IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.01.2018

CORAM

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

O.P.No.182 of 2010

M/s Anagram Capital Limited-Trading Member (T.M)
(Formerly known as Anagra Securities Limited)
Branch office-404, Challa Mall, No.11,
Sir Thiyagaraya Road, T.Nagar-600 017.
Tel:(044) 24358710/50/58/59 ..Petitioner

Vs.

1.Mr.K.Srinivasan(Constituent),
Old No.13, New No.4,
Subbarayan Street,
Nungambakkam, Chennai-600 034.

2.P.M.Venkatasubramanian,
Sole Arbitrator,
National Stock Exchange of India Limited,
2nd Floor, Isphani Centre,
Door No.123-124, Nungambakkam High Road,
Nungambakkam, Chennai-600 034. .. Respondents

Original Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996, to set aside the Award dated 10.05.2009 and order dated 13.07.2009 in Arbitration Matter (A.M.) No.CM/C-0154/2008 passed by the 2nd respondent received by the petitioner on 20.07.2009.

For Petitioner : Mr.P.V.Balasubramaniam

For Respondents : No appearance

ORDER

Heard the learned counsel appearing for the petitioner. As there was an endorsement in the notice, which got returned as "left", this Court directed the petitioner to effect paper publication. Even thereafter, there is no representation for the first respondent.

2. The first respondent is the Constituent of the petitioner, who was dealing with National Stock Exchange of India Ltd., (NSE) in both cash and "F & O" segment. There was an Agreement executed for Member Client relationship. Pursuant to the aforesaid Member Client Agreement, the first respondent was registered as a client and awarded a code. The first respondent raised a dispute inter alia alleging that for the mistakes committed by the petitioner, he has incurred a loss of Rs.9 lakhs. During the hearing, the first respondent took a stand that this Rs.9 lakhs would constitute the amount of loss that has occurred in not effecting the sale of the shares held by him in the custody of the petitioner. The learned Arbitrator, after giving a finding that a notional claim cannot be granted, proceeded to pass an award of Rs.62,578/- fixing 12% interest on the shares lying in the pool account of the petitioner maintained

by the first respondent. It appears that during the pendency of the proceedings, the shares have been transferred from the pool account to Demat account. The specific case of the petitioner is that he has instructed the first respondent to transfer the shares to yet another Demat account belonging to him/them. It is his further case that the petitioner has not effected the sale and purchase as instructed by him.

3. It is the case of the petitioner that insofar as the purchase is concerned, there was no adequate credit balance available in the account of the first respondent. Secondly, the first respondent did not give any instruction for the sale. Insofar as the sale of 100 shares is concerned, though a request was made by the first respondent, the petitioner has sent a communication saying that he should go through the delivery slip. As it was not forthcoming, the first respondent transferred the shares from the pool account to Demat Account. We are concerned with the award passed as against the respective case of the parties. As rightly submitted by the learned counsel appearing for the petitioner, the first respondent did not respond to the intimation sent by the petitioner requiring him to furnish the delivery slip duly signed. That apart, the learned Arbitrator having found that the first respondent was not entitled for notional claim, resultant award ought not to have been passed. Once it is held that the mistake lies

with the first respondent, there is no question of payment of any interest on the shares lying in the pool account. After all, trading in shares has got its own peculiarities. In such view of the matter, this Court is of the view that the award requires interference in exercise of the power under Section 34 of the Arbitration and Conciliation Act, 1996. Being the claimant, it is for the first respondent to prove its case. Accordingly, the award passed by the learned Arbitrator stands set aside and the original petition is allowed. No costs.

17.01.2018

raa

M.M.SUNDRESH,J.

O.P.No.182 of 2010

17.01.2018