

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.03.2018

CORAM

THE HONOURABLE MR. **JUSTICE M.M.SUNDRESH**

Original Petition No.115 of 2014

M/s.India Infoline Limited
rep. by its Associate Vice President
Swaminathan .. Petitioner

Vs.

1.D.Jeyalakshmi
2.K.K.Balu, Arbitrator. .. Respondents

Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 to set aside the Award dated 07.12.2013 in Arbitration Matter (A.M.) No.CM/C-0024/2013 dated 07.12.2013.

For Petitioner : Mr.G.Surya Narayanan

For Respondents : No appearance

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ORDER

Challenging the award passed by the second respondent dated 07.12.2013, the present original petition has been filed.

2. Heard the learned counsel appearing for the petitioner. None appears for the respondents.

3. The first respondent herein is the client/constituent of the petitioner, who is a member of the stock exchange. The transaction was carried out by the power of attorney of the first respondent. According to the first respondent, the cash given for the value of the shares for demating did not come into her account. The defence taken by the first respondent was that even prior to the sale, the first respondent started trading in Futures and Options segment. Since the first respondent has lost the amount, the petitioner cannot be made liable. The details of the transactions were accordingly informed to the first respondent.

4. The first respondent denied these transactions. The petitioner produced the details sent through sms and e-mail alerts. Though the aforesaid methodology is approved by SEBI by circular dated 03.12.2009, the learned Arbitrator has rejected it on the ground that there is no confirmation from the service provider.

5.Learned counsel appearing for the petitioner made two submissions. Being the claimant, it is for the first respondent to substantiate its case. The fact that the communications were sent through e-mail from the computer of the petitioner is not in dispute. If that is taken into account, then it can be safely presumed that the trades in the account of the first respondent were executed with her instruction. Therefore, the rejection of the e-mail and sms logs sent in Excel format under Exs.B4 and B5 is bad in law.

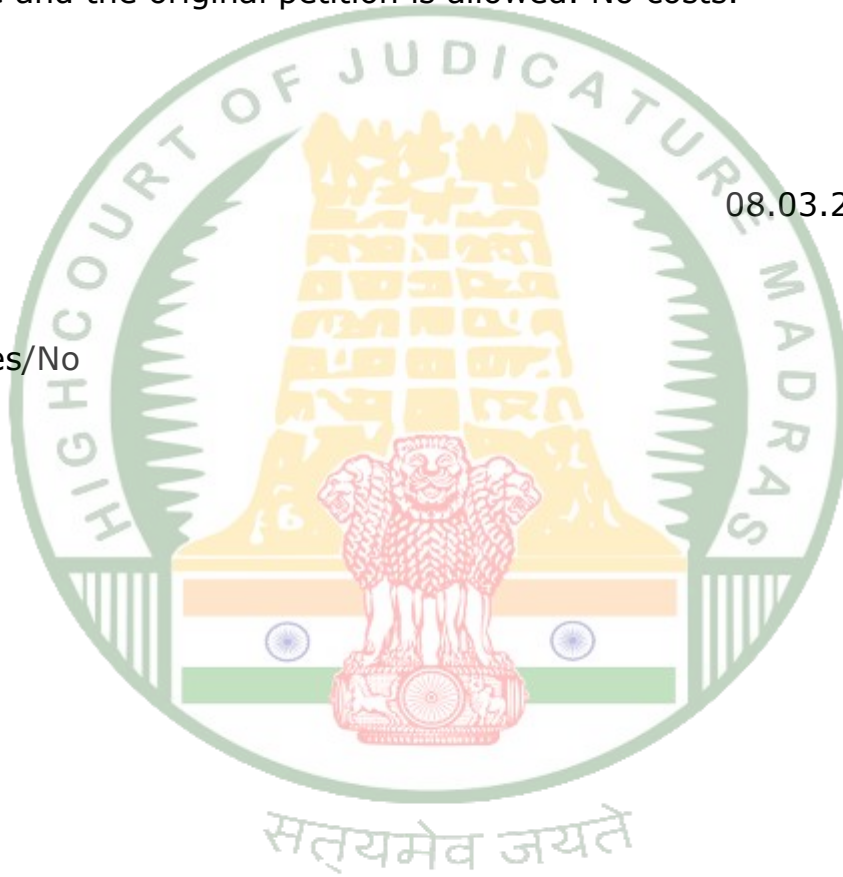
6.This Court finds considerable force in the said submissions. The learned Arbitrator has to consider the materials available on record. There is no law which prohibits taking into evidence of the email and sms by way of communication. The petitioner is following the same practice for quite number of years. Such a practice is also authorized. Being a claimant, it is for the first respondent to substantiate her case. The rules of evidence are not strictly to be followed in arbitration proceedings. The learned Arbitrator is expected to decide the issue by taking into consideration the practice that is being followed. In fact, the same procedure was followed even prior between the parties. The

agreement also provides for such a communication.

7.Thus, in the light of the above, this Court is inclined to set aside the award passed. Accordingly, the award dated 07.12.2013 is set aside and the original petition is allowed. No costs.

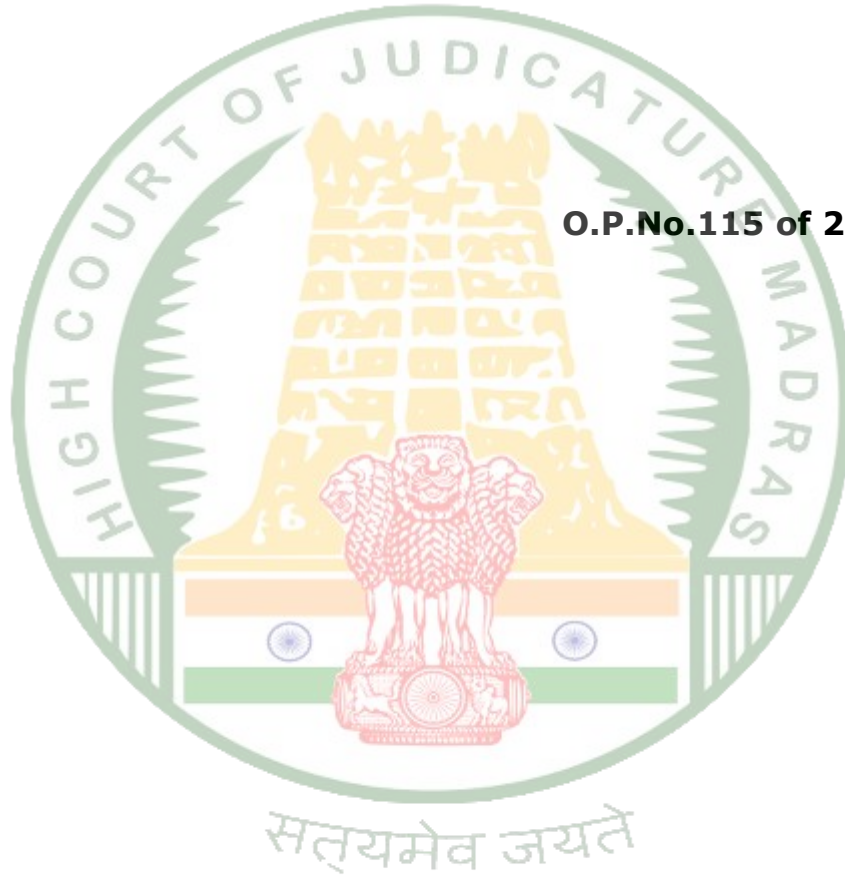
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Index:Yes/No
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M.M.SUNDRESH,J.



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