration agreement recorded in the Rules, Bye-laws and Regulations of the Bombay Stock Exchange Ltd. The arbitral tribunal rendered an award on 9th December 2016 thereby dismissing the claim filed by the petitioner. Counter claim of the respondent no.1 was partly allowed. Appellate bench dismissed the appeal filed by the petitioner.

2. Learned counsel for the petitioner submits that tribunal was not constituted in accordance with the Regulation 5.8 (2) of the Regulations framed by the Bombay Stock Exchange Ltd. He submits that the arbitral tribunal has proceeded beyond the terms of constituent agreement entered into between the petitioner and the respondent no.1.

3. Learned counsel for the petitioner however fairly pointed out that no such objection about improper constitution of arbitral tribunal was raised by the petitioner before the arbitral tribunal. He also fairly pointed out that no such ground has been raised in the arbitration petition filed under Section 34 of the Arbitration and Conciliation Act, 1996.

4. In my view, since the petitioner did not raise any objection regarding constitution of the arbitral tribunal allegedly not being in compliance with Regulation 5.8 (2) of the Regulations framed by the Bombay Stock Exchange Ltd., he cannot be allowed to raise such objection at this stage and that also across the bar. The petitioner participated in the arbitral proceedings before the arbitral tribunal. No such ground has been raised in the arbitration petition filed under Section 34 of the Arbitration and Conciliation Act, 1996. It would amount to waiver.

5. In so far as the submission of the learned counsel for the petitioner that the arbitral tribunal has proceeded contrary to and beyond the terms of the constituent agreement between the petitioner and the respondent no.1 is concerned, a perusal of the grounds raised in this petition clearly indicates that even this ground is also not raised by the petitioner.

6. Both the awards rendered by the arbitral tribunal are well reasoned awards and are rendered after considering all the facts and evidence produced by the parties. This Court cannot re-appreciate the evidence and the findings being not perverse under Section 34 of the Arbitration and Conciliation Act, 1996. The petition is devoid of merits and is accordingly dismissed. No order as to costs.

R.D. DHANUKA, J.