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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO. 407 OF 2007

Kotak Securities Limited … Petitioner

vs.

Khurshed N. Wadia & Anr. … Respondents

Mr. V. K. Ramabhadran, Senior Advocate a/w. Ms.Subra Karamakar for the petitioner.
Ms. Cathrine Fernandez i/b. Deven Dwarkadas & Partners for the Respondents.

CORAM : A.K. MENON, J.
DATE : 18th JUNE, 2018

P. C.

1. By this petition the petitioner challenges an award dated 18th May, 2007 along with an order dated 18th June, 2007 under Section 34 of the Arbitration and Conciliation Act, 1996. This petition came to be admitted by the Appeal Court on 13th October, 2011 after a single Judge of this Court rejected the challenge on 5th February, 2009. By the impugned award the claim made by the respondent was allowed in part and the petitioner was directed to pay a sum of Rs.1,47,000/- along with interest at the rate of 24% p.a. from 22nd May, 2006 till the date of payment i.e. 14th June, 2006 along with costs of arbitration.

2. The challenge is on the basis and as canvassed by Mr. Ramabhadran, learned Senior Counsel on behalf of the petitioner that the sum awarded was in fact paid

over to the respondent as early as 14th June, 2006 by remittance to the Bank account and further sum of Rs.768.66 was also been paid over on 9th August, 2006. The entire claim as awarded is therefore completely baseless and therefore vulnerable as being perverse and patently illegal.

3. In the course of submissions Mr. Ramabhadran has taken me through the statement of claim. This being an Arbitration Application under Regulation 5.9 (a) of the National Stock Exchange of India Regulations in respect of capital markets, the statement of claim was filed by the respondent in Form No. I.

4. The respondent is an individual who had entered into a Member Client Agreement with the petitioners. The petitioner was at the material time a depository participant. The claim made was for a sum of Rs. 4,01,882/- duly supported by what is described as a statement of case. The Statement of case sets out the manner in which the claim had arisen. According to the respondent he had pledged 1000 shares of Tata Power Company with the petitioner as security margin for trading in shares of the public limited companies and out of these 14 scrips were sold allegedly without the knowledge of the respondent and without intimation to him. It is also the respondents contention that in April, 2006 the petitioner paid a sum of Rs.40,000/- by cheque to buy 99 shares of IVRPCL Infr. Proj. Ltd. and to be retained in demat account not as a pledge against security margin.

5. On 22nd May, 2006 the Stock market is believed to have crashed and the petitioner squared up all outstanding positions resulting in debit balance of

Rs.3,08,207.41 in the account of the respondent. In order to recover that amount the petitioner had sold the 99 shares of IVRCL Infra. Proj. Ltd. and 986 shares of Tata Power Company and realized an excess amount of Rs.2,08,645.78. According to him they need not have sold 986 shares of Tata Power Company and only sale of 612 shares of Tata Power would have enabled them to recover the amount which was due from the respondent to the petitioner. The case further records that excessive interest had been charged and that the petitioner had also dealt in NIFTY without his authority. According to him the agreement between him and the petitioner had not been furnished to him and all transactions were without his authorisation.

6. On 29th May, 2006 the respondent wrote to the petitioner seeking reasons for selling shares without permission. Further correspondence ensued in which the respondent contended that the petitioner has caused loss of Rs.3,64,170/- to which extent he was entitled to reimbursement. The petitioner refuted the contention and pointed out that the Member Client Agreement empowered them to deal with and dispose of these shares if payment towards security margin is not received. Therefore there was nothing wrong in the squaring of outstanding. The respondent persisted in his claim. In the mean time a sum of Rs. 1,46,664.56 and Rs.768.66 had been paid over by the petitioner to the respondent as part of settlement of the account.

7. The petitioners opposed the claim and filed their reply dated 4th April, 2007 in which they denied the claim and it was contended that under the Member Client

Agreement dated 21st March, 2006 the respondent was obliged to maintain the prescribed margin which had fallen below acceptable limits. The respondent had only 1.58% Margin against the required margin of 25% and as a result there was no option open to the market committee but adjust the margin by liquidating shares. It was contended that the respondent was regularly informed by emails at the email address provided by him of the various developments including the outstanding debit balance from time to time as also reminders to maintain the margin. Particulars of these emails are also provided in the reply from which it is seen that at least five emails were sent from 15th May, 2006 to 19th May, 2006 showing the debits .

8. Reliance was placed on the provisions for shortfall of margins and margins in the form of security. All contract notes and bills were also emailed on execution of every trade. It was also pointed out that vide letter dated 27th November, 2006 respondent had requested the petitioner to close the account and realise the amount due to him and accordingly the sum of Rs.1,46,664.56 and Rs.768.66 was realised and transferred to his account. In fact the award records these rival contentions including the one pertaining to trading in NIFTY and in the award Arbitrators holds that the respondents contention that the agreement authorised the petitioners to deal only in shares and not in NIFTY was not correct. It was further held that respondent could not complain about the clauses in the agreement and Power of Attorney which were binding on him. The arbitrator held that it does not mean Member Broker can dispose of the stocks under the power of attorney in

such a negligent manner. Ultimately what was found is that award was a Rs.1,47,000/- was liable to be awarded to the respondent. It is on that basis that the arbitrator has awarded a sum of Rs.1,47,000/- @ 24% p.a. from 22nd May, 2006 till release of payment. The reasoning applied in the arbitral award for granting of interest @ 24% p.a. is based on the fact that the petitioner had charged the respondent interest @20% p.a. Thus it is on these facts that the petitioner assails on the award. Primarily because they had already paid over the amount and which the arbitrator had failed to take that into consideration.

9. On behalf of the respondent Ms. Fernandez fairly admitted that the sum of Rs.1,47,000/- had been received by her client as set out in the reply to the claim and a letter dated 27th November, 2006. Ms. Fernandez stated that the only claim that now survives for interest @ 24% p.a. from 22nd May, 2006 to 14th June, 2006. This in actual terms would be that the principal sum awarded had already been paid even well before the award, almost an year before the award was passed. What remains is the claim for interest @ 24% p.a. There was no warrant for the granting interest @ 24% p.a. Even otherwise, taking the respondent claims at face value, I find the amount of Rs. 1,46,664.56 plus Rs. 768.66 totalling to Rs.1,47,433.22 had already been paid over in two installments the first amount on 14th June, 2006 and the second installment on 9th August, 2006. In these circumstances there was no question of payment of any further interest.

10. In the circumstances, I am of the view the entire basis of the award is fallacious. The challenge must succeed. In the result, I pass the following order.

(i) The award dated 18th May, 2007 is set aside.

(ii) No costs.

(A.K. MENON, J.)