IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 03.07.2018

CORAM

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

O.P.NO.697 OF 2010

M/s. Angel Capital & Debt Market Ltd.,
Rep. by its Authorised Representative
Mr. S.Balaji .. Petitioner

Vs

1. Mr. Anche Venkata Rao
   No.01-60 Manduru Post
   Chunduru- Mandal
   Guntur District.

2. Mr. M.V. Badrinath
   Arbitrator
   National Stock Exchange of India Ltd.,
   2nd Floor, Isphani Centre,
   No. 123-124 Nungambakkam
   High Road, Nungambakkam
   Chennai - 600 034. .. Respondents

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Petition filed under Section 34 of Arbitration and Conciliation Act, 1996 praying to set aside the award dated 03.12.2009 passed by the second respondent in Arbitration proceedings between the petitioner and the first respondent.

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For Petitioner : Mr. G. Derrick Sam

For Respondent : Mr. P.V. Balasubramaniam for R1

ORDER

The instant petition has been filed under Section 34 of the Arbitration and Conciliation Act, challenging the Award dated 03.12.2009 passed against the petitioner.

2. The brief facts leading to the filing of the instant petition are :

The petitioner is a Stock Broker and the first respondent is the client of the sub broker B.N.V. Satyanarayanan. There was a tripartite agreement between the petitioner, the first respondent and the sub broker B.N.V. Satyanarayanan, dated 02.01.2007. The claim of the first respondent before the Arbitral proceedings was that, without authorisation, the petitioner who is a Stock broker traded on behalf of the first respondent and sold approximately 2250 Nos. of CCL Products India Limited Equity shares, between the price range of Rs.450/- to Rs.275/-, to an approximate value of Rs.8,00,000/-. At the time of entering into the tripartite agreement, the first respondent had invested a sum of Rs.1,50,000/- in the share trading business. The petitioner

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claims that only on proper authorisation, the 2250 Nos. of CCL Products India Limited Equity shares were sold on behalf of the first respondent. In the F & O Segment, the petitioner traded on behalf of the first respondent and on account of that trading, according to the petitioner, the first respondent suffered a loss of Rs.5,70,491/- which he is liable to pay to the petitioner. The first respondent disputed its liability and instead made a claim of Rs.10,00,000/- from the petitioner, for the loss suffered by the first respondent on account of the unauthorised trading in the F & O Segment by the petitioner. Eventhough the sub-broker namely B.N.V. Satyanarayanan acted on behalf of the first respondent, who is admittedly an illiterate, under the tripartite agreement, the petitioner alone is held liable to compensate for the loss suffered by the first respondent, on account of any unauthorised trading. Since, there arose disputes between the petitioner and the first respondent, the dispute was referred to Arbitration and the National Stock Exchange, as per the Arbitration clause contained in the tripartite agreement, appointed the 2nd respondent as the Arbitrator to decide the dispute between the parties.

2.2. The first respondent made a claim of Rs.10,00,000/- on account of the loss suffered by him due to the unauthorised trading by

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the petitioner. The petitioner also made a counter claim against the first respondent, for a sum of Rs.5,70,491/- before the Arbitrator. The Arbitrator after considering the materials available on record and after hearing the submissions of both the parties, passed an award in favour of the first respondent directing the petitioner to pay a sum of Rs.7,60,000/- in full and final settlement of his claim of Rs.10,00,000/- and the counter claim made by the petitioner was rejected as time barred. Aggrieved by the award passed by the Arbitrator dated 03.12.2009, the instant petition has been filed, under Section 34 of the Arbitration and Conciliation Act.

3. Learned counsel for the petitioner drew the attention of this Court to the Arbitral Award dated 03.12.2009, which is under challenge, wherein paragraph 4.1 reads as follows :-

> *" .... To a pointed question as to how he, without any ability to read and understand English, would be placing the orders in the cash segments as also in the F & O which required a thorough knowledge of trading in shares, he replied that he relied thoroughly on the sub-broker. Even prior to joining ACDM he had a demat account and continued to have his account with Karvy, but*

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> *contrary to his instructions, the broker traded in F&O also and made him incur losses. Initially he started trading in the shares of CCL in January 2007 and the last trade was in October 2007. He had visited the Tenali branch four/ five times only to ascertain the accounts position. He was getting contract notes once in three months in a bunch only and he signed the receipt without any date. "*

He submitted that as seen from the admission made by the first respondent, it is clear that the contract notes were sent by the petitioner once in three months, in a bunch and all the contract notes are signed by the first respondent, for having received the same. Therefore, according to the learned counsel for the petitioner only after proper authorisation, the shares were traded on behalf of the first respondent.

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4. Learned counsel then drew the attention of this Court to the additional reply statement filed by the petitioner before the Arbitrator in which the petitioner has enclosed copies of the contract notes and the acknowledgements received from the first respondent as Annexure-1 as well as copy of the KYC attached as Annexure 2. According to the learned counsel, the signed contract notes of the first

respondent were not properly considered by the Arbitrator, under the impugned award. It is also seen from the letter dated Nil addressed to the National Stock Exchange of India Limited, that F & O Trading has been done by the petitioner.

5. Per contra, learned counsel for the first respondent would submit that the first respondent is an illiterate person. He drew attention of this Court to various contract notes filed by the petitioner before the Arbitrator. He pointed out to this Court, the discrepancies in the contract notes. He submitted that some of the contract notes were undated and some of the bill numbers were identical. On a mere perusal of the contract notes, learned counsel for the first respondent submits that it is evidently clear that the contract notes have been forged by the petitioner.

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6. Learned counsel further submitted that as per the by-laws of the National Stock Exchange each and every contract note should be sent to the first respondent immediately after the trading has taken place. But admittedly, in the instant case contract notes were sent only once in every three months, which according to the learned counsel for

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the first respondent is not in accordance with the by-laws of the National Stock Exchange. Therefore, according to him the trading done by the petitioner is an unauthorised trading.

7. This Court perused and examined the Arbitral award and finds that each and every ground of challenge that has been raised by the petitioner has been duly considered by the Arbitrator, under the impugned award. The following findings have been given by the Arbitrator, based on the materials available on record :-

a) The first respondent is an illiterate person and he has no knowledge to read or write English and he is not in a position to execute trading by himself;

b) Only a sum of Rs.1,50,000/- was the investment made by the first respondent. Whereas the petitioner had sold shares belonging to the first respondent for a value of Rs.8,50,000/- which resulted in a loss, which has wiped out the entire investment of the first respondent.

c) There is a clear finding, after considering the contract notes produced by the petitioner that the contract notes give an impression that the signatures have been taken at the time of

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delivery and appear to be a repeat of the impression.

d) There is also a clear finding that the petitioner was doing trading in the account of the first respondent, without specific orders for the trading, which is in gross violation of the rules. There is also a finding that the petitioner was not doing portfolio management service for the first respondent.

e) All the trades done by the petitioner were unauthorised ones, without the knowledge of the first respondent and against his instructions not to trade in F & O segment.

f) The Arbitral Tribunal rejected the counter claim made by the petitioner against the first respondent on the ground of limitation. The arbitral award also extracts the relevant dates and has given a clear finding that the counter claim should have been filed by the petitioner against the first respondent on or before 21.01.2009 whereas it has been filed only on 15.06.2009. Since the claim is time barred, the arbitrator has rejected the counter claim made by the petitioner against the first respondent.

7. As seen from the arbitral award which is under challenge, it is a reasoned and well considered award. Each and every ground for

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challenge raised by the petitioner has been duly considered under the Arbitral Award. The scope for interference under Section 34 of the Arbitration and Conciliation Act is very limited. This Court cannot re-appreciate the evidence available before the Arbitral Tribunal. Unless and until the award is perverse or patently illegal, this Court cannot interfere , under Section 34 of the Arbitration and Conciliation Act.

8. The Hon'ble Supreme Court in a Catena of decisions starting from ***Renusagar Power Company Ltd vs. General Electric Company 1994 Supp (1) SCC 644 to the recent Associated Builders Vs DDA (2015) 3 SCC 49*** has held only under the following grounds the Arbitrator Award can be challenged under Section 34 of the Arbitration and Conciliation Act:

> *(a) Procedure contemplated under Arbitration and Conciliation Act was not followed by the Arbitrator.*
> *(b)The Arbitral Award is a non speaking Award.*
> *(c)The Arbitrator has transgressed his jurisdiction.*
> *(d)The Arbitral Award is in conflict with the public policy of India.*

> *(iii)An award would be regarded as conflicting with the public policy of India if:-*
> *(a) it is contrary to the fundamental policy*

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of Indian law, or

(b) it is contrary to the interests of India,

(c) it is contrary to justice or morality,

(d) it is patently illegal, or

(e) it is so perverse, irrational, unfair or unreasonable that it shocks the conscience of the court.

(iv)An award would be liable to be regarded as contrary to the fundamental policy of Indian law, for example, if

(a) it disregards orders passed by superior courts, or the binding effect thereof, or

(b) it is patently violative of statutory provisions, or

(c) it is not in public interest, or

(d) the arbitrator has not adopted a "judicial approach", i.e.has not acted in a fair, reasonable and objective approach, or has acted arbitrarily, capriciously or whimsically, or

(e) the arbitrator has failed to draw an inference which, on the face of the facts, ought to have been drawn, or

(f) the arbitrator has drawn an inference, from the facts, which, on the face of it, is unreasonable, or

(g) the principles of natural justice have

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been violated.

(v)Insofar the "patent illegality" has to go to the root of the matter. Trivial illegalities are inconsequential.

(vi) Additionally, an award could be set aside if

(a) either party was under some incapacity, or

(b) the arbitration agreement is invalid under the law, Or

(c) the applicant was not given proper notice of appointment of the arbitrator, or of the arbitral proceedings, or was otherwise unable to present his case, or

(d) the award deals with a dispute not submitted to arbitration, or decides issues outside the scope of the dispute submitted to arbitration, or

(e) the composition of the Arbitral Tribunal was not in accordance with the agreement of the parties, or in accordance with Part I of the Act, or

(f) the arbitral procedure was not in accordance with the agreement of the parties, or in accordance with Part I of the Act, or

(g) the award contravenes the Act, or

(h) the award is contrary to the contract

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between the parties.

(vii) "Perversity", as a ground for setting aside an arbitral award,has to be examined on the touchstone of the Wednesbury principle of reasonableness. It would include a case in which

(a) the findings, in the award, are based on no evidence, or

(b) the Arbitral Tribunal takes into account something irrelevant to the decision arrived at, or

(c) the Arbitral Tribunal ignores vital evidence in arriving at its decision.

(viii) At the same time,

(a) a decision which is founded on some evidence, which could be relied upon, howsoever compendious, cannot be treated as "perverse",

(b) if the view adopted by the arbitrator is a plausible view, it has to pass muster,

(c) neither quantity, nor quality, of evidence is open to re-assessment in judicial review over the award.

(ix)"Morality" would imply enforceability, of the agreement, given the prevailing mores of the day. "Immorality", however, can constitute a ground for interfering with an arbitral award only if it shocks the judicial conscience.

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9. The petitioner has not satisfied any of the grounds mentioned above. Therefore, this Court is of the view that there is no merit in the petition filed by the petitioner. Hence, this petition shall stand dismissed.

03.07.2018

Index : Yes/ No
Speaking order/ Non speaking order
[Issue order copy on 13.07.2018]

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ABDUL QUDDHOSE, J.

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O.P.NO.697 of 2010

03.07.2018

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