

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 11.06.2019

CORAM

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

O.P. No.468 of 2012

Anurag Sharan

.. Petitioner

-vs-

1. M/s.J.M.Financial Services Pvt Ltd
3rd Floor, Apeeja House,
3 Dinshaw Vachha Road,
Near K C College, Churchgate,
Mumbai 400 021.Respondent/Applicant
2. Sri. S.Subramanian,
The Sole Arbitrator,
(Civil Judge Senior Division – Rtd.)
National Stock Exchange of India Ltd.,
Regional Arbitration Centre,
Old No.7, New.No.2, Nawab Garden,
Murugappa Road, Kotturpuram,
Chennai – 600085.
(Amended as per order dated 23.01.2019 in
A.No.392/19 and time extends as per order
dated 11.02.2019.) .. Respondents

Prayer: Petition filed under Section 34 of the Arbitration & Conciliation Act, 1996 to set aside the award dated 30th October 2008, passed by the Second Respondent in Arbitration matter No.F and O/C-0209 of 2008 with the cost of the petitioner.

For Petitioner : M/s.P.V.Rajeswari

For Respondents : Mr.Varun Srinivasan
for M/s.N.V.S.Associates for R1.

ORDER

This petition has been filed to set aside the award dated 30th October 2008, passed by the Second Respondent in Arbitration matter No. F and O/C-0209 of 2008 with the cost of the petitioner.

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

(i). The petitioner was trading in both Segment of the National Stock Exchange and Bombay Stock Exchange. He was also trading in the Futures and Options (F & O) Segment of National Stock Exchange (hereinafter called as 'NSE') through the respondent.

(ii). In the F and O Segment of the NSE, the petitioner on 21.01.2008 had open positions valued at Rs.83,76,650/- for which the margin requirement was Rs.35,11,800/- for that he had given scrips as collateral security which was to the value of Rs.19,05,667.47. Hence, as on 21.01.2008, there was margin deficit of Rs.16,06,140.77 besides M to M loss to the extent of Rs.23,40,645/-. But he could not make the payment, instead agreed to square off the positions. After that the petitioner's account in F and O, stood at Rs.7,00,580.95 debit. When payment was demanded by the petitioner, he denied his liability

and started saying that his collateral was worth more than 64.86 lakhs and there was a credit balance in his account and that his open positions were squared off for a very low price. These allegations are false. Since the petitioner is not willing to settle the debit balance, the applicant/respondent had laid this arbitral claim, with a prayer to grant an award for Rs.7,00,580.95 with 18% interest.

3. Thereafter, the Arbitrator was appointed as per the agreement entered between the parties with the F & O Scheme and NSE of India Ltd. It is also to be noted that there is a specific agreement between the parties to refer the matter to Arbitrator as per the regulations set out in the Regulation namely 5.18 which is the Mode of Communication, wherein it is stated as follows:

5.18 Mode of Communication:

" (a) Any communication sent by the Exchange to either of the parties shall be deemed to have been properly delivered or served, even if such communication is returned to the Exchange as unclaimed/refused/undelivered, if the same is sent to the ordinary business address and/or ordinary place of residence and/or last known address of the party, in any one or more of the following ways:-

- i. by post,
- ii. by registered post,

- iii. under certificate of posting*
 - iv. by speed post/courier services,*
 - v. by telegram,*
 - vi. by affixing it on the door at the last known business or residential address,*
 - vii. by advertising it in at least one prominent daily newspaper having circulation in the area where the last known business or residential address of Respondent is situated,*
 - viii. by sending a message through the Trading System,*
 - ix. by electronic mail or fax.*
 - x. By hand delivery.*
- (b). Any communication sent by either of the parties to the Exchange shall be made in any one or more of the following ways:*
- i. by post (ordinary or registered or speed) or Courier service*
 - ii. by telegram*
 - iii. by fax*
 - iv. by hand delivery*
 - v. by electronic mail"*

4. Admittedly, in the agreement and in the Registration form, the resolution of the petitioner has given as No.A-331 Century Park, 48, Richmond Road, Bangalore. It is stated as last known address of the petitioner. In pursuant to the appointment of the learned Sole Arbitrator, he has issued a notice informing about the arbitration and

fixing the date of hearing. However, the said notice was returned and left with an endorsement 'left'. Thereafter, the Arbitrator has proceeded to decide the arbitration proceedings and passed an award. Challenging the same, the present Original Petition is filed.

5. The main contention of the learned counsel appearing for the petitioner that the notice has not been served. The petitioner has changed the address to some other place in the year 2006 and the above fact has also informed to the respondent by written communication. Besides, the correspondence were frequently made through E-mails. That being the position, the notice of arbitration to the erstwhile address is not according to law. Hence, the award is liable to be set aside.

6. The learned counsel appearing for the respondent would contend that the alleged change of address has been pressed into service for the purpose of this case. Even admittedly, there were E-mail correspondences in the year 2008, wherein, it has been specifically made in regard to the address given in the agreement that has not been disputed by the respondent. That being the position, the alleged contention of the petitioner that the address has been changed in the year 2006 cannot be countenanced. As per the

regulations, the notice has been sent and copies of Arbitration has been sent only to the address given in the agreement which has been followed as per the regulations. Hence, he submitted that there is no ground made out to interfere the award.

7. I have perused the entire records.

8. The only grievance of the petitioner is that the notice has been ordered. Admittedly, in the Registration form, the permanent address of the petitioner is given as No.A-331 Century Park, 48, Richmond Road, Bangalore. Further, the declaration also given in the agreement by the petitioner, though the above address stated by him is true, admittedly, the notice has been sent to the same address by the Arbitrator through the Registered Post, which was sent to the correct address where the petitioner is lastly resided.

9. Statutory presumption arises for proper service under Section 27 of the General Clauses Act. Besides, the party to the contract themselves bound by the contract in the manner which the communication to be addressed. In the event of any dispute as stated above, the regulations of F&O also provides the manner in which the communication to be sent with notice to the correct address and last

known address by Registered Post. Certainly, there will be a presumption for proper service. Therefore, now it cannot be stated that there was a change of address. Even there was a change of address, it should ought to have been notified to the other side by written communications. Therefore, the contention of the petitioner that no notice has not been sent cannot be countenanced at this stage. Admittedly, even in the year 2008, there were E-mail communication, even in such communication, the address given in the agreement has been clearly mentioned by the petitioner. If there was a change of address, the same should be informed to the other side, which has not been done so. In the Judgment of the Hon'ble Apex Court in the case of **Madan and Co. vs. Wazir Jaivir Chand.** in paragraph 5 of the judgment, the Hon'ble Apex Court has dealt with the service of notice. Similarly, this Court in the case of **C.Bhuvaneswari and Ors. vs. Shriram City Union Finance Ltd. And ors.** has held in paragraph 11 is as follows:

"11. Further, in the decision rendered by the Bombay High Court in the case of Francisco A.D'Souza vs. L & T Finance Ltd., Mumbai MANU/MH/0781/2015, it has been categorically held that when notices are sent at the last known addresses of the parties and the same have not been returned by the postal authority, it would amount to a deemed service of such notices. It was further held therein that it is suffice that notice has been sent to the

last known address of the party as mentioned in the Agreement, unless and otherwise the party is able to produce a document to the effect that change of address was duly communicated."

10. Having regard to the above judgments and also considering the records, I find that the contention of the petitioner cannot be countenanced. Section 3 of the Arbitration and Conciliation Act also makes it clear that when any written communication is deemed to have been received if it is delivered to the addressee personally or at his place of business, habitual residence or mailing address by registered letter or by any other means, it is a valid service.

11. Admittedly, the notice in this case has been sent to the such known address of the petitioner by Registered Post, therefore, it cannot be said that there is no service of notice. Hence, the original petition is liable to be dismissed.

12. The amount deposited by the petitioner at the time of admission shall be ordered to be paid to the respondent and the amount realized of Rs.2,50,000/- (Rupees two lakh fifty thousand

only) shall be adjusted towards the part satisfaction in execution proceedings.

11.06.2019

msv

Index:Yes/No

Internet:Yes/No

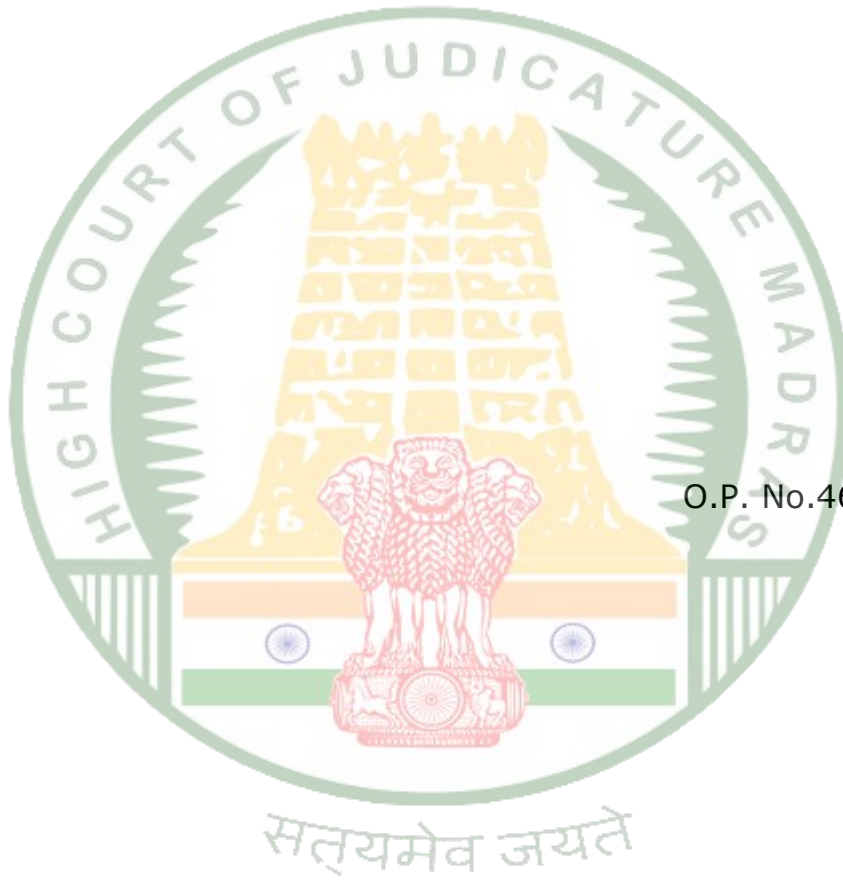
Speaking order: Non-speaking order



WEB COPY

N.SATHISH KUMAR,J.

Msv



O.P. No.468 of 2012

WEB COPY

11.06.2019