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

ARBITRATION PETITION NO. 1205 OF 2014

Arun Thakordas Gujarathi ...Petitioner
vs
M/s.Angel Broking Pvt.Ltd. ...Respondent

Mr.S. Shamim I/b. Shamim & Co. for Petitioner.
Mr.Shantanu Mitra with Aagam Doshi & Nishant Upadhyay I/b. Desai & Diwanji for Respondent.

CORAM : S.C.GUPTE, J.

DATE : 16 APRIL 2019

P.C. :

Heard learned Counsel for the parties.

2 This arbitration petition challenges an award passed by a sole arbitrator in a reference under the Rules and Bye-laws of National Stock Exchange ("NSE"). The Respondent herein, who is a broking house, was the claimant before the arbitrator, whereas the Petitioner, the constituent of the former, was the respondent. The Petitioner was trading with the Respondent broker in futures and options segment of NSE. He had a trading account with one Angel Capital & Debt Market Ltd., who is now known as "Angel Broking Pvt.Ld.", the Respondent herein. The Petitioner had also kept collaterals with a sister concern of the Respondent, namely, Angel Broking Ltd., through a demat account maintained with it. The Respondent's claim arose out of the dues owed by the Petitioner to it in the trading account. The Petitioner resisted the claim on the ground that he had issued written instructions of 26 December 2007 requiring the

Respondent to stop trading in his account. The Petitioner claimed even to have submitted an account closure form on 18 December 2007 duly filled in. Both the stop- trading instructions and the account closure form were allegedly submitted to the Respondent's authorised agent, one Leader Shares, which is claimed to be a proprietary concern of one Prabha Khatri. It was the case of the Respondent before the sole arbitrator that all transactions in his account post such trading instructions, i.e. post 16 December 2007, were unauthorised and did not give rise to any liability on the part of the Petitioner. The arbitrator rejected this defence after observing that the genuineness of the stop-trading instructions as well as the account closure form was not proved. The learned arbitrator particularly observed that the signatures on the purported instructions of 16 December 2007 and the account closure request form signed on 18 December 2007 of the authorised signatory, namely, Leader Shares, were different. The learned arbitrator observed that these signatures gave rise to doubts as to the genuineness of the documents. The arbitrator, accordingly, did not accept the Petitioner's case on instructions to close the account. The arbitrator also observed that the Petitioner would not have closed his account on 15 December 2007 when there was an outstanding open position and that in any case he had, by his purported letter of 16 December 2007 and account closure request form dated 18 December 2007, sought only transfer of his demat shares with Angel Broking Ltd. to Urban Bank demat account. The arbitrator held that the Petitioner was well aware of all transactions in his account being an on-line client of the Respondent with continuous access to the Respondent's back office and could not claim to have come to know of the debit balance after filing of the arbitration application.

3 The issues considered by the learned arbitrator in this behalf are essentially questions of fact. The learned arbitrator has fairly assessed the evidence placed by the parties before him and has come to a conclusion, which can certainly be described as a possible view of the matter and not a view which no fair or judiciously minded person would take or as would shock the conscience of the court. It is essentially a view which is supported by evidence. For example, the finding that the signatures of the authorised representative, namely, Leader Shares, in the letter of 16 December 2007 and in the account closure form defer considerably, is supported by the relevant documents produced before this court. Based on the difference in the signatures, if the arbitrator were to conclude that there was doubt as to the genuineness of the documents, it can surely be described as a possible view.

4 Learned Counsel also submits that the Petitioner was not an on-line client. Learned Counsel submits that there is no proof of any on-line transaction conducted by the Petitioner. The question is not whether any transaction was in fact conducted by the Petitioner on-line. The question is whether he had access to the account, so that he could see and verify the transactions made on his behalf. Be that as it may, even if this particular conclusion can be said to be without any evidence and an impossible conclusion, the overall finding of fact on the issue as to whether the Petitioner in fact issued stop-trading instructions and closed his account on the particular date alleged by him, as noted above, cannot be termed as an impossible conclusion.

5 Learned Counsel for the Petitioner submits that the signature on the instructions of 16 December 2007 clearly tallies with the signature on the account opening form of the authorised representative, Leader Shares. Even if it is so, it is quite beside the point. This court, as a challenge court hearing a petition under Section 34 of the Arbitration and Conciliation Act, 1996, is not expected to re-examine the evidence and see if the arbitrator has come to a correct finding of fact. This court merely concerns itself with whether the arbitrator's view on a question of fact is a possible view or a view that no fair or judiciously minded person would take. The Petitioner's challenge in the present petition does not meet this standard of scrutiny.

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

(S.C. GUPTE, J.)