IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **17.07.2019**

CORAM:

THE HON'BLE MR. JUSTICE N.SATHISH KUMAR

O.P.No.473 of 2012

Ashok Reddy Puli ...Petitioner

vs.

1.M/s.BMA Wealth Creators Ltd.,
29/5A, Dr.Ambedkar Sarani,
Topsia Road, Vishwakarma II,
Kolkata – 700 046.

2.National Stock Exchange of India,
Arbitration Tribunal,
2nd Floor, Ispahani Centre,
123-124, Nungambakkam High Road,
Nungambakkam,
Chennai – 600 034.

3.Mr.K.Sridhar,
Presiding Arbitrator,
2nd Floor, Ispahani Centre,
123-124, Nungambakkam High Road,
Nungambakkam,
Chennai – 600 034.

4.Mr.A.P.Sridharan,
Arbitrator,
2nd Floor, Ispahani Centre,
123-124, Nungambakkam High Road,
Nungambakkam,
Chennai – 600 034.

5.Mr.Sridharan Krishnamoorthy,
Arbitrator,
2nd Floor, Ispahani Centre,
123-124, Nungambakkam High Road,
Nungambakkam,
Chennai – 600 034. ...Respondents

Prayer: Original Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996, to set aside the Award of the Arbitrators dated 25.01.2012 and Award costs to the Petitioner in respect of these proceedings.

For Petitioner : Mr.G.Ashokapathy
for M/s.Pass Associates

For Respondent : No appearance

ORDER

Aggrieved over the orders of the Appellate Tribunal confirming the Arbitral Award dismissing the claim made by the petitioner, the present petition has been filed.

Brief facts leading to the filing of the present petition:

2.The claimant opened a trade account on 05.12.2007 with the respondent and commenced trade operation with effect from 14.12.2007. On 01.07.2008, there was a debit balance of Rs.16,03,651.25 in purchasing of Air Deccan shares. The claimant had made payment of Rs.10,00,000/- on 10.06.2008 and had to make payment of Rs.16,03,651.25 to the respondent. However, on 02.07.2008, the respondent without knowledge of the claimant had taken intra day positions of buying and selling of 16,500 Nifty shares thereby creating a loss of Rs.14,06,040/- immediately, he sent a letter dated 03.07.2008 objection to the said transaction.

Thereafter, the claimant has transferred 27,500 shares of Balaji Distilleries, 5250 shares of Geomatric to the margin account of the respondent on 11.07.2008, 2500 shares of EID Parry, 193 shares of HDFC Bank, 4000 shares of Satyam Computers and 264 shares of TATA Steel on 30.08.2008.

3.The shares were transferred to the pool account of the respondent with the clear instructions that no transactions should be initiated in his account without his consent. Subsequently, the claimant account was transferred to Calcutta Office without his knowledge, the same was objected by the claimant. Thereafter, on 31.03.2010, he received Statement of Accounts wherein his trading account showed a debit balance of 15,65,362.90.

4.On verification, it is found that the respondent traded in the applicant's account from the year 2008-2009 resulting in huge loss and on account of the said losses, the applicant had to sell all his shares which were lying in the pool account of the respondent. Therefore, the claimant has been made for a sum of Rs.82,89,650/- in addition to Rs.50,00,000/- as compensation for the losses and totally a sum of Rs.1,42,89,650/- with interest at 24% per annum.

5.It is the contention of the respondent is that the claim of the applicant is barred by limitation. The claimant started to execute the trades in stock market through the respondent from 14.12.2007 in Capital Market Segment. The claimant used to run into debit balance in the Share Trading Account and he never disputed the trade till 01.07.2008 despite suffering losses in other shares, he claimed a transaction in Nifty as unauthorized purportedly. Applicant was informed his position neither clear the debit balance nor to clear the margin in trading account. Therefore, the respondent had no option but to close out the position and demanded the debit balance of Rs.20,45,806.99. Hence, he sought to dismiss the claim.

6.The learned Arbitral Tribunal framed the following issues:

1.Whether the claim of the applicant is barred by limitation period?
2.Whether the claim of the applicant is true and acceptable?

3.Whether the counter claim of the respondent is true and acceptable?

7.The learned Arbitral Tribunal held that the applicant namely, the claimant was following the trade promptly till 01.07.2008 and it is very difficult to accept that the applicant was not having any knowledge about the trade transactions in his account from 02.07.2008 to 31.03.2010 and also taking his conduct, disbelieve his contention and rejected the claim. Similarly, the learned Arbitral

Tribunal also disbelieved the contention of the claimant making a demand on the certificate of posting for such huge amount and finally held that the claimant is not entitled to any of the amount claimed in the claim petition.

8.The Appellate Tribunal also confirmed the order of the Arbitral Tribunal as against the finding, the present petition has been filed. The main contention of the learned counsel for the petitioner that though the applicant was trading shares till 01.07.2008 and there was a debit in his account in respect of other shares. He never authorized the respondent to trade in Nifty. Without any authorization, the respondent has traded the shares in Nifty which resulted in loss. The petitioner also objected the same, the very next day i.e., on 03.07.2008.

9.The learned Arbitrator records finding to the effect that the respondents have not produced any contract notes. However, disputed the claim on mere presumption such finding cannot be sustained in law. Any finding must be based on the materials not by presumption and inference. Hence, it is the contention that learned Arbitrators having found that the respondents have not produced any documents to show that the delivery of contract notes, ought to have allowed the claim of the petitioner. Hence, it is contented that the award has to be set aside and the petitioner is entitled to the award for entire amount claimed.

9.Despite service of notice on the respondents and their name have been printed in the cause list today, none appeared on the side of the respondents.

10.I perused the entire Award and the findings of the Appellate Tribunal and considered the submissions of the learned counsel for the petitioner. The fact that the claimant was traded in the respondent account is not in dispute. It is also not in dispute till 01.07.2008, the claimant was trading and in fact he suffered some loss on 01.07.2008 and there was a debit balance of Rs.16,03,651.25 in respect of the above debit he had also made the payment. Only contention of the claimant that he never authorized the respondent to deal with the shares namely, Nifty on 02.07.2008, without such authorization, the respondent had sold the shares which was objected by him on 03.07.2008.

11.The learned Arbitrator taking note of the fact that having come to know about the alleged sale without any authorization by the claimant, the claimant in fact transferred the shares on 11.07.2008 and also subsequent dates. The learned Arbitrator also taken note of the conduct of the claimant to the effect that from 02.07.2008 to 31.03.2010, he has never followed his account. Having taken note of such conduct, the learned Arbitrator in fact disbelieved the entire evidence. It is curious to note that on 03.07.2008 itself, according to the claimant, he was aware of the unauthorized sale, he made an objection and wrote a letter to the respondent. Having found that the shares has been dealt unauthorizedly, subsequent transfer of the shares on various date on 11.07.2008, 02.07.2008 and 30.08.2008 makes his case unbelievable. No doubt, that there must be materials and evidences to conclude to arrive any conclusion but the fact remains that it is well settled that while deciding the issue.

12.The Court may presume the existence of any fact taking note of common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case. Every issue which is the subject matter of the adjudication has to be dealt considering the common course of natural events, human conduct public and private business relation of parties etc. Therefore, when the Arbitrators rightly assessed the conduct of the parties and disbelieved his contention it cannot be said that the entire Award is based on presumption.

13.It is against the normal human conduct to remain silent even after having suffered huge loss due to unauthorized transactions and further transfer of the shares. These are the facts which were taken note by the Arbitrators, which are also upheld by the Appellate Tribunal. When the learned Arbitral Tribunal and First Appellate Authority have assessed the facts and arrived finding, this Court exercising the jurisdiction under Section 34 cannot re-appreciate the entire evidence as Appellate Court.

14.Hence, I do not find any merits in this petition and the petition is dismissed. However, there shall be no order as to costs.

17.07.2019

Index: Yes/No
Internet: Yes/No
Speaking Order/Non-Speaking Order
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N.SATHISH KUMAR, J.

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