IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.07.2019

CORAM

THE HONOURABLE MR. JUSTICE N.SATHISH KUMAR

Original Petition No. 312 of 2015

O.P.Nos. 52 and 53 of 2017

M/s.Religare Broking Ltd.,
GYS Global A-3,4,5, Plot No.11,
Sector 125, NOIDA 201 301
Represented by its Associate Vice President and
Authorized Signatory, Mr.V.Elumalai .. Petitioner in O.P.No.312 of 2015 and respondent in O.P.Nos.52 and 53 of 2017

Vs.

1. Mr.Joseph J. Naduvilaparampil,
Naduvilaparampil,
Perumpanchry P.O., Chanaganacherry,
Kerala – 686 536. ...... Petitioner in O.P.Nos.52 and 53 of 2017 and respondent in O.P.No.312 of 2015

2.Mr. V.Paul Das,
Presiding Arbitrator, Appellate Arbitrators Panel,
National Stock Exhange of India Ltd.,
8th Floor, Arihant Nitco Park,
No.90, Dr. Radhakrishnan Salai, Mylapore,
Chennai – 600 004.

3. Mr.P.Chandrasekhar,
Co-Arbitrator, Appellate Arbitrators Panel,
National Stock Exchange of India Ltd.,
8th Floor, Arihant Nitco Park,
No.90, Dr. Radhakrishnan Salai, Mylapore,
Chennai – 600 004.

4. Mr.C.Madasamy,
Co-Arbitrator, Appellate Arbitrators Panel,
National Stock Exchange of India Ltd.,
8th Floor, Arihant Nitco Park,
No.90, Dr. Radhakrishnan Salai, Mylapore,
Chennai – 600 004. .. Respondents
O.P.No.312 of 2015

Prayer in O.P.No.312 of 2015: Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 to set aside the impugned award dated 10.12.2014 passed by the 2nd, 3rd and 4th respondent in Arbitration Appeal Matter (A.M.) No: NSC/ARBN/APPCM/C-0019/2014-2 received by the petitioner on 03.01.2015.

Prayer in O.P.No.52 of 2017: Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 to set aside the impugned award dated 22.12.2014 passed by the learned Arbitrator in Arbitration Appeal Matter (A.M.) No: NSC/ARBN/APPCM/C-0019/2014-2.

Prayer in O.P.No.53 of 2017: Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 to set aside the impugned award dated 10.12.2014 has to be set-aside and the claim of the petitioner before the Appellate Arbitral Tribunal for a sum of Rs.2.38 Crores as prayed for to be allowed.

For Petitioners in O.P.Nos.52 and 53 of 2017 and respondent in O.P.No.312 of 2015 : Ms.Subharanjani Ananth

For Respondent in O.P.Nos.52 and 53 of 2017 and petitioner in O.P.No.312 of 2015 : Mr.Sundar Narayanan for M/s.R.Sunil Kumar

COMMON ORDER

O.P.No. 52 of 2017 has been filed to set aside the impugned award dated 22.12.2014 passed by the learned Arbitrator in Arbitration Appeal Matter (A.M.) No: NSC/ARBN/APPCM/C-0019/ 2014-2.

2. O.P.No. 53 of 2017 has been filed to set aside the impugned award dated 10.12.2014 and for allowing the claim of the petitioner before the Appellate Arbitral Tribunal for a sum of Rs.2.38 Crores as prayed.

3. O.P.312 of 2015 has been filed to set aside the impugned award dated 10.12.2014 passed by the 2nd, 3rd and 4th respondent in Arbitration Appeal Matter (A.M.) No: NSC/ARBN/APPCM/C-0019/2014-2 received by the petitioner on 03.01.2015.

4. The claimant's case is as follows:

The claimant had opened a trading account with the respondent in August 2008. It was only for investment purpose. Initially, there was no problem as the transactions were carried out as per rules and according to the applicant's instructions. However, in November-December 2012, he came to know that he lost his entire portfolio- Rs.1.90 crore worth shares and the value of his shares at that point of time was only Rs.2.2 lakhs. He waited for sometime thinking how to proceed further and handle the situation.

5. When the matter has been originally led by the IGRP as per the by-laws of the National Stock Exchange of India, thereafter, the matter has ended in conciliation proceedings. The parties were referred to arbitration. Accordingly, the Arbitral Tribunal took note of the fact that the petitioner has agreed to pay a sum of Rs.1.25 crores, awarded a sum of Rs.1.25 crores with interest at 12% per annumn for the period of 7 months from December, 2013 to July 2015, thus, a total sum of Rs.1,33,75,000/-. The above award was also confirmed by the Appellate Tribunal. The award of the Arbitral Tribunal is now challenged by the respondent in arbitration O.P.No.312 of2015.

6. The claimant has also challenged the award amount, on the ground that the entire claim was not considered either by the Arbitral tribunal or by the Appellate Tribunal. The main contention of the petitioner/respondent to challenge the arbitral award that it is vitiated for violation of Sections 75 and Section 81 of the Arbitration and Conciliation Act (hereinafter referred as 'Act'). The Arbitral tribunal also taken note of the matters relating to the conciliation proceedings which is contrary to the provisions of law. Hence, it is the contention that the award is in violation of Sections 75 and 81 of the Act. The said award is certainly contrary to the public policy of India and liable to be interfered with under Section 34 of the Act.

7. The learned counsel for the petitioner in O.P.No.312 of 2015 relied upon the following judgments:

> ***Govind Prasad Sharma and ors. v Doon Valley Officers Cooperative Houseing Society Ltd*** and also ***Smriti Madan Kansagra v Perry Kansagra*** and ***N.Radhakrishnan v Maestro Engineers and others (2010) 1 SCC 72***.

8. Further, it is the further contention that IGRP should not have quantified loss when there is serious allegation of fraud.

9. Whereas, the learned counsel for the petitioner/claimant that the respondent in main O.P admitted the case that his agents have committed the fraud which caused loss to the claimant. Hence, as per Section 238 of the Indian Contract Act, principal is liable even for the fraud of the agent. Further, it is her contention that the respondent himself admitted that his employee has committed the fraud and therefore submitted that when respondent itself admitted the liability before the Arbitrator, now, he cannot take a contrary stand. Hence, no ground has been made out to interfere under Section 34 of the Act.

10. The three arbitrators have been appointed to form a Tribunal. Thereafter, the claimant has preferred his claim. The arbitral tribunal taking note of the specific admission that the trading member admitted to pay a sum of Rs.1.25 crores has passed an award based on his admission. The above award has been put under challenge. If any award is in violation of Sections 75 and 81 of the Act, such award is liable to be set aside.

11. Section 75 of the Act deals with the confidentiality. The Conciliator and the parties shall keep confidential of all matters relating to the conciliation proceedings. Confidentiality shall extend also to the settlement agreement, except where its disclosure is necessary for the purposes of implementation and enforcement.

12. Similarly, Section 81 of the Act states that the party shall not rely on or introduce as evidence in arbitral or judicial proceedings, any views expressed or suggestions made by the other party in respect of a possible settlement of the dispute. Similarly, admission made by the other party in the course of the conciliation proceedings; proposals made by the Conciliator and the fact that the other party had indicated his willingness to accept a proposal for settlement made by the conciliator.

13. Though the conciliation was in process before IGRP, one of the party though decided to settle the matter, no *consensus ad idem* reached between the parties, no decision has been taken. However, the parties have been advised to go before the Arbitrator.

14. It is to be noted that the observation made before the conciliation proceedings not to be used by any of the parties as evidence in the arbitral proceedings. Whereas, the Arbitral Tribunal have, in fact, independently enquired the parties. The petitioner has admitted to pay a specific amount, in fact, the Arbitral Tribunal independently asked the desire of the parties as to whether there is any possibility of settlement. It is to be noted that section 30 of the Act enable the Arbitrator to encourage the settlement of dispute during the arbitral proceedings. If the settlement is reached between the parties, the Arbitral Tribunal has to record the settlement in the form of arbitral award in agreeing terms. Such award shall be in terms of Section 31 of the Act. Therefore, when the trading member has admitted to pay Rs.1.25 crores before the Arbitrator and the award was resulted on positive admission made by the parties, it cannot be said that the award is vitiated under Sections 75 and 81 of the Act. If the entire award is based on the confidential matters disclosed during the conciliation proceedings, then, the contention of the petitioner that such award cannot be sustained in the eye of law cannot be founded, whereas, in this case, the Arbitrator has passed an award based on the admission made by the petitioner which is

independent of the disclosure made before the Conciliator before the IGRP. Such being the position, Sections 75 and 81 of the Act cannot be pressed into service.

15. With the above observations, O.P.No.312 of 2015 is dismissed. No costs.

16. In respect of other O.Ps viz., O.P.Nos. 52 and 53 of 2017 filed by the claimant for enhancement of the compensation, it is to be noted that no evidence adduced by the claimant to specify the entire claim before the Arbitrator. Therefore, in the absence of any evidence, when the award is based on the admission of the party, the petitioner cannot claim for enhancement of the award. Accordingly, there is no merits in the petition filed by the claimant. Hence, O.P.Nos.52 and 53 of 2017 is dismissed. No costs.

10.07.2019

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

N.SATHISH KUMAR,J.

msv

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