IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.02.2018

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

O.P.No.787 of 2010

M/s Motilal Oswal Securities Ltd.,
Rep., by its Branch Manager Mr.Ramakrishnan,
2nd Floor, Palm Spring Centre,
Next to D-Mart Super Market,
New Link Road, Malad(W),
Mumbai-400 064. ..Petitioner

Vs.

1.Mr.P.M.Abraham,
Perialathu House,
Madathumbhagom North P.O.
Puraumattom, Thiruvalla-689 543.

2.C.Rangamani, Sole Arbitrator,
National Stock Exchange of India Ltd.,
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 28.08.2009 passed by the second respondent under Arbitration Matter(A.M.) No.CM/C-0038/2009 received by the petitioner on 14.09.2009.

For Petitioner : Mr.P.V.Balasubramaniam

For respondents : Mr.S.Doraisamy for R1

ORDER

The petitioner herein is the Trading Member. The first respondent is the client of the petitioner. An agreement was entered into between the parties. The first respondent gave delivery instruction to sell his shares. The instruction was not carried out. According to the first respondent, a communication was sent by fax, which factum was disputed by the petitioner. Thereafter, there was a fall in the share market and reduction in the value of shares. In the meanwhile, the petitioner has paid certain amount being the differential amount for not carrying out the petitioner to the account of the first respondent. The first respondent initiated arbitral proceedings seeking difference in the payment between the date on which instruction was given and the value of the shares which was fallen subsequently. The Tribunal has passed an award by computing the difference in the amount till the date of the award and the date on which the instructions were given to be sold. Challenging the same, the present original petition has been filed.

2. The learned counsel appearing for the petitioner would submit that it is a case where the petitioner did make the payment. The first respondent sold the shares subsequently.

3. The learned counsel for the first respondent would submit that the loss has occurred due to the mistake committed by the petitioner. As adjudication is made on merit and appreciation of facts, no interference is required.

4. This Court does not find any reason to interfere with the Award passed on facts. Admittedly, the petitioner did not sell the shares when the price was at peak. The fact that the first respondent give the delivery instruction is not in dispute. The first respondent did fulfil his part of the performance. The entire responsibility was placed on the petitioner. Though the petitioner disputed the subsequent fax sent on 20.12.2007, the finding was that the number to which it has been sent was no longer valid at that point of time. For the mistake committed by the petitioner, the first respondent cannot be made liable.

5. The petitioner did not advise officially, despite the factum of the first respondent approaching the petitioner with his objection towards the auction failed at the first instance and as to the credit for the net auction loss. The petitioner did not take sufficient step to rectify the same. The learned Arbitrator has taken into consideration all the relevant materials and merely awarded the difference in value of the shares. In such view of the matter, this Court does not find any merit in this original petition.

However, considering the fact that the interest levied at 10 % per annum is excessive, the same stands modified to 6% per annum. Accordingly, the original petition stands dismissed modifying the rate of interest awarded by the Tribunal at 10% to 6 % per annum. No costs.

27.02.2018

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M.M.SUNDRESH,J.

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