

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.07.2019

CORAM

THE HONOURABLE MR. **JUSTICE N.SATHISH KUMAR**

Original Petition No.443 of 2011

S.Vijayakumar .. Petitioner/Claimant

Vs.

1.Mr.V.Paul Das, BA BL,
Sole Arbitrator,
National Stock Exchange of India Ltd.,
2nd Floor, Ispahani Centre,
Door Nos.123-124, Nungambakkam High Road,
Chennai – 600 034.

2.M/s.JRG Securities Ltd.,
JRG House, Ashoka Road,
Kaloor, Kochi – 682 017,
Represented by its Director .. Respondent/Respondent

Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 to set aside the Arbitration Award dated 29.10.2010 passed by the First Respondent dismissing the claim of the petitioner made against the second respondent and award costs to the petitioner throughout.

For Petitioner : Mr.P.N.Radhakrishnan

For Respondents : Mr.G.Derrick Sam
for M/s.Hari Radhakrishnan

ORDER

This petition has been filed to set aside the Arbitration Award dated 29.10.2010 passed by the First Respondent dismissing the claim of the petitioner made against the second respondent.

2. The brief facts leading to file this original petition is as follows:

According to the applicant, the transaction dated 11.02.2010, 25.02.2010, 18.01.2010, 15.02.2010 and 26.03.2010 relating to sale of shares done by the representative of the respondent without obtaining the permission from him. Thereby, the claim for a sum of Rs.1,48,893.89 has been made against the respondent. The respondent has disputed the contention and they took up the plea that the applicant himself has admitted the suppression of facts and received the contracts. They also delivered E-contract notes probably by sending SMS on daily basis to the E-mail of the applicant.

3. Based on the rival condition, the learned Arbitrator assessed the entire evidence and factually found that the claim of the petitioner is not established.

4. The learned counsel for the petitioner would contend that the Arbitrator has not considered the evidence properly and decided the issue beyond the terms of the contract, whereas, it is the contention of the respondent that the Arbitrator has taken note of the entire aspects and factually found that the claim was not established.

5. In the light of the above submissions, it is relevant to extract the findings of the learned Arbitrator:

"According to the applicant all the above transactions were done by the representative without obtaining any permission from him. This contention could not be accepted by me, for the simple reason that the applicant, as per the terms of the agreements entered with respondent should have objected to the transactions within a specified time of the transaction. But in this case he has not done so, on the other hand he alleges that he could find out the above transactions only after 15.04.2010. It may be seen from the above transactions that they were commenced in the month of January 2010 and concluded in month of March 2010 whereas the applicant has made the allegation about the above transactions only on 07.07.2010 through this arbitration claim petition only. The reasons for the delay as explained by the applicant in his claim petition is not acceptable to me. The respondent has also refuted the Claim of the applicant on the ground the applicant himself

specifically admitted in the statement of facts itself that he had been receiving E-contract notes as per the agreement executed by him for that purpose. However he claims that the same was not clear. The respondent had delivered contract notes promptly with respect to all the transactions carried out in the account of the applicant and the applicant had not chosen to dispute any such transactions evidenced by those contract notes. The respondent had set SMS alerts on a daily basis to the mobile number of the applicant and log report is available with the respondent in proof of the same and the same is produced along with this statement. After receiving the confirmation of all the trades done by the applicant promptly and without disputing any such transactions the applicant, after the concerned employee resigned from the service of the respondent company, opted to prefer this arbitration case only as an after thought and the attempt made by the applicant is evidently to recoup the loss suffered by him for the transactions carried out by him by raising a false case against the company. The respondent has also reiterated that the entire transactions in the trading account of the applicant was carried out as per the instructions of the applicant by himself using his login Id and password and proper confirmation had been given to him promptly by delivering E contract notes and the applicant at any time could have viewed all the minute details of his transactions by accessing the back office of the respondent through website of the respondent and the

applicant had not raised any issue regarding this with the respondent. The respondent has also filed all the relevant documents to prove their above contention and I have perused all of them and satisfy myself that the contention of the respondent is acceptable. The applicant cannot take shelter on the ground that the representative of the respondent has done all the above transactions without his consent and he could have verified each and every one of the transactions done through his DMAT account then and there on receipt of the contract notes and E-mail, SMS etc. But the applicant has failed to do this and belatedly filed this arbitration claim petition alleging that the representative of the respondent has done the transaction without his consent and knowledge, after the representative resigned his post from the respondent. Accordingly I conclude that the claim of the applicant is not true and acceptable based on the documents filed by both sides and I answer to the above issue against the applicant."

6. On perusal of the above findings, it makes clear that the learned Arbitrator has analysed the facts and also the evidence and finally found that the delay in preferring the claim also militate against the claimant. The learned Arbitrator has factually found that the claim has been preferred only after the representative of the respondent has

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left the shop in order to set right the 8 loss and also found that the claim has not been established. This Court cannot sit as an Appellate Court to re-appreciate the evidence. Hence, I do not find any material reason to interfere with the award. Accordingly, the original petition is dismissed. No costs.

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Index:Yes/No
Internet:Yes/No
Speaking order: Non-speaking order

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