

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.06.2018

CORAM

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

Original Petition No.629 of 2015

S.Gunabalan

.. Petitioner

Vs.

1.M/s.Nirmal Bang Commodities Private
Limited, B 401, 4th Floor,
Kandalwal House, Poddar Road,
Opp. Poddar Park,
Malad E Mumbai - 400 097 and
also having Branch Office at
No.51 North Boag Road, II Floor,
T.Nagar, Chennai - 17.

2.A.V.Hari Dasan,
Sole Arbitrator.

.. Respondents

Petition filed under Section 34 of the Arbitration and Conciliation
Act, 1996 to set aside the Award dated 14.01.2015 passed by the
second respondent in arbitration matter No.MCX/ARB 1904 A/14.

For Petitioner : Mr.N.P.Kumar

For Respondents : No appearance

ORDER

Challenging the award of the second respondent dated 14.01.2015, the present original petition has been filed.

2.The petitioner is the client of the first respondent, which is the member of the stock exchange. Being a constituent of the first respondent, the petitioner invested a sum of Rs.30,000/-. It appears the transaction made by the first respondent on behalf of the petitioner resulted in a loss of Rs.22,000/. Claiming that the said transaction was done unauthorisedly and without the prior consent of the petitioner, the jurisdiction of the Arbitrator was invoked. The learned Arbitrator rejected the contention of the petitioner by holding that he had admitted the receipt of e-mail, sms, contract note and ledger statement, for which, he did not send any objection that the transactions were not ordered by him. Incidentally, the remaining payment was directed to be paid, which was accordingly paid.

3.Learned counsel appearing for the petitioner would submit that the reply was not considered. This Court is afraid that the said contention cannot be accepted. The learned Arbitrator did take note of the e-mail, sms, contract note and ledger statement sent to the petitioner apart from other materials. In fact, the petitioner has

specifically stated that the loss should not have occurred with the first respondent being an expert. As per the contract, any loss is solely attributed to the petitioner. The learned Arbitrator has also heard the sample C.D. played. From that, the learned Arbitrator was convinced that many of the transactions were authorised. A factual finding was given that the first respondent was not responsible for the loss sustained and the transactions were made with the knowledge of the petitioner and his consent. The ledger also shows a credit balance of Rs.7,634.70. Therefore, the contention made based upon the e-mail by itself cannot be a ground to set aside the finding on fact rendered by the learned Arbitrator. There is no specific denial of unauthorised transaction by the petitioner as against the documents produced by the first respondent.

4. In view of the above, the original petition stands dismissed.

No costs.

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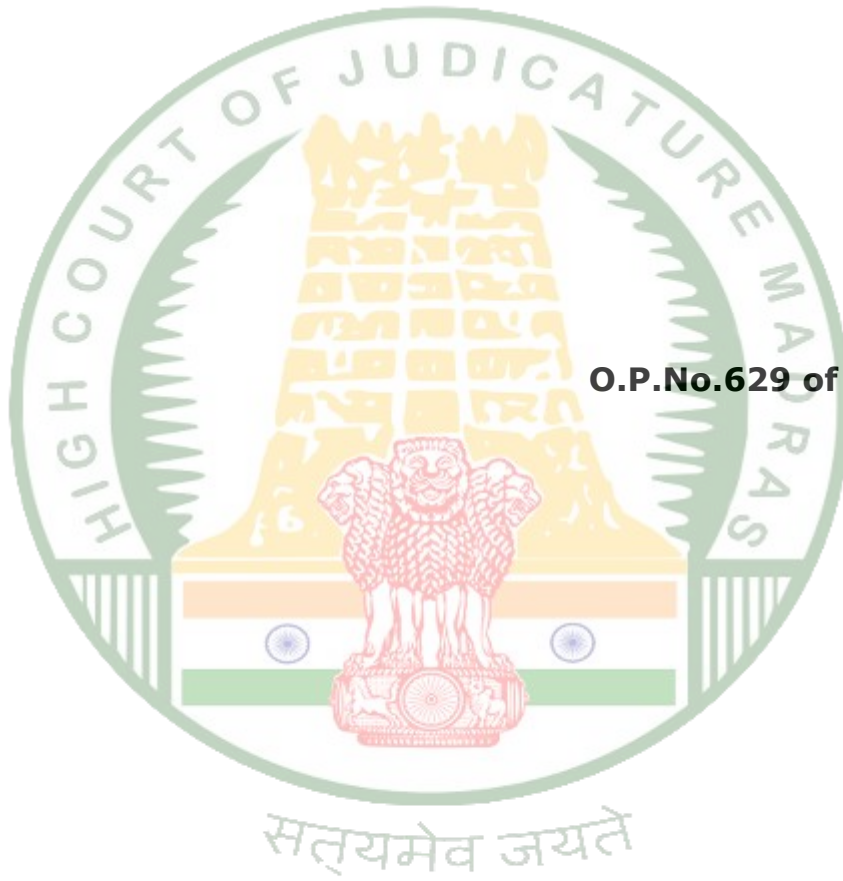
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Index: Yes/No

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M.M.SUNDRESH,J.

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O.P.No.629 of 2015

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