IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO.605 OF 2015

Jugal Kishore Uttamchand Sahni ....Petitioner
vs
M/s. Karvy Stock Broking ...Respondent

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Mr. Prashant P. Kulkarni, for the Petitioner.

Mr. Ramesh Gogawat, i/b. Joby Mathew & Associates, for the Respondent.

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CORAM : S.C. GUPTE, J.

DATED: 21 JANUARY, 2019

P.C.:

. Heard learned Counsel for the parties. This arbitration petition challenges an award passed by a sole arbitrator in the matter of arbitration under the Rules, Bye-laws and Regulations of the National Stock Exchange of India Ltd. ('NSE'). The Respondent herein, who is a stock broker and trading member of NSE, was the claimant before the arbitrator, whereas the Petitioner, the former's constituent, was the Respondent in the reference, who had filed his counter-claims. The arbitrator rejected both claims and counter-claims. The Petitioner has come in challenge against rejection of his counter-claims.

2. The Petitioner's counter-claims pertain to the value of his shares in his trading account as of 31 March 2008. It was his case before the arbitral forum that he did not effect any transaction in his account

after 31 March 2008 and that, accordingly, shares in his account as of 31 March 2008 ought to have been returned to him. The arbitrator, firstly, observed that there were regular transactions in the account even after 1 April 2008 and that shares were sold and credit provided in the account. The arbitrator held that it could not be “safely said that the Respondent (i.e. the Petitioner herein) was not aware of the transactions in his account”. The arbitrator also held that his claim lodged after a lapse of six months from the disputed date (i.e. 31 March 2008) was barred by limitation. Neither of these grounds shows application of mind. The Petitioner's case before the arbitral forum being that he had not transacted in his account after 31 March 2008, implies that he had not issued any instructions to the Respondent trading member for any transaction in his account. It was this case, which was to be considered by the arbitral tribunal. Instead the arbitral tribunal appears to have simply taken into account some transactions actually effected in the account after 1 April 2008. There may be entries in the account after 31 March 2008, but the question before the arbitrator was whether these were authorised; in other words, whether it was the Petitioner who had issued instructions for these trades. It is no good to say that it cannot be safely said that the constituent was not aware of the transactions in his account. The question was, could it be safely said that the constituent was aware of the transactions in his account and further, whether such knowledge implied that the trades were effected on the Petitioner's instructions. As for the ground of limitation, learned Counsel for the Respondent does not dispute that there was no case of bar of limitation, since the limitation period is admittedly of three years. This is clearly a patent illegality appearing on the face of the award.

3. The award, thus, exhibits a clear non-application of mind and is also vitiated by a patent illegality, and deserves to be set aside. Accordingly, the petition is allowed to the extent of rejection of the Petitioner's counter-claims.

(S.C. GUPTE, J.)