

IN THE HIGH COURT OF JUDICATURE AT BOMBAY***ORDINARY ORIGINAL CIVIL JURISDICTION*****ARBITRATION PETITION NO. 602 OF 2017****Kalyansinh K. Kumpavat (Constituent)****..... Petitioner****VERSUS****Prashant J. Patel (Trading Member)****..... Respondent**

Mr.Sunil R. Rawal, a/w. Mr.Nilesh Makwana, i/b. Mr.Ravi D. Talreja
for the Petitioner.

Mr.Simil Purohit, a/w. Mr.Jayant Gaikwad, i/b. Mr. Ajay N. Khandhar
for the Respondent.

CORAM : R.D. DHANUKA, J.**DATE : 17th JUNE, 2019****P.C.**

By this petition filed under section 34 of the Arbitration and Conciliation Act, 1996, the petitioner has impugned the arbitral award dated 10th April, 2017 passed by the learned arbitrator allowing the claims made by the member and rejecting the counter claim filed by the petitioner.

2. The arbitral award is impugned on the ground that there was no signature of the member on the agreement between the member broker and client though the same was signed by the petitioner. The impugned award is also challenged on the ground that there was no dealing between the parties. The petitioner was not served with any of the contract notes. The petitioner was dealing with the sub-brokers of the respondent. The sub-brokers were necessary parties to the petition

as well as to the proceedings before the learned arbitrator.

3. A perusal of the record indicates that though the respondent has not signed the agreement, the petitioner had admittedly signed such agreement.

4. A perusal of the impugned award and the findings rendered by the learned arbitrator clearly indicates that the petitioner had filed a counter claim against the respondent before the learned arbitrator on the premise that the petitioner had made excess payment to the respondent. The petitioner has also admitted certain dealings between the petitioner and the respondent. If there was no transaction between the petitioner and the respondent, the petitioner would not have made payments to the respondent and would not have received any payment from the respondent as clearly reflected in paragraph (26) of the impugned award. The petitioner also did not dispute the entry in the ledger account of the respondent nor disputed the transaction.

5. The learned arbitrator has rendered a finding that though there was no proof of delivery of the contract, the respondent has produced the proof of the dispatch of the contract notes which was duly received by the petitioner and acted upon by making various payments from time to time to the respondent member.

6. Insofar as the submission of the learned counsel for the petitioner that since the respondent had not signed the agreement i.e. the 'agreement between the member broker and client' and thus there

was no arbitration clause is concerned, there is no dispute that in the contract notes, there was a reference to the bye-laws of the Stock Exchange which includes arbitration agreement. The fact remains that the petitioner himself has filed the counter claim against the respondent also would indicate that the petitioner did not dispute that the arbitration agreement exists between the parties. The finding of fact being not perverse, cannot be interfered with by this court in this petition filed under section 34 of the Arbitration and Conciliation Act, 1996.

7. The petition is devoid of merits and is accordingly dismissed. There shall be no order as to costs.

8. At the request of the learned counsel for the petitioner, the respondent shall not execute the award for a period of four weeks from today. If any appeal is preferred, a copy thereof shall be served upon the respondent's advocate in advance.

[R.D.DHANUKA, J.]