

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 11.06.2018

CORAM

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

O.P.NO.787 OF 2013

M/s. India Infoline Commodities
Limited,
No.143, MGR Road,
Perungudi,
Chennai 600 096

Petitioner

Vs

1.Ashok Kumar Parupally,
H.No.10-83, New Gaddinaran,
D.S.No-12, Ward 18,
Hyderabad 500 060.
2.C.Rangamani,
Arbitrator,
Multi Commodity Exchange
of India Ltd.,
Flat No.1 A & B, First Floor,
Doshi Towers, Periyar EVR Salai,
Kilpauk, Chennai 600 010

Respondents

Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 praying to set aside the award of the arbitrator in his proceedings MCX/legal/1244A/13 dated 06.08.2013.

For Petitioner : Mr. G.Surya Narayanan

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ABDUL QUDDHOSE, J.

msr

ORDER

The instant Original Petition has been filed challenging the Arbitration Award dated 6.8.2013 passed by the 2nd respondent Arbitrator. The petitioner is a share broker registered with the Multi Commodity Exchange of India Limited.

2. The 1st respondent is a client of the petitioner and there was an agreement between the petitioner and the 1st respondent. There arose disputes between the petitioner and the 1st respondent under the said agreement. In view of the disputes between the parties, a claim was made by the 1st respondent against the petitioner before the 2nd respondent Arbitrator in accordance with the agreement dated 18.10.2011 entered into between the petitioner and the 1st respondent. The claim was made by the 1st respondent for a sum of Rs.2,37,000/- together with interest and cost against the petitioner.

3. The 2nd respondent-Arbitrator, after considering the materials available on record, passed an award for a sum of Rs.60,000/-, under which, the petitioner was directed to pay the said amount within 30 days from the date of the award.

4. Aggrieved by the award passed by the learned Arbitrator, the petitioner has filed the instant Original Petition challenging the said Award. The learned counsel for the petitioner submits that the petitioner has settled the entire claim of the 1st respondent.

5. He drew the attention of this Court to the reply filed by the 1st respondent dated 13.7.2013 before the learned Arbitrator and submitted that as evidenced by the letter, a sum of Rs.1,55,000/- was credited to the account of 1st respondent on 12.4.2012 and the balance amount of Rs.60,000/- was paid by Mr. Dastappa, the petitioner's employee, who, according to the petitioner was responsible for not adhering to the instructions given by the 1st respondent for operating the account maintained by the 1st respondent.

6. The reply dated 13.7.2013 filed by the 1st respondent before the Arbitrator reads as follows;

'In reply to Para 2 it is true that they have credited Rs.1,80,000/- on various dates up to 22.12.2011 without my knowledge on knowing the fact after one month, I had utilized the amount for my personal use dated 27.01.2012, and after 15 days my account balance was showing Rs.1,267-33 ps. on that I enquired with the employees of IIFL for they did not give any proper answer. On that I demanded that I will complaint to Police and MCX for the above reason they promised to settle the issue and credited Rs.1,55,000/- on 12.04.2012 and promised to pay the remaining amount within short period.

Regarding Mr. Dastappa's mail dated 26.03.2013 he had not paid any amount to me, but he promised that he and the employees of IIFL will arrange the amount and pay within short period but he did not paid. As contended by the Respondent if they have paid Rs.60,000/- amount through dastappa then why they have not mentioned the same in their reply mail given to MCX dated 22.08.2012. That account was settled for an amount of Rs.2,15,000/- as mentioned in their Para 2. The above acts and additional submission clearly shows that they are misleading the authority and the acts of IIFL clearly shows that they are misusing the funds of the clients by misappropriating, cheating and doing fraud transactions without knowledge of the customers and they have not provided monthly Ledger transactions to me.'

7. The learned counsel for the petitioner drew the attention to a sentence in the above referred paragraphs which reads as "That Account was settled for an amount of Rs.2,15,000/- as mentioned in their Para 2' and submitted that tthe 1st respondent has categorically admitted that the account has been settled and therefore, no payment is due and payable by the petitioner to 1st respondent. The reply dated 13.7.2013 submitted before the Arbitrator by the 1st respondent is to be read in entirety. The previous sentences in the same paragraph will clearly reveal that Mr.Dastappa, the employee of the petitioner has not paid the balance outstanding amount of Rs.60,000/-. The previous sentences in the same paragraph reads as follows;

'On that I demanded that I will complaint to Police and MCX for the above reason they promised to settle the issue and credited Rs.1,55,000/- on 12.04.2012 and promised to pay the remaining amount within short period. Regarding Mr. Dastappa's mail dated 26.03.2013 he had not paid any amount to me, but he promised that he and the employees of IIFL will arrange the amount and pay within short period but he did not paid.'

8. Therefore, it is clear that the contention of the learned counsel for the petitioner that the entire demand has been made cannot be countenanced. Further learned counsel for the petitioner submits that suppressing the receipt of a sum of Rs.1,55,600/- made by the petitioner, the 1st respondent has made a claim for Rs.2,37,000/-. The learned Arbitrator has rightly disallowed Rs.1,55,000/- from and out of total claim amount and has awarded only for the balance outstanding amount of Rs.60,000/- in favour of the 1st respondent.

9. Learned Arbitrator has also given reasons for rejecting the contention of the petitioner that balance outstanding amount of Rs.60,000/- was also paid through the petitioner's employee Dastappa. In his Award in para 7(c), reasoning was given by the learned Arbitrator for rejecting the contention of the petitioner that the balance outstanding of Rs.60,000/- was paid to the 1st respondent. Paragraph 7(c) of the Award reads as follows;

'7....

(c) The Respondent who had worked out an

agreement to settle the dispute on an agreed amount of Rs.2,15,000/- should have seen to that the entire payment is made as a payout in the Applicant's account. They have failed in their duty in allowing certain part settlements to be made by their employee and that too in cash which is denied by the Applicant. Even if there is a doubt about the statement of the Applicant that he had not received the said cash payments, the benefit of that doubt should be given to the Applicant as the Respondent are not able to prove the payment of Rs.60,000/- with documentary evidence. It is concluded, therefore, that the Applicant is entitled to receive the balance of Rs.60,000/- from the Respondent.'

10. Admittedly no proof of payment of Rs.60,000/- was produced before the Arbitrator by the petitioner. The petitioner has also not examined Mr. Dastappa who was their employee as a witness in the arbitration proceedings. Having given a clear finding that no proof of payment of Rs.60,000/- has been produced by the learned Arbitrator, this Court cannot re-appreciate the evidence under section 34 of the Arbitration and Conciliation Act. The scope of challenge is very limited and only if the petitioner satisfies the parameters laid down under section 34, this Court can interfere.

11. Therefore, this Court is of the considered opinion that the petitioner has not made out any case for interference under section 34 of the Arbitration and Conciliation Act. Accordingly, this Original Petition shall stand dismissed, however, there shall be no order as to costs. Consequently, the

connected applications are also closed. Stay granted earlier shall stand vacated. No costs.

08.06.2018

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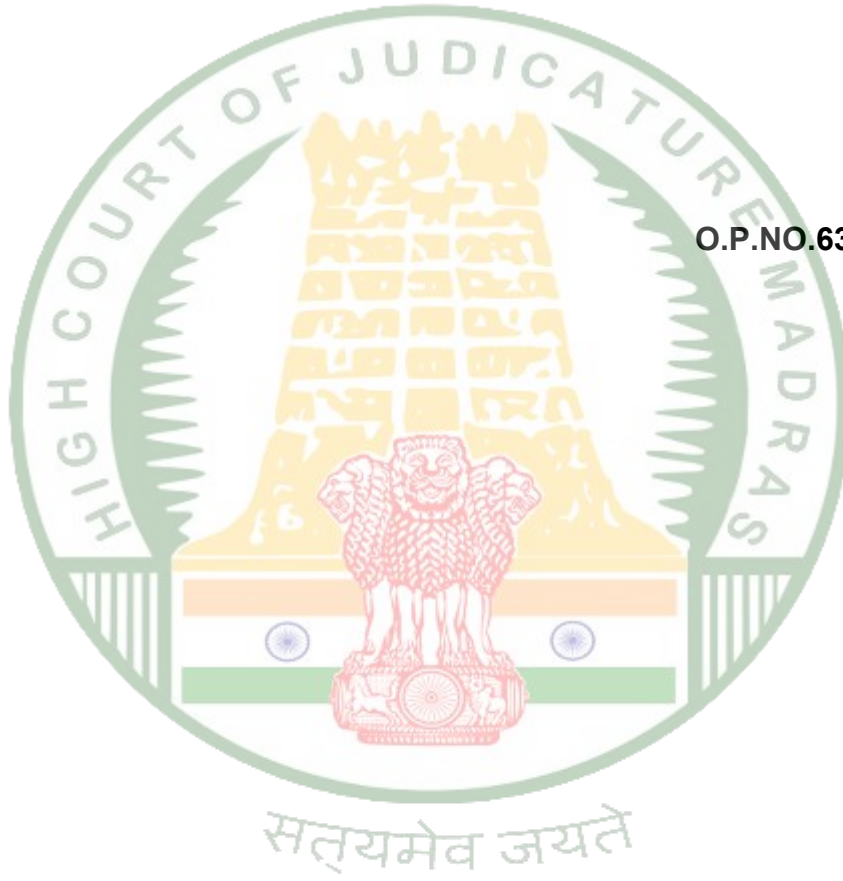
Speaking Order/non-speaking order

Index:yes/No



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O.P.NO.637 OF 2011

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