IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.03.2018

CORAM

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

Original Petition No.510 of 2009

M/s.Motila Oswal Securities Ltd.,
rep. by its Branch Manager
Ramakrishnan .. Petitioner

Vs.

1.Ajith Kumar

2.S.Subramanian,
Sole Arbitrator. .. Respondents

Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 to set aside the Award dated 29.10.2008.

For Petitioner : Mr.P.V.Balasubramaniam

For Respondents : No appearance

ORDER

Challenging the award dated 29.10.2008, the petitioner has filed the present original petition.

2.The first respondent is the client/constituent of the petitioner, who is a member of the stock exchange. As there was a margin deficit for the position held by the first respondent, it was accordingly informed by the petitioner that the position held by the first respondent was squared off by the petitioner. As there was a loss, a claim was made by the petitioner for the debit balance.

3.Before the learned Arbitrator, the first respondent raised a plea that the branch officials informed him to pay a sum of Rs.70,000/- only on 21.01.2008 as against the requirement of Rs.2,20,000/-. He has accordingly paid the aforesaid amount.

4.The learned Arbitrator accepted the contention of the first respondent by holding that there is no material to hold that the demand was made for payment of Rs.2,20,000/- on 21.01.2008. Thus the first respondent cannot be blamed for deficiency in the marginal requirement at the time of opening of the trade the next day – 22.01.2008. The petitioner having not raised the demand cannot seek a claim against the first respondent. Thus the squaring off position on the next day was wrong. The first respondent was having some other business. Therefore, he was not expected to know about the situation. Hence fixing the negligence/inadvertence on the part of the petitioner, the relief was declined.

5.Heard the learned counsel appearing for the petitioner. Despite service of notice, none appears for the respondents.

6.Learned counsel appearing for the petitioner, by placing reliance upon the terms and conditions, especially voluntary clauses 6 and 11 and the clause governing the transactions and settlement with the particular reference to clause 6.7 and 2.1 of the risk disclosure document, submits that it is the duty of the first respondent to see to it there is no margin short fall.

7.This Court is unable to accept the said contention. All these provisions will have to be seen contextually. If one has to see clause 6 under the voluntary clauses, it is very specific that the claimant agrees to make all marginal demands as demanded by the stock broker. This clause is to be read in consonance with other clauses. A factual finding has been given by the learned Arbitrator with respect to the demand made by the first respondent. While exercising the power under

Section 34 of the Arbitration and Conciliation Act, this Court is not expected to go into such finding.

8.In such view of the matter, this Court does not find any merit in this original petition and the same is accordingly dismissed. No costs.

16.03.2018

Index:Yes/No

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M.M.SUNDRESH,J.

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