

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.04.2018

CORAM

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

Original Petition No.736 of 2011

K.Rajamani

.. Petitioner

Vs.

1.Networth Stock Brokings Limited,
Stock Broker,
D.C. Silk Mills Compound II Floor,
Kondivita Road, Andheri East,
Mumbai - 400 059.

2.T.N.C.Kaushik
3.M.Subashchandran
4.D.Vasudevan

.. Respondents

Petition filed under Section 34 (3) of the Arbitration and
Conciliation Act, 1996 to set aside the award dated 05.08.2011.

For Petitioner : Mr.S.Gopalakrishnan

For Respondents : No appearance

ORDER

Challenging the award dated 05.08.2011, the petitioner has filed the present original petition.

2.The petitioner made a complaint to the Bombay Stock Exchange Limited, in which, the first respondent is a member, stating that transactions have been made in her account without her consent. The matter was transferred to the learned Arbitrator. An award was passed in favour of the petitioner on the premise that there is no material to hold that the petitioner had intention to commence trading all of a sudden and she placed orders for trading in her account. Therefore, she had no part in the developments resulting in liquidation of her share holdings. Resultantly, it was held that the petitioner's account was operated by someone else without her consent. Accordingly, the first respondent was directed to pay a sum of Rs.3,69,353/- being the value of the shares disposed of from her account.

3.Aggrieved over the same, the first respondent filed an appeal. The Appellate Tribunal reversed the finding by holding that the

petitioner did not dispute the factum of receipt of contract notes sent periodically. Within the time limit, she did not protest the substance mentioned in the contract note. The petitioner could have got advice from her husband, who is a Chartered Accountant. Therefore, having impliedly accepted the contract notes, it is not open to her to question it belatedly. Challenging the same, the present original petition has been filed.

4.Learned counsel appearing for the petitioner would submit that the petitioner did protest. The dismissal of the case of the petitioner's husband cannot be put against her. The Appellate Tribunal committed an error in putting the onus on the petitioner. Hence the award requires interference.

5.This Court does not find any merit in this petition. The findings are factual apart from non-suiting the petitioner on the ground of delay, laches and acquiescence. The petitioner, as recorded even by the Tribunal, at the first instance, did receive the contract notes from time to time. There is no material to hold that the petitioner did protest or raise objection on the recording made in the contract notes within the time prescribed. A mere belated protest, even assuming if

there is one, cannot be a ground to substantiate the case of the petitioner. If the account was operated intentionally, it is for the petitioner to substantiate it. The petitioner is not an ignorant person. She is a teacher with her husband as a Chartered Accountant. He was also dealing in shares. Admittedly, all the trades have taken place in her account, as indicated in the contract notes. Therefore, the Appellate Tribunal has rightly inferred that the petitioner impliedly accepted the contract notes. Thus, no ground is made out to interfere with the award passed. Accordingly, the original petition stands dismissed. No costs.

20.04.2018

Index:Yes/No

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M.M.SUNDRESH,J.

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