IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO.433 OF 2016

Kotak Securities Limited … Petitioner
Versus
Joseph Chandy Paleth … Respondent

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Mr. V.K. Ramabhadran, Senior Advocate I/b Subra Karmakar for the Petitioner.
None for the Respondent.

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CORAM : S.C. GUPTE, J.

DATE : 30 JANUARY 2019

P. C. :

. Heard learned Counsel for the Petitioner. None appears for the Respondent. None had appeared even on the last two dates, i.e. on 21 September 2018 and 10 October 2018.

2 The petition challenges an award passed by Appellate Tribunal of Arbitrators under By-laws, Rules & Regulations of National Stock Exhange of India Limited (NSE), upholding the original award passed by a Sole Arbitrator in the reference. The main challenge to the impugned award is that inspite of finding that the Respondent-constituent had not disclosed any cause of action and rejecting his counter-claims accordingly for not being substantiated, the arbitrators have unilaterally disallowed some part of interest and brokerage/commission charged by the Petitioner-trading member and worked out a negative balance payable to the Petitioner herein and accordingly, directed payment to the Respondent-constituent.

3 According to Indian law, any judicial forum, which is constituted under a contract between the parties, ought to decide disputes between them within the framework of the contract and the terms of submission. What was submitted to the arbitral forum was the Petitioner-trading member's claim of balance at the foot of the member-client account and the Respondent-constituent's counter-claim. The arbitrators, having found no justification in the Respondent's counter-claim and rejected it on that footing, had to consider the Petitioner-trading member's claim. A sum of Rs.3,15,437/- was claimed by the Petitioner as debit balance due at the foot of the trading account towards trades executed by it on the Stock Exchange on behalf of the Respondent-constituent. The arbitrators had to consider whether the debit balance claimed as due by the Petitioner was infact due to it or not. The arbitrators could not have considered the propriety of brokerage/commission charged by the Petitioner or interest on such brokerage or other charges levied by the Petitioner on the Respondent and arrived at a negative balance payable to the Petitioner-trading member. At the most, it might have been permissible to the arbitrators to disallow the debit balance claimed by the Petitioner after considering the propriety of the charges levied by it to the Respondent in the member-client account, but there is no way the arbitrators could have directed any net payment, after such adjustment, by the trading member to the constituent. That was clearly not permissible under law. Even if it is assumed that a court of plenary jurisdiction could do so, it is certainly not permissible to a private forum chosen by the parties under a contract and approached on specific terms of submission to carry out this exercise on its own, i.e. without there being any appropriate prayer for such relief.

4 Accordingly, the impugned award cannot be sustained. The Arbitration Petition, in the premises, is allowed by setting aside the impugned award dated 7 January 2016 read with original award dated 14 October 2014.

5 The amount, if any, deducted by the Stock Exchange from the Petitioner's account and deposited in this court, shall be returned to the Petitioner.

(S.C. GUPTE, J.)