IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.12.2019

CORAM:

THE HONOURABLE Ms.JUSTICE.P.T.ASHA

O.P.No. 977 of 2019
and
A.No.9415 of 2019

M/s.Enrich Commodities India Pvt. Ltd.,
New No.241, Old No.85-86, Zind Court,
Rangarajapuram Main Road,
Kodambakkam, Chennai – 600 024.
Rep. By its Director L.Sunil Kumar ..Petitioner

Vs.

Mr.Palani Balasundaram,
No.144/52, Second Street,
Thiruveni Nagar, Villianur,
Pondichery – 605 110. ..Respondent

Prayer: Petition filed under Section 34 (2) of the Arbitration and Conciliation Act, 1996 praying to set aside the award passed by the Sole Arbitrator in the Arbitration No.MCX/ARB/4964/A/19 of 2019 dated 06.09.2019 and to pay the cost.

For Petitioner : Mr. K.Jayachandiran

For Respondents : No Appearance

JUDGMENT

This original petition has been filed under Section 34(2) of the Arbitration and Conciliation Act, 1996, challenging the award dated 06.09.2019 passed by the Sole Arbitrator appointed as per the Bye-laws and Business Rules of Multi Commodity Exchange of India Limited, Mumbai (Chennai Region).

2. The principles, which are necessary for disposing of the above petition is as follows:-

The parties are referred to in the same array as before the Arbitral Tribunal. It is the case of the claimant that he had invested a sum of Rs.1,00,000/- with the respondent in respect of the trading that he was to do through the respondent. It is his case that without placing any order, trade has been carried out in his account between the period 17.01.2018 to 18.06.2018. He would submit that he was totally unaware of the activities of the respondent and he was informed that the respondent has debited a sum of Rs.20,000/- from and out of his credit balance from the upfront margin paid by him. On coming to know about the said activities, he has approached the Multi Commodity Exchange and Grievances Tribunal. However, the complaint was dismissed after hearing the parties and therefore, aggrieved by the said order, the applicant had invoked the Arbitration clause and had moved arbitration proceedings. He had claimed refund of a sum of Rs.91,538/- after deducting a sum of Rs.8,584.58/-, which has to be given to the respondent as due amount.

3. The case of the respondent is that the claimant had voluntarily approached him and executed a trade agreement and had invested a sum of Rs.1,00,000/-. It was their case that in the KYC form, he had given his mobile number and all the contract notes and confirmation notes have been forwarded to him to this mobile number. The respondent would also admit that the claimant had given his E-mail ID. According to the respondent, trading had started on 29.06.2018 and the claimant, who received all the contract notes, confirmation notes etc., without a demur has kept quite all these years and has now suddenly come up with the above claim petition.

4. Before the Arbitrator, the representative of the claimant had appeared and the trading member namely, the respondent was also represented by his authorized representative. The Tribunal has taken note of the fact that the respondent, who is a trading member has not adhered to the circular dated 26.03.2018 which has been issued by the Multi Commodity Exchange of India Limited, which has clearly directed trading members to keep evidence of the order placed by them on behalf of the members. The Tribunal has also observed that the respondent has not been able to show proof that such a record has been maintained by them. In the absence of such instructions, the Tribunal below went on to hold that the claimant has proved his case that trading has been done

without his authorization. Consequently, the Tribunal had directed the respondent to refund the amount of Rs. 91,538/- together with interest at the rate of 9% per annum.

5. The said award is the subject matter of challenge before this Court. The counsel appearing for the respondent would submit that the claimant has received every contract note of the transactions that has been carried out on day today basis and the claimant's representative has admitted the above. Once there is an admission, the Tribunal below erred in allowing the claim filed by the claimant. He would seek to challenge the award on the ground that the claimant having had knowledge about the transactions has not initiated the any proceedings prior to the claim.

6. Heard the learned counsels and perused the papers. From the records, it is seen that along with the KYC documents in Form-A, the claimant has given a communication to the respondent wherein, he has requested the respondent to deliver all the contract note pertaining to the trades carried out and ordered by him to his E-mail ID, "SIVAKAILASH2000@GMAIL.COM". He has signed a declaration to this effect and the portion relating to the delivery of electronic contract note is herein under

extracted:-

> *"Therefore, I am voluntarily requesting for delivery of electronic contract note pertaining to all the trades carried out / ordered by me.*
>
> *I have access to a computer and am a regular internet user, having sufficient knowledge of handling the e-mail operations.*
>
> *My e-mail id is SIVAKAILASH2007 @ GMAL.COM. This has been created by me and not by someone else."*

7. The respondent admittedly has not followed this dicta. Their contention is that the contract note receipt has been sent through SMS, which runs contrary to instructions given by the claimant that this read along with the circular dated 26.03.2018 would clearly demonstrate that the respondent has not maintained the record as directed by the Multi Commodity Exchange of India Limited.

8. In these circumstances, I do not find any reason to interfere with the award and there are no ground made out for setting aside the order and the petitioner made out no such case as under Section 34(2) Arbitration and Conciliation Act. Hence, this original petition stands dismissed. No costs.

05.12.2019

kkn
Internet: Yes/No
Index:Yes/No
Speaking/Non-Speaking

P.T.ASHA, J.

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and A.No.9145 of 2019

05.12.2019