

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03-11-2020

CORAM:

THE HONOURABLE Mr.JUSTICE M.SUNDAR

O.P.No.385 of 2016
And
Application No.2593 of 2016

M/s.Angel Commodities Broking Pvt Ltd.,
Represented by its Authorised Signatory,
Mr.G.Dinesh and having its Registered Office at,
G1, Akruti Trade Centre,
No.7, MIDC Road Andheri (E),
Mumbai 400 093.

... Petitioner

Vs.

1.Mr.B.K.Maharaj

2.Justice Sri E.Padmanabhan (Retd),
Sole Arbitrator,
Multi Commodity Exchange of India Limited,
7th Floor, Shakti Towers-I,
766 Anna Salai,
Chennai-600 002.

(R-2 deleted as per order dated 10.06.2016 and
22.12.2016 in OP No.385 of 2016)

... Respondents

Prayer: Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 seeking to set aside the Award dated 25.11.2013 and order under Section 33 of the Arbitration and Conciliation Act, 1996 dated 19.01.2014 passed by the second respondent herein in respect of

arbitration proceedings between the petitioner and the first respondent and thus render justice.

For Petitioner : Mr.G.Surya Narayanan

For Respondent : Mr.K.Shakespeare

ORDER

Captioned 'Original Petition' ('OP' for the sake of brevity) was listed in a physical hearing today.

2. Mr.G.Surya Narayanan, learned counsel on record for the sole petitioner and Mr.K.Shakespeare, learned counsel on record for the lone respondent, were before me in this physical hearing today.

3. With the consent of aforementioned learned counsel on both sides, captioned OP was taken up for final disposal and both learned counsel were heard out elaborately.

4. Captioned OP is an application under Section 34 of 'The Arbitration and Conciliation Act, 1996 (Act 26 of 1996)', which shall

hereinafter be referred to as 'A and C Act' for the sake of convenience and brevity.

5. Captioned OP being an application under Section 34 of the A and C Act, short facts shorn of elaboration or in other words, factual matrix in a nutshell containing essential facts imperative for appreciating this order will suffice.

6. Short facts are that the lis between the parties pertains to trading qua 'Multi Commodity Exchange of India Limited' ('MCX' for the sake of brevity and convenience); that petitioner before me, which is a Private Limited Company, is a trading cum clearing member and the respondent before me, who is an individual, is petitioner's client; that this Court is informed that the trade, which is subject matter of dispute pertains to gold and silver only; that the respondent before me registered with the petitioner vide a client registration form dated 20.09.2010 and paid to the petitioner a total sum of Rs.6,80,000/- in all; that this Court is informed that three months thereafter the contractual relationship between the parties ran into rough weather resulting in the arbitration

clause being triggered; that there is no dispute or disagreement with regard to arbitration agreement between the parties as the parties have agreed that resolution of disputes, if any, shall be in accordance with MCX bye-laws; that there is no dispute that MCX bye-laws provides for arbitration; that a former Hon'ble Member of the Bench of this Court was appointed as a sole Arbitrator; that the sole Arbitrator constituted the 'Arbitral Tribunal' ('AT' for the sake of brevity); that AT entered upon reference and after hearing both sides, made an arbitral award dated 25.11.2013; that this arbitral award was corrected at the instance of the respondent before AT by exercise of powers under Section 33 of the A and C Act on 29.01.2014; that this correction pertains to paragraphs 14, 16 and 17 of the arbitral award; that this is merely a correction of typographical error wherein the erroneously given figure of Rs.2,80,000/- had to be corrected as Rs.1,80,000/-; that this arbitral award dated 25.11.2013 as corrected vide the correction order dated 29.01.2014 shall hereinafter be referred to as 'impugned award' for the sake of convenience and clarity; that the lis before AT was, respondent had parted with Rs.6,80,000/- in favour of the petitioner; that the petitioner had indulged in unauthorised trading through a sub broker; that owing to

this unauthorised trading, which the respondent was unaware, respondent claimed that he is entitled to damages besides certain other claims including a sum of Rs.25,000/- said to have been paid towards equity account; that the claim of the respondent before the AT was for these sums after giving credit to a sum of Rs.5 lakhs paid by sub broker of the petitioner to the respondent; that AT, after examining the rival contentions and the applicable covenants, allowed only a part of respondent's claim i.e., refund of Rs.1,80,000/- (after giving credit to Rs.5 lakhs paid by the sub broker) together with interest at the rate of 12% per annum; that this Court is informed that respondent has not preferred any independent application under Section 34 of A and C Act assailing those portions of the award which had gone against the respondent; that captioned OP has been presented in this Court on 22.07.2015, assailing the impugned award.

7. This Court, in the factual matrix narrative supra, has also captured the trajectory the matter has taken in reaching this Court by way of captioned OP.

8. This Court has carefully considered the elaborate rival submissions made by learned counsel on both sides in the physical hearing today and this Court has also examined the case file. This Court now proceeds to discuss the rival submissions, set out its discussion on the same and give its dispositive reasoning with regard to whether the impugned award is vitiated by any of the facts adumbrated under Section 34 of the A and C Act.

9. From a careful consideration of the rival submissions and case file, it comes to light that two points constitute the lis. One point is whether the respondent authorized the petitioner to trade and whether such trade i.e., what has been described as portfolio management is permissible.

10. Learned counsel for petitioner submitted that the contract emanated from MCX, therefore the AT should have called for MCX records and the AT should have also examined the ledger. It was also submitted by the learned counsel for petitioner that certain sums particularly Rs.2 lakhs said to have been paid by the respondent was

towards realisation of revenue, but there was no stock.

11. Per contra, learned counsel for respondent submitted that sufficient opportunity was given to both parties. This is clearly captured in paragraph 7 of the impugned award and it cannot now be gainsaid that AT has passed the award without calling for the MCX trade ledger.

12. This Court finds that paragraph 13 of the impugned award talks about the nature of contract. Vide paragraph 13 of the impugned award, AT has held that the petitioner before me and his sub broker have acted as if they are doing portfolio management, that such portfolio management in Multi Commodity Exchange i.e., MCX is patently illegal and not authorized by the bye-laws of MCX. It has also been held in paragraph 13 of the impugned award that it is not permissible in terms of contractual stipulation entered between the parties. Curiously, both parties have not placed either the contract between the parties or the bye-laws of MCX before this Court. To be noted, there is no dispute or disagreement with the aforementioned registration form dated 20.09.2010, which is a client registration form

and that is not contract between the parties.

13. A further careful consideration of the rival submissions reveals that it may not be necessary to go into these aspects of the matter as the central issue qua lis can be tested on a demurer.

14. To test the matter on a demurer, let us assume that portfolio management is permissible both under contract and under MCX bye-laws. It is made clear that this is only an assumption. This Court is not expressing any opinion on whether it is permissible in the contract between the parties or under MCX bye-laws as both have not been placed before this Court.

15. If portfolio management is permissible, as there is no dispute or disagreement that the respondent has parted with a total sum of Rs.6,80,000/- in favour of the petitioner and as the contractual arrangement between the parties has broken the respondent would be entitled to get back Rs.6,80,000/- unless it is demonstrated that the trade has resulted in a loss. In the instant case, there is no dispute that from

and out of Rs.6,80,000/-, Rs.5,00,000/- has already been returned by the sub broker of the petitioner to the respondent and therefore, the entire issue narrows down to return of Rs.1,80,000/-.

16. If the sheet-anchor submission of learned counsel for petitioner in captioned OP that this Rs.1,80,000/- should be presumed as loss sustained by the respondent in the transaction is to be sustained, petitioner before me who was respondent before the AT should have produced necessary evidence to demonstrate that the respondent has actually suffered loss. To be noted onus in this regard shifted to respondent before AT, moment payment of Rs.6,80,000/- in all by claimant AT was admitted/established. Paragraph 10 of the impugned award makes it clear that no competent witness has been examined to substantiate the case of the petitioner before me and therefore, it cannot now be gainsaid that the AT did not direct the petitioner before me to let in evidence. In this regard, ground 'f' in the OP becomes relevant. Ground 'f' in the OP is to the effect that AT had not given any direction for examination of witness. This ground in the considered view of this Court cannot be countenanced. It cannot be gainsaid by the parties to a

arbitration proceedings before AT that AT should give direction to one of the parties to let in evidence. It is a matter of right for the party to exercise his prerogative to let in evidence. If the case of the petitioner is that the petitioner desires to let in evidence and AT did not permit the same, though the parties have not agreed anything to the contrary, it could have been different fact scenario altogether.

17. Be that as it may, learned counsel for petitioner also drew attention of this Court to Section 199 of the Indian Contract Act, 1872 and submitted that the moment a party ratifies an unauthorised action done on his behalf, it tantamounts to ratifying the whole of the transaction of which ratified portion forms part of. There can be no quarrel over the contents or the statutory stipulation contained in Section 199 of the Contract Act, but it is not necessary to go into that aspect of the matter as the issue even if tested on a demurer, does not enure in favour of the petitioner owing to aforementioned reasons.

18. The argument pertaining to Rs.2 lakhs being paid by the respondent only to realise the proceeds and there being no stock on that

date is in the realm of an argument in a appeal. This cannot be countenanced in an application under Section 34 of the A and C Act. To be noted, this is not a legal plea and this has also not been raised in the OP grounds.

19. This Court has reminded itself that the captioned OP is under Section 34 of the A and C Act and is therefore not an appeal. It is not even a revision. It is not even a full-fledged judicial review. It is a mere challenge to impugned award within the legal landscape and statutory perimeter of Section 34 of A and C Act.

20. In the light of the narrative, discussion and dispositive reasoning set out thus far, this Court is unable to find any aspect of the matter which vitiates the impugned award on any one of the slots adumbrated in Section 34 or for that matter, under any one of the slots as explained by Courts with regard to the scope of Section 34.

21. This Court has given the date of presentation of the captioned OP supra i.e., 22.07.2015. Therefore, this Court has also

reminded itself that captioned OP is governed by pre 23.10.2015 regime of A and C Act or in other words, it is governed by A and C Act as it stood prior to its amendment by Act 3 of 2016 which kicked in with retrospective effect on and from 23.10.2015. This Court is unable to find any perversity/irrationality or lack of judicial approach in the impugned order owing to reasons set out supra.

22. As a sequitur to the narrative, discussion and dispositive reasoning thus far, captioned OP fails as no case has been made out for judicial intervention under Section 34 of the A and C Act qua impugned award and consequently, OP is dismissed. As a further consequence, A.No.2593 of 2016 also stands dismissed. There shall be no order as to costs.

03-11-2020

Speaking order / Non speaking order

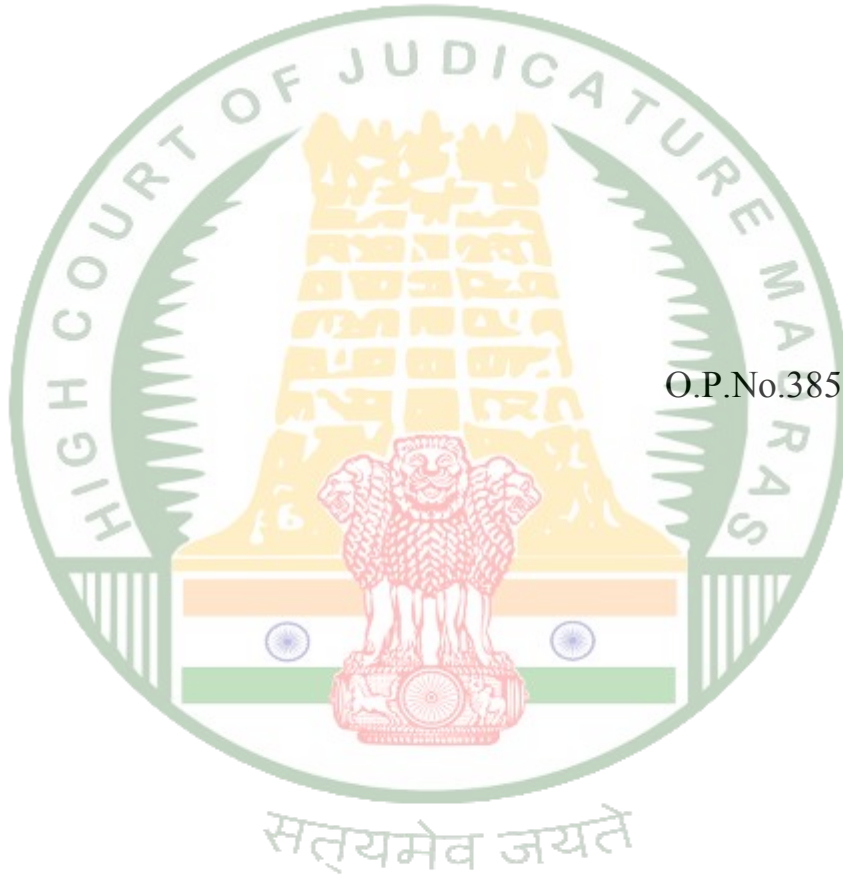
Index : Yes/No

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