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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO.727 OF 2018

Badrinath Madhukar Bodhai ...Petitioner
vs
The Joindre Capital Services Limited Mumbai And Anr. ...Respondents

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Mr. Vibhor Dileep Barla, i/b. Vikas J. Takalkar, for the Petitioner.

Mr. Ajay Khandhar, a/w. Mr. Jayant Gaikwad, i/b. Mr. Ajay Khandhar & Co., for Respondent No.1.

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CORAM : S.C. GUPTE, J.

DATED: 16 OCTOBER 2019

P.C. :

. Heard learned Counsel for the parties.

2. This arbitration petition challenges an appellate award passed by the Appellate Arbitral Bench of Bombay Stock Exchange. The Petitioner herein, who was the original applicant before the arbitrators, is a constituent, whereas Respondent No.1 herein is the trading member, with whom the Petitioner was dealing and Respondent No.2 is the sub-broker, who facilitated the trades. The Petitioner's claim was rejected by the arbitrators mainly on the ground of want of jurisdiction and limitation. The arbitrators held that the disputes did not pertain to the trading under the BSE from his Dmat account; therefore, it was

appropriate to refer the matter to arbitration under the Bye-laws 14.1.1 and 14.1.3 of National Securities Depositories Regulations and that BSE arbitrators had no jurisdiction to entertain the application. On the ground of limitation, the arbitrators held that it was apparent from the record as well as the documents of the Petitioner herein that stocks had vanished from his Dmat account during the period from 17 August 2004 to 28 May 2005. (This period is said to be wrongly stated by the arbitrators; according to the arbitrators, the correct period is 30 April 2004 to 19 December 2005.) The arbitrators held that on 26 July 2006, the Petitioner had received a statement of his holdings in his Dmat account with Janalaxmi Co-operative Bank Ltd., who were the depositories. This statement showed only the stocks of LIC in the Dmat account and no other stocks. The arbitrators observed that, in the premises, on that date, the Petitioner could be said to have come to know that the stocks were stolen away or misappropriated. Admittedly, there was no transaction from the Dmat account with Respondent No.1 after 31 March 2007. In the premises, the arbitrators were of the view that the present complaint, after a period of more than 10-12 years was clearly beyond time; it was much more than 3 years after having knowledge of loss of his stocks. The arbitrators, accordingly, held that the complaint/arbitration application was clearly barred by the law of limitation.

3. The conclusion of the learned arbitrators is supported by some evidence on record. It cannot be said to be a conclusion based on no evidence. No relevant or germane material appears to have been disregarded; so also, no irrelevant or non-germane material appears to

have been considered by the arbitrators for arriving at their conclusion. The conclusion, thus, is a possible conclusion. It cannot be termed either impossible or something which no fair or judiciously minded person could have arrived at. It is not a conclusion which could be said to shock the conscience of the court. None of the tests for entertaining a challenge to an arbitral award referred to by the Supreme Court in **Associate Builders vs. Delhi Development Authority**[1] is satisfied in the present case.

4. Learned Counsel for the Petitioner relies on the statement made by the sub-broker (Respondent No.2 herein). The holding statement given by the sub-broker in respect of the Petitioner's account is, in the first place, as of 28 May 2005, that is to say, of more than ten years before the Petitioner’s approach to BSE; as against this statement, the statement of his holding in the relevant Demat account was received by the Petitioner on 26 July 2006. Secondly, and, at any rate, this statement has been furnished by Respondent No.2. It is difficult to see how it could bind Respondent No.1. Learned Counsel for the Petitioner relies on Bye-law 248E of BSE to contend otherwise. Bye-law 248E says nothing of the kind. It is about the liability of the member broker to comply with an arbitral award against a sub-broker, who fails to comply with the same. This has no application to the facts of our case. Learned Counsel for the Petitioner, alternatively, relies on Article 68 of the Schedule to the Limitation Act, 1963. Relying on this article, it is submitted that the Petitioner’s claim is for specific movable property, i.e. his shares in Demat account with Janalaxmi Cooperative Bank Ltd., Nashik, which were said to be lost or stolen or misappropriated or

1 (2015) 3 SCC 49

converted. Learned Counsel submits that in such a case, limitation period begins to run against a claimant when he first learns in whose possession the specific movable property is. Learned Counsel submits that his client came to know about the person, in whose possession the shares were, only in the course of the arbitral proceedings. Learned Counsel, accordingly, submits that there is no bar of limitation so far as his claim is concerned. The case of the Petitioner is not governed by Article 68. If at all, it is Article 69, which may be said to govern his case. This is not a case, where any specific movable property has been lost or stolen or misappropriated or converted by an unknown person and the rightful owner has come to know about the possession of such property by the opponent and, thereafter, filed a suit or a claim. This is a case for recovery of specific movable property, which belonged to the Petitioner and was reflected in his Dmat account with Janalaxmi Co-operative Bank, Nashik, and which property, according to the Petitioner, was under the control of the Respondents, who are responsible for its wrongful conversion or mis-appropriation. If that is his case, the case would fall within Article 69 and the period of limitation would begin to run when the property is wrongfully taken away or converted. As noticed by the learned arbitrators, the property was taken away sometime before 26 July 2006. The Petitioner is said to have received a statement on that day of his holdings in his Dmat account with Janalaxmi Co-operative Bank Ltd., Nashik. If this property is taken away and is not reflected in his account as of that date, his period of limitation to recover the same begins to run from the date the property is taken away and not when the identity of its recipient is learnt by the Petitioner.

5. Accordingly, there is no merit in the arbitration petition. The petition is dismissed.

(S.C. GUPTE, J.)