IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO.337 OF 2015

Smt. Swati Shrikrushna Bhavsar ....Petitioner
vs
M/s. Kotak Mahindra Investment Limited ...Respondent
.....
Mr. Sachin Dhakephalkar, for the Petitioner.

Mr. Deepak Dhane, i/b. Joby Mathew & Associates, for the Respondent.
......
CORAM : S.C. GUPTE, J.

DATED: 6 FEBRUARY 2019

P.C.:

. Heard learned Counsel for the parties. This petition challenges an award passed by a sole arbitrator in a reference arising out of a loan agreement described as Master Loan Agreement dated 6 November 2006 between the Petitioner and the Respondent.

2. The Respondent is a Non-Banking Finance Company. It claims to have advanced a loan to the Petitioner for purchase of securities against pledge of securities lying in a depositary account bearing Client ID:12913215 and DP ID:IN300214. The Master Loan Agreement shows the Petitioner as having pledged these securities and availed of the loan facility from time to time. The claim of the Respondent (claimant before the arbitral forum) arose out of this facility. The Respondent produced transaction statements of the demat account as also ledger statement of the Petitioner. The ledger statement shows a

debit balance in the Petitioner's account in the sum of Rs.5,61,879.43 as on 22 February 2008. The Respondent, vide letter dated 11 March 2008, called upon the Petitioner to pay this balance. It was the case of the Respondent before the arbitrator that the Petitioner was indebted to it in the sum of Rs.6,11,446.25 as of 9 August 2008 as per particulars of claim annexed to the statement of claim. The defences of the Petitioner to this claim have been set out in paragraph 6 of the award. The Petitioner disputed her signatures. She denied having entered into any contract with the Respondent or availed of any facility. According to her, the demat account and ledger statements were false. It was her case that she wanted to invest in shares and hence opened an account with Kotak Securities Limited and invested a sum of Rs.5 lakhs. It was her case that what she wanted was to trade in shares by sale and purchase and receive and pay monies from and to Kotak Securities Limited; she signed various printed agreements without understanding the nature thereof; Kotak Securities Limited and their employees played a fraud on her and that is how the present claim was made against her by the Respondent. She made a claim against Kotak Securities Limited by way of a counter-claim.

3. The arbitrator considered the record placed before him by the parties. The arbitrator noted that the Petitioner had traded in futures and options, as was evident from the statement made in her counter-claim; her statement showed that she had corresponded with Kotak Securities Limited in English and had even attended meetings with them. The arbitrator noted that the ledger account of the Petitioner showed various receipts, clearly establishing that she was fully aware of the transactions. The arbitrator, accordingly, disbelieved her story that she

was unaware of the documents signed by her or of the payments reflected in her ledger account or the legal relationship or the facility availed of by her. So far as her transactions with Kotak Securities Limited are concerned, the arbitrator noted that the case against Kotak Securities Limited or its employees was outside the purview of the arbitration reference, as Kotak Securities Limited was not a party to the reference. The arbitrator noted that the reference was in respect of dues under a loan and pledge agreement executed between the Petitioner and the Respondent to which Kotak Securities Limited was not a party. The arbitrator disbelieved the Petitioner's story that she only wanted to invest monies in shares and not avail of any loan. The arbitrator also rejected the Petitioner's contention that she had not signed the documents or that they were not valid. As regards the Petitioner's counter-claim, the arbitrator noticed that all amounts claimed by her related to transactions between the Petitioner and Kotak Securities Limited to which the Respondent was not a party. The arbitrator, accordingly, rejected the counter-claim. Having come to the conclusion that the claim made by the Respondent herein was justified, the arbitrator awarded a sum of Rs.6,11,446.25 as per particulars of claim with interest at the rate of 2% per month till payment or realisation.

4. The award exhibits a possible view of the material placed before the learned arbitrator. The award is supported by evidence. No irrelevant or non-germane material is considered or relevant or germane material disregarded by the arbitrator for arriving at his conclusion. There is nothing in the award which would either shock the conscience of the Court or indicate a view which no fair or judiciously minded

person would take. The award, accordingly, does not merit any interference under Section 34 of the Arbitration and Conciliation Act, 1996.

5. Learned Counsel for the Petitioner submits that as of the date of the arbitration reference, the Petitioner's securities worth at least Rs.4,64,094.66 were available with Kotak Securities Limited. Learned Counsel submits that these securities were kept by the Petitioner in accordance with the master loan agreement. It was these securities, which were pledged with the Respondent herein for the loan finance given by it under the master loan agreement. It is submitted that the arbitrator should have accordingly ordered adjustment of outstandings of the Petitioner against the securities. There is absolutely no substance in this submission. In the first place, no such submission appears to have been advanced before the learned arbitrator. On the other hand, such a submission would run counter to the Petitioner's submissions before the arbitrator, which have been noted above. The thrust of her submissions before the arbitrator was that the Petitioner only wanted to deal with Kotak Securities Limited and had invested amount with them and it was Kotak Securities Limited and their employees, who had played a fraud by getting loan documents executed by the Petitioner without her knowledge or consent. In fact, the investment made with Kotak Securities Limited or securities held by them to the account of the Petitioner were included in the counter-claim of the Petitioner. This counter claim, as we have noted above, was not entertained by the learned arbitrator on the ground that Kotak Securities Limited was not a party to the arbitration agreement and was not before him in the

arbitration reference. There is, thus, no substance in the Petitioner's contention now advanced before this Court.

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

7. Learned Counsel for the Petitioner applies for stay of the award. Having suffered an award against her and her petition in challenge of that award having been comprehensively heard and decided against her, there is no question of any stay of the award. The application is rejected.

(S.C. GUPTE, J.)