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

ARBITRATION PETITION NO. 354 OF 2018

S. Chockalingam …Petitioner.
vs.
M/s. Kotak Mahindra Bank Ltd. & Anr. …Respondents.

……

Ms. Kiran Doiphode I/b M/s. V. M. Dhoiphode & Co. for the Petitioner.

Mr. Dinesh Purandare with Nikhil & Ms. Sanap I/b. M/s. V. Deshpande & Co. for the Respondents.

…….

CORAM : S.C. GUPTE, J.
DATED : 30 AUGUST 2019

P.C. :

Heard Learned Counsel for the Petitioner and the Respondents.

2. This Arbitration Petition challenges an award passed by a sole Arbitrator in a reference arising out of a loan agreement.

3. The Petitioner (Original Claimant in the above reference) entered into a loan agreement with the Respondent, under which a sum of Rs. 43,00,000/- was borrowed by the former from the latter. Against this loan, security was given in the form of 50,000 shares of ICICI Bank. Various documents along with Loan Agreement, including a Memorandum of deposit shares, Power of Attorney, Creation and Confirmation of pledge/hypothecation form, all dated 15 May 2001, were signed by the Petitioner.

4. One of the conditions of the loan agreement was for maintenance of particular value of security vis-a-vis the outstanding loan balance, referred to in the agreement as 'margin'. In the case of any margin shortfall, the agreement required a notice of 3 days within which the borrower was to make good the shortfall by giving further security. If such security was not furnished, the lender was free to realize the security. It is not in dispute that there was a margin shortfall as of 13th September, 2001 and a notice dated 13 September, 2001 was issued by the Respondent/Lender to the Petitioner. It is the Petitioner's case that this notice was received on 15 September, 2001. Accordingly, the Petitioner had time up to 18th September, 2001 to replenish the deficit of margin, but prior to that day, i.e. on 17 September, 2001, the security was realized by the Respondent by sale of shares. Damages arising as a result of this realization, which was alleged to be unauthorized, was the subject matter of the reference.

5. It is not in dispute that what was realized by the Respondent towards sale of the shares kept with it as a security was, together with the payment made by the Petitioner to the Respondent, in excess of the outstanding balance loan. Though this excess was refunded by the Respondent to the Petitioner, the cheque of the excess amount handed over by the Respondent to the Petitioner was returned back by the latter to the former. Learned Counsel for the Respondent submits that his client has no claim to this amount and that the same shall be paid to the Petitioner. The amount of Rs. 1,88,767.19 will, accordingly, have to be refunded by the Respondent to the Petitioner.

6. The Petitioner's case before the Arbitrator was that the shares pledged by him with the Respondent were sold before such sale was due and that the Petitioner ought to have been given an opportunity to replenish the shortfall in margin. The Arbitrator's finding, on the other hand, is that assuming that the sale was wrongful by reason of inadequate notice, i.e. notice of 2 days, in this case, instead of 3 days' notice required in accordance with the contract between the parties, the sale would amount to wrongful conversion, giving rise to damages and these damages would have to be then assessed at the market rate on the date of conversion, that is to say, the date of the sale. The Arbitrator noticed that the Claimant had not made any claim for seeking damages for wrongful conversion; the Claimant had neither repurchased shares in the open market at any time after 17 September, 2001 nor made out a case for damages otherwise. As a result of the sale of the shares, as the Learned Arbitrator found, no loss was occasioned to the Petitioner as of the date of the alleged wrongful conversion. The Arbitrator observed that there was no actual loss suffered by the Petitioner on account of any such wrongful conversion. In any event, excess recovery made out of the wrongful conversion was sought to be made over by the Respondent to the Claimant; nothing further needed to be done in that case by the Respondent. The Arbitrator, in the premises, did not deal with any other issue arising in the matter.

7. The Arbitrator's view on the subject is perfectly legitimate and reasonable. The Petitioner's pleaded case amounts to a case of wrongful conversion and his remedy in such a case would be nothing but recovery of damages for such wrongful conversion and not return of the shares

pledged by the Petitioner. As rightly observed by the Arbitrator, there was neither a prayer made nor material produced before the Arbitrator in support of the case for such damages and that, in the premises, none could be awarded to the Petitioner.

8. The view of the Learned Arbitrator is clearly a possible view supported by evidence and not a view which is either impossible or such that no fair or judiciously minded person would have arrived at on the basis of the material. It does not, in the premises, call for any interference under Section 34 of the Arbitration and Conciliation Act, 1996.

9. Accordingly, there is no merit in the petition. Arbitration Petition is dismissed.

(S.C. GUPTE, J.)