

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.02.2018

CORAM

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

O.P.No.354 of 2011

Mr.M.Prabhu

..Petitioner

Vs.

1.M/s Aditya Birla Money Limited, (Trading Member),
(M/s Formerly Apollo Sindhuri Capital Investments Ltd.,)
Ali Towers – M Floor, 55, Greams Road,
Chennai-600 006.

2.Mr.Justice K.Sampath(Retired),
Sole Arbitrator,
Jagadambal Colony,
Royapettah, Chennai-600 014.

.. Respondents

Original Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996, to set aside the Award dated 05.04.2010 passed by the second respondent.

WEB COPY

For Petitioner : Mr.V.Srikanth

For 1st Respondent : M/s S.Shivan
for Mr.S.Ramsubramaniam & Associates

ORDER

The petitioner was enrolled as a Constituent of the first respondent and was allotted client code No.737360. The petitioner was carrying on trade activities through the branch at Athur. As there was a debit balance of Rs.3,86,712/-, which was not paid by the petitioner, the first respondent invoked arbitration clause after issuing notices requiring payment.

2. The petitioner took a plea before the learned Arbitrator that the transactions were unauthorised and covering was made without his knowledge. The learned Arbitrator, not accepting the plea of the petitioner, was pleased to allow the claim and hence, the present original petition.

3. The learned counsel appearing for the petitioner would submit that it is a case where there was fluctuation in the market due to the events that happened pursuant to the election conducted unauthorisedly. The transactions were made by the first respondent without the consent and knowledge of the petitioner. The mere fact that the petitioner did not object to the contract note and the statement of accounts received, cannot be put against the petitioner.

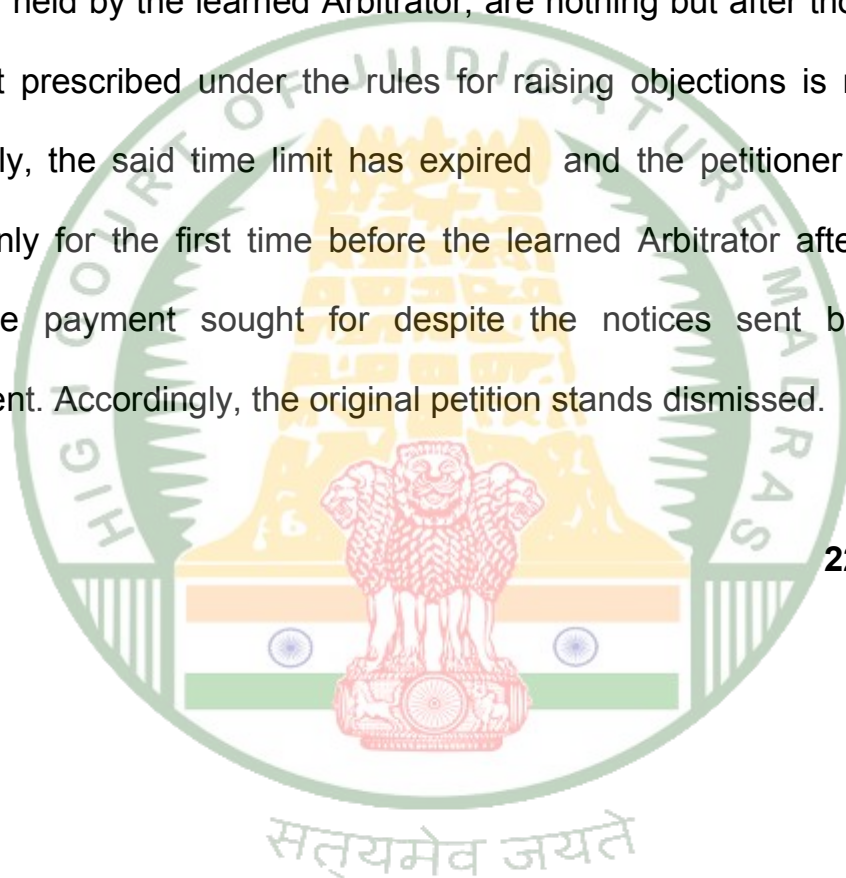
4.The learned counsel appearing for the first respondent would submit that the adjudication was on fact. The learned Arbitrator made a factual recording that there is no need to examine Mr.Shivaji, who acted as s sub broker. There was no material to hold that there is a collusion between the sub broker and the first respondent. The petitioner, shifted his stand changing the date from 15.05.2009 to 12.05.2009. He carried forward (short) position of 16 lots on the 13th of May, 2009. He square off 8 lots on that date. There was no material to substantiate the contentions, which have been raised only for the first time in the counter affidavit. Thus, no interference is required.

5. A perusal of the award would show that the relevant materials have been taken into consideration. The learned Arbitrator rejected the plea of the petitioner on the impleadment of Mr.Shivaji while holding that the agreement was only between the parties. The petitioner also did not take up the issue with the first respondent at the earliest point of time as a time limit is fixed for raising his protest. Shifting of the date has not been explained between the one mentioned in the counter affidavit and the proof affidavit. The fact that the petitioner carried forward position of 16 lots on the 13th of May, 2009 and square off 8 lots on the same day is neither denied or disputed. Admittedly, the petitioner did not square off position

and therefore, the first respondent did not have any other option to do it on 19th. The petitioner did not also dispute the contract notes. He did not question it on receipt of it. Therefore, looking from any perspective, this Court does not find any error in the award passed. The objections raised, as rightly held by the learned Arbitrator, are nothing but after thought. The time limit prescribed under the rules for raising objections is mandatory. Admittedly, the said time limit has expired and the petitioner raised the issues only for the first time before the learned Arbitrator after failing to make the payment sought for despite the notices sent by the first respondent. Accordingly, the original petition stands dismissed. No costs.

22.02.2018

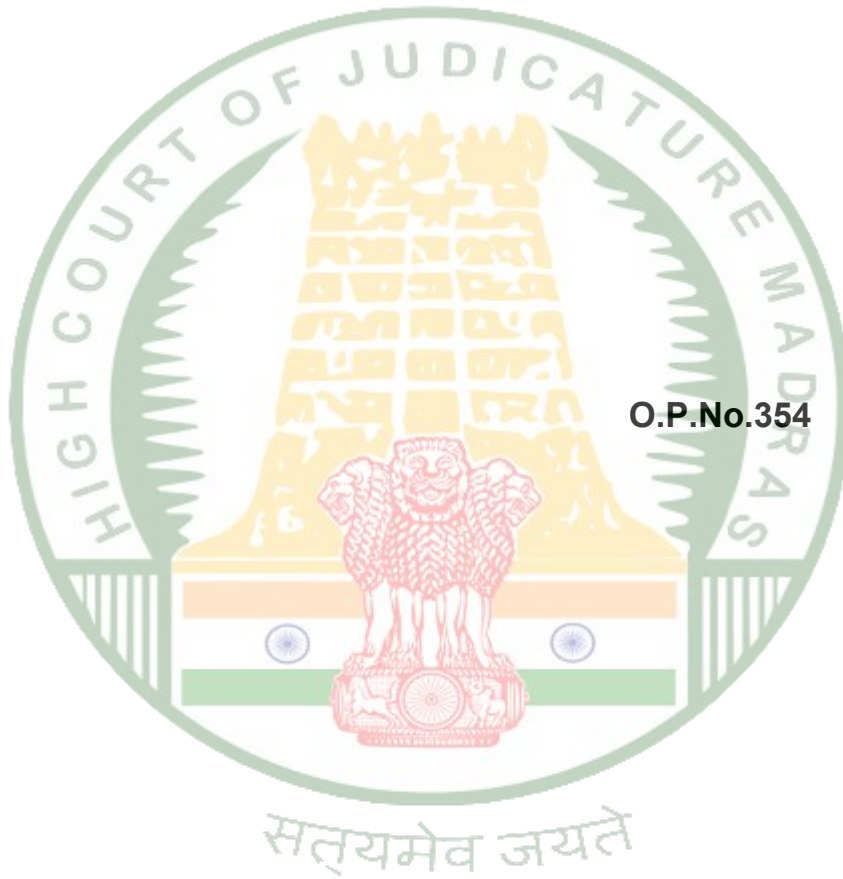
raa



WEB COPY

M.M.SUNDRESH,J.

raa



O.P.No.354 of 2011

WEB COPY

22.02.2018