IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.01.2018

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

O.P.No.294 of 2010

H.Khamrunisha Begum,
W/o Mehboob Hussain,
Door No.682/3, 2nd Cross,
Patel Nagar, Near Janda Katta,
Hospet-583 201, Karnataka. ..Petitioner

Vs.

1.M/s Karvy Stock Broking Limited,
Karvy Centre, 8-2-609/K,
Avenue 4, Street No.1,
Banjara Hills, Hyderabad-500 034.

2.Mr.M.V.Badrinath, Sole Arbitrator,
National Stock Exchange of India Limited,
2nd Floor, Ispahani 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 28.12.2009 made in Arbitration matter No.CM/C-0074/2009 by the second respondent and consequently, allow the claim of the petitioner.

For Petitioner : Mr.Thanya Kapoor for Mr.S.R.Raghunathan

For respondents : Mr.V.M.Ravishankar for R2

ORDER

The petitioner is the Client/Constituent of the first respondent, who is a Trading Member of National Stock Exchange of India limited, Chennai. The petitioner was having a single account and joint account along with her husband. The single Account is "F & O" segment. According to the petitioner, the first respondent involved itself in unauthorised trading in her account refused to transfer the securities from her pool account to dmat account effected sale after cut off date given by her and failed to square off the position. Thus, the petitioner suffered loss.

2. It is the case of the first respondent that the petitioner has not placed the correct facts. She has been doing transactions in her "F & O"segment. That is the reason why, she asked the first respondent to square off the position. The petitioner's husband was receiving contract notes periodically. These contract notes clearly show the factum of transactions, as per the instructions given by her.

3. The Tribunal dismissed the claim of the petitioner both on merit and on limitation by applying Bye Law 3 of Chapter II of NSE Bye Laws. Insofar as the issue pertaining to limitation is concerned, the Tribunal did

not agree with the contention of the petitioner that the provisions of Limitation Act would apply as in the case of a normal suit in making a claim before the Tribunal. On merit, the Tribunal was pleased to hold that the written complaint itself has been signed by both the petitioner and her husband bearing the signature of the latter. The contention that she did not do any trading was not correct in view of the contract notes and her own case that her request to square off the position was not considered. Accordingly, the claim was rejected and hence, the present original petition.

4. The learned counsel appearing for the petitioner vehemently contended that the Bye Laws of the NSE do not have a statutory prescription. They would, at best, form part of the contract *inter se* parties. The other issue pertaining to unauthorised trading, square off the position, non receipt of the contract notes and the instructions not followed, have not been considered by the Tribunal. The learned counsel has made reliance upon Section 43 of the Arbitration and Conciliation Act, 1996 to contend that the provisions of the Limitation Act could apply. To buttress her submissions, the following judgments are relied upon.

1. **ANGEL CAPITAL & DEBT MARKET LTD., V. SHARAD MUNOT ((2012) SCC Online Bom. 1989);**

2. **SYTEMATIX SHARES & STOCKS (INDIA) LTD., V. VIMAL AGARWAL ((2010) SCC Online Bom. 3); and**
3. **SMT. BIBA SETHI AND MR.NITIN SETHI V. DYNA SECURITIES LIMITED (1703.2009-High Court of Delhi).**

5. The learned counsel appearing for the first respondent submitted that it is a known fact that on 21.01.2008, the entire stock exchange was closed and thus, there was no trading. It was an unusual happening. Thereafter, the petitioner made a request and accordingly, action was taken to sell all her shares on 22.01.2008. The contract notes were in fact received by her husband. The fact that she made request to square off would prove that she had indulged in trading. There was no payment resulting in ledger balance to effect transfer from the pool account to dmat account and therefore, there is no question of complying the direction issued by SEBI as contended by the learned counsel for the petitioner.

6. Coming to the issue of limitation, Section 43(3) of the Arbitration and Conciliation Act, 1996, is the one, which applies to the case on hand provided the submission of the learned counsel for the petitioner is accepted. Thus, if this Court is to hold that the Bye Laws do not have the

statutory prescription, still discretion is available with the Court to extend the time. Section 43(1) 9iof the Arbitration and Conciliation Act, 1996, speaks about the application of the Limitation Act, 1963, to the proceedings in Court. The claim made based upon the agreement *inter se* and the bye laws has no akin to the proceedings in a Court. The bye laws are enacted pursuant to the power conferred to the NSE under the statute. It is for the purpose of binding the parties. These bye laws have to be read into the agreement. Otherwise they do have the statutory prescription apart from having a binding effect of the parties. To that extent, this Court is unable to accept the unreported decision of Delhi High Court in **SMT. BIBA SETHI AND MR.NITIN SETHI V. DYNA SECURITIES LIMITED dated 17.03.2009**. This aspect can be seen on a perusal of the new regulation/bye laws. Chapter XI of the Bye Laws speaks about arbitration. This chapter, more than one occasion, reiterates the binding effect of the parties. Bye Law 3 mentions that an arbitration application shall be governed by the Law of Limitation Act, 1963 as specified under Section 43 of the Arbitration and Conciliation Act, 1996. Explanation to this Bye Law says as follows:

> "Arbitration Applications filed prior to September 1, 2010, where the Arbitration application has been dismissed solely on grounds of limitations and three years from the date of dispute have not

yet elapsed will be covered in the limitation period stated above".

7. If one is to read Bye Law 3 along with explanation, then the position is very clear. What is applicable hitherto was the bye law, which prescribes the period of six months. However, an application rejected on this ground can be represented to get an adjudication on merit as per the explanation. Hence, prior to September, 2010, what is applicable is the old bye laws. Once we hold that old bye laws would govern, then the same has to be read in consonance with the Limitation Act with a particular reference to Section 29(2) and Section 43 of the Arbitration and Conciliation Act, 1996. After all, it is the duty of the Court to award any possible conflict between the provisions of various statutes, enactments and rules. By this logic, there is no difficulty in deciding the matter on merit since admittedly, the present claim has been made within the period of three years. When a claim, which was rejected on the ground of limitation, be made within the period of three years can be permitted to be agitated on merit, a claim which was decided on both limitation and on merit cannot be dismissed on the ground of limitation alone. Hence, this Court holds that the petitioner is entitled to agitate the matter before this Court on merit.

8. Coming to the second issue, the Tribunal has correctly rendered its finding. It is a case where the petitioner was doing business through her husband. The Tribunal gave a factual finding that contract notes were indeed received by her husband. For coming to the conclusion, the Tribunal not only relied upon the records but took into consideration of the conduct of the petitioner as well. The petitioner did try to take different stands. When once the petitioner made a statement that she wanted to square off the position, then the earlier stand automatically falls to the ground. The contract notes would clearly indicate the transactions entered by the petitioner and therefore, it cannot be stated that there was no transactions and if any, without her consent. Such a finding given by the Tribunal on the analysis of the facts cannot be interfered with in exercise of power under Section 34 of the Arbitration and Conciliation Act, 1996. Once it was held that there were contract notes received after acknowledgement by the petitioner through her husband coupled with the contradiction in her statement, the other grounds cannot be maintained at all. The petitioner, being the claimant, has not established her case while seeking to set aside the award. It appears that the petitioner did receive the payments accrued to F & O account to the transaction effected in F & O account. Therefore, looking from any perspective, the petitioner is not entitled for the relief. Accordingly the original petition stands dismissed.

No costs. While dismissing this petition, this Court appreciate the assistance rendered by the learned counsel for the petitioner, who showed clarity on both law and facts.

19.01.2018

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M.M.SUNDRESH,J.

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