

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION**

**APPEAL NO. 8 OF 2021
IN
ARBITRATION PETITION NO. 1310 OF 2018
WITH
INTERIM APPLICATION NO. 827 OF 2020
IN
APPEAL NO. 8 OF 2021**

Anil V. Madgavkar
65 years of age, Son of late Vijay Madgavkar,
having office at Nizari Bhawan, 5th Floor,
Menezes Braganza Road, Panaji, Goa – 403 001.

... Appellant/
Applicant

Versus

1. IFIN Commodities Limited
Continental Chambers, 3rd Floor, 142, Mahatma
Gandhi Road, Nungambakkam,
Chennai – 600 034.
2. Rashmi Sharma, Proprietress of 3P World,
Residing at the Yeracaud, Nagalur Road,
Yeracaud, Salem, Tamil Nadu.
3. Rajesh Sharma, Residing at the Yeracaud, Nagalur
Road, Yeracaud, Salem, Tamil Nadu.

... Respondents

**ALONG WITH
APPEAL NO. 5 OF 2021
IN
ARBITRATION PETITION NO. 1308 OF 2018
WITH
INTERIM APPLICATION NO. 821 OF 2020
IN
APPEAL NO. 5 OF 2021**

Celsa A. Madgavkar
62 years of age, Wife of Annand Vijay Madgavkar,
having office at Nizari Bhawan, 5th Floor,
Menezes Braganza Road, Panaji, Goa – 403 001.

... Appellant/
Applicant

Versus

1. IFIN Commodities Limited
Continental Chambers, 3rd Floor, 142, Mahatma
Gandhi Road, Nungambakkam,
Chennai – 600 034.

2. Rashmi Sharma, Proprietress of 3P World,
Residing at the Yeracaud, Nagalur Road,
Yeracaud, Salem, Tamil Nadu.

3. Rajesh Sharma, Residing at the Yeracaud, Nagalur
Road, Yeracaud, Salem, Tamil Nadu.

... Respondents

**ALONG WITH
APPEAL NO. 6 OF 2021
IN
ARBITRATION PETITION NO. 1263 OF 2018
WITH
INTERIM APPLICATION NO. 823 OF 2020
IN
APPEAL NO. 6 OF 2021**

Ayesha A. Madgavkar
35 years of age, Daughter of Anil V. Madgavkar,
having office at Nizari Bhawan, 5th Floor,
Menezes Braganza Road, Panaji, Goa – 403 001.

... Appellant/
Applicant

Versus

1. IFIN Commodities Limited
Continental Chambers, 3rd Floor, 142, Mahatma
Gandhi Road, Nungambakkam,
Chennai – 600 034.

2. Rashmi Sharma, Proprietress of 3P World,
Residing at the Yeracaud, Nagalur Road,
Yeracaud, Salem, Tamil Nadu.
3. Rajesh Sharma, Residing at the Yeracaud, Nagalur
Road, Yeracaud, Salem, Tamil Nadu. ... Respondents

**ALONG WITH
APPEAL NO. 7 OF 2021
IN
ARBITRATION PETITION NO. 1356 OF 2018
WITH
INTERIM APPLICATION NO. 820 OF 2020
IN
APPEAL NO. 7 OF 2021**

Aakash A. Madgavkar
31 years of age, Son of Annand V. Madgavkar,
having office at Nizari Bhawan, 5th Floor,
Menezes Braganza Road, Panaji, Goa – 403 001. ... Appellant/
Applicant

Versus

1. IFIN Commodities Limited
Continental Chambers, 3rd Floor, 142, Mahatma
Gandhi Road, Nungambakkam,
Chennai – 600 034.
2. Rashmi Sharma, Proprietress of 3P World,
Residing at the Yeracaud, Nagalur Road,
Yeracaud, Salem, Tamil Nadu.
3. Rajesh Sharma, Residing at the Yeracaud, Nagalur
Road, Yeracaud, Salem, Tamil Nadu. ... Respondents

**ALONG WITH
APPEAL NO. 10 OF 2021
IN
ARBITRATION PETITION NO. 1313 OF 2018
WITH**

**INTERIM APPLICATION NO. 824 OF 2020
IN
APPEAL NO. 10 OF 2021**

Nisha A. Madgavkar
39 years of age, Daughter Anil V. Madgavkar,
having office at Nizari Bhawan, 5th Floor,
Menezes Braganza Road, Panaji, Goa – 403 001.

... Appellant/
Applicant

Versus

1. IFIN Commodities Limited
Continental Chambers, 3rd Floor, 142, Mahatma
Gandhi Road, Nungambakkam,
Chennai – 600 034.

2. Rashmi Sharma, Proprietress of 3P World,
Residing at the Yeracaud, Nagalur Road,
Yeracaud, Salem, Tamil Nadu.

3. Rajesh Sharma, Residing at the Yeracaud, Nagalur
Road, Yeracaud, Salem, Tamil Nadu.

... Respondents

**ALONG WITH
APPEAL NO. 11 OF 2021
IN
ARBITRATION PETITION NO. 1306 OF 2018
WITH
INTERIM APPLICATION NO. 822 OF 2020
IN
APPEAL NO. 11 OF 2021**

Nadisha A. Madgavkar
34 years of age, Daughter of Annand V. Madgavkar,
having office at Nizari Bhawan, 5th Floor,
Menezes Braganza Road, Panaji, Goa – 403 001.

... Appellant/
Applicant

Versus

1. IFIN Commodities Limited
Continental Chambers, 3rd Floor, 142, Mahatma
Gandhi Road, Nungambakkam,
Chennai – 600 034.
2. Rashmi Sharma, Proprietress of 3P World,
Residing at the Yeracaud, Nagalur Road,
Yeracaud, Salem, Tamil Nadu.
3. Rajesh Sharma, Residing at the Yeracaud, Nagalur
Road, Yeracaud, Salem, Tamil Nadu. ... Respondents

**ALONG WITH
APPEAL NO. 12 OF 2021
IN
ARBITRATION PETITION NO. 1315 OF 2018
WITH
INTERIM APPLICATION NO. 825 OF 2020
IN
APPEAL NO. 12 OF 2021**

Annika Madgavkar Lobo
38 years of age, Daughter of Anil V. Madgavkar,
having office at Nizari Bhawan, 5th Floor,
Menezes Braganza Road, Panaji, Goa – 403 001. ... Appellant/
Applicant

Versus

1. IFIN Commodities Limited
Continental Chambers, 3rd Floor, 142, Mahatma
Gandhi Road, Nungambakkam,
Chennai – 600 034.
2. Rashmi Sharma, Proprietress of 3P World,
Residing at the Yeracaud, Nagalur Road,
Yeracaud, Salem, Tamil Nadu.
3. Rajesh Sharma, Residing at the Yeracaud, Nagalur
Road, Yeracaud, Salem, Tamil Nadu. ... Respondents

**ALONG WITH
APPEAL NO. 13 OF 2021
IN
ARBITRATION PETITION NO. 1309 OF 2018
WITH
INTERIM APPLICATION NO. 828 OF 2020
IN
APPEAL NO. 13 OF 2021**

Annand V. Madgavkar
69 years of age, Son of Vijay Madgavkar,
having office at Nizari Bhawan, 5th Floor,
Menezes Braganza Road, Panaji, Goa – 403 001.

... Appellant/
Applicant

Versus

1. IFIN Commodities Limited
Continental Chambers, 3rd Floor, 142, Mahatma
Gandhi Road, Nungambakkam,
Chennai – 600 034.

2. Rashmi Sharma, Proprietress of 3P World,
Residing at the Yeracaud, Nagalur Road,
Yeracaud, Salem, Tamil Nadu.

3. Rajesh Sharma, Residing at the Yeracaud, Nagalur
Road, Yeracaud, Salem, Tamil Nadu.

... Respondents

Mr. Ashwin Shanker a/w Mr. Bimal Rajashekhar and Mr. Rishi Murarka, Advocates for the Appellant in all Appeals.

Mr. Charles Desouza a/w Ms. Jyoti Sanap i/by M/s. V. Deshpande and Co., Advocates for the Respondent No.1 in APP/8/2021.

Mr. Nikhil Rajani i/by M/s. V. Deshpande and Co., Advocates for the Respondent No.1 in APP/5/2021, APP/6/2021, APP/7/2021, APP/10/2021, APP/11/2021, APP/12/2021 and APP/13/2021.

Mr. Arnab Ghosh, Advocate for the Respondent Nos.2 and 3 in all Appeals.

**CORAM : R. D. DHANUKA &
V. G. BISHT, JJ.
RESERVED DATE : 30th MARCH, 2021
PRONOUNCED DATE: 7th APRIL, 2021**

JUDGMENT (*Per R. D. Dhanuka, J.*) :-

. By these Appeals filed under Section 37 of the Arbitration and Conciliation Act, 1996, the appellants have impugned the judgment delivered by the learned Single Judge dismissing the Arbitration Petitions filed by each of these Appellants under Section 34 of the Arbitration and Conciliation Act, 1996 (for short ‘the Arbitration Act’) . By consent of parties, all these appeals were heard finally at the admission stage. The parties have addressed this Court in the lead matter i.e. Appeal No. 8 of 2021 and have stated that the view that would be taken by this Court in the said lead matter would also apply to the other matters in this batch of appeals. Some of the relevant facts for the purpose of deciding these appeal are as under :-

Facts and submissions in Appeal No. 8 of 2021 :-

2. The appellant was the original claimant in the arbitral proceedings and was the original petitioner before the learned Single Judge. It was the case of the appellant that on 8th March, 2011, the appellant and the respondent no.1 entered into an agreement in respect of investment of Rs.50,00,000/- to be made by the appellant. The appellant issued a cheque for the said amount in the name of the respondent no.1. Under the said agreement, there was a stop loss trigger of 3.5% loss. According to the appellant, all trades were to be

done with prior written consent of the appellant by the respondent no.1. On 14th March, 2011, the appellant invested an additional amount of Rs.25,00,000/- by issuing a cheque in the name of the respondent no.1. The transactions were carried out by the appellant through the respondent no.2.

3. It is the case of the appellant that on 14th April, 2011, the respondent no.2 who was alleged to be an agent of the respondent no.1 asked for a massive increase in its commission. The entire family of the appellant who had invested along with the appellant immediately instructed the respondent no.1 to stop all further investments and called for refund of the amounts invested by the appellant. In the first week of May, 2011, there was a crash in the Commodity Market due to which the appellant lost 70% of its investment value.

4. It is the case of the appellant that on 8th May, 2011, the entire family of the appellant sent an email to the respondent no.1 specifying that the trades had not been done with their consent and that the stop loss trigger clause had been breached by it. In response to the said email, on 11th May, 2011, the respondent no.2 who was alleged to be an agent of the respondent no.1 according to the appellant, pleaded on behalf of the respondent no.1 and allegedly admitted liability and requested that no legal action be taken against the respondent no.1/respondent no.2. Respondent no.2 issued a cheque for Rs.5 crores in favour of the family of the appellant as repayment allegedly on behalf of the respondent no.1.

5. It is the case of the appellant that on 13th May, 2011, Mr. Anil Madgavkar, the appellant in Appeal No. 8 of 2021 sent an email only for himself stating that he was agreeable to continue with his investments with respondent no.1. It is the case of the appellant that the said email was sent on the basis of certain representations made by the respondent no.2 on behalf of the respondent no.1 which were then breached. On 13th June, 2011, the respondent no.2 forwarded an affidavit admitting that he was responsible for the losses incurred by the appellant and his family. On 22nd July, 2011, the appellant received a communication from the respondent no.1 that w.e.f. 19th July, 2011 the respondent no.2 was not its authorized person.

6. On 5th August, 2011, the entire family of the appellant sent an email to the respondent no.1 protesting the losses alleged to have been caused to them by the respondent no.1 by carrying out the trades contrary to the terms and conditions of the agreement in the accounts of the appellant and his family members including the stop loss trigger provision and without their prior written consent. It is the case of the appellant that there was no response to the said email dated 5th August, 2011 and also to email dated 8th May, 2011, which were sent by the respondent no.2 on behalf of the respondent no.1. On 10th August, 2011, the appellant and his family members sent an email to the Multi Commodity Exchange of India Limited with a request to take action against the respondent no.1 (hereinafter referred to as 'MCX').

7. On 10th August, 2011, the respondent no.1 responded to the said email dated 5th August, 2011 referring the letter of 13th May, 2011

written by Mr. Anil Madgavkar and denied the allegations made by the appellant and his family members. In the said letter, the respondent no.1 denied its knowledge of the alleged representations made by the respondent no.2, appellant and his family members on or around 11th May, 2011. On 11th August, 2011, the appellant and his family members responded no.1 to the letter dated 10th August, 2011 sent by the respondent no.1 and reiterated that the respondent no.1 could not disclaim liability for the action of the respondent no.2 and holding it accountable for trading contrary to the agreement as well as explicit instructions to close the accounts and seeking refund of the amounts invested by the appellant and his family members.

8. On 19th August, 2011, the appellant and his entire family sent a legal notice to the respondent nos. 1 and 2 calling upon them to pay the various amounts. On 24th August, 2011, the appellant and his family members sent an email to respondent no.1 alleging that all their accounts with the respondent no.1 were to be closed and the moneys were liable to be returned to the appellant and his family members. It is the case of the appellant that on 24th August, 2011, the respondent no.1 responded listing out certain actions for closure. On 24th August, 2011, the appellant and his family members responded to the said letter dated 24th August, 2011 and expressed surprise that the respondent no.1 was asking them to go through a broker when their broker's agency relationship with respondent no.1 had been allegedly terminated w.e.f. 19th July, 2011. On 16th January, 2012, the appellant and his family members invoked the arbitration clause against the respondent nos. 1 and 2. On 20th March, 2012, the respondent no.1 filed its written

statement before the learned Arbitrator. The appellant and his family members filed rejoinder on 9th April, 2012.

9. It is the case of the appellant that on 30th June, 2012, the Arbitral Tribunal made an award after hearing the parties only for two hours. The respondent no.2 was dropped from the arbitration proceedings without assigning any reasons. The Arbitral Tribunal dismissed the claims made by the appellant and his family members by making separate awards. Being aggrieved by the Arbitral Awards, the appellant and his family members filed separate Arbitration Petitions under Section 34 of the Arbitration Act before the Court of Principal District and Sessions Judge, Panaji. On 22nd August, 2013, the respondent no.2 filed an intervention application in the said arbitration petitions filed under Section 34 of the Arbitration Act on the ground that various findings in the arbitral awards rendered by the Arbitral Tribunal adversely affected it and that the said arbitral awards were passed without hearing the respondent no.2.

10. By an order dated 23rd March, 2015, the Principal District and Sessions Judge, Panaji permitted the respondent no.2 to intervene in those proceedings filed under Section 34 though opposed by the respondent no.1. On 8th October, 2015, the respondent no.1 filed a writ petition impugning the said order dated 23rd March, 2015, permitting the respondent no.2 to intervene in those petitions filed under Section 34 of the Arbitration Act. The said writ petition was dismissed by the Goa Bench of this Court on 8th October, 2015. On 26th February, 2018, the Principal District and Sessions Judge, Panaji allowed those

petitions under Section 34 filed by the appellant and his family members and was pleased to set aside those arbitral awards.

11. On 27th August, 2018, the appeals filed by the respondent no.1 impugning the said order dated 26th February, 2018 passed by the Principal District and Sessions Judge, Panaji came to be set aside by the Goa Bench of this Court on the ground of jurisdiction. It was held that the arbitration proceedings having been held in Mumbai, only the Court in Mumbai had jurisdiction to entertain those petitions filed under Section 34 of the Arbitration. On 29th September, 2018, the appellant along with his family members filed separate arbitration petitions under Section 34 of the Arbitration Act before the learned Single Judge of this Court. On 26th September, 2019, the learned Single Judge dismissed all those petitions filed under Section 34 of the Arbitration Act at the admission stage. Being aggrieved by the said judgment dated 26th September, 2019 passed by the learned Single Judge, each of the appellants have filed separate Appeal under Section 37 of the Arbitration Act.

12. Mr. Ashwin Shanker, learned counsel for the appellant invited our attention to various correspondence forming part of the record before the Arbitral Tribunal, various portions of the pleadings filed by both the parties before the Arbitral Tribunal and various findings recorded by the Arbitral Tribunal in the impugned arbitral award. He also strongly placed reliance on Rule 13 ii, v, vi, vii(c), 5.24 and the directives issued by the said MCX on 30th September, 2009 and more particularly clause (b) thereof stating that the member shall keep

evidence of making the payment of having dispatched the contract note to the clients. It is submitted by the learned counsel that the respondent no.2 was an authorized agent of the respondent no.1. The appellant and his family members had issued sale instructions to the respondents and to close out the transactions and to refund the investments made by the appellant and his family members. On 1st May, 2011, the entire market was crashed.

13. Learned counsel submits that the respondent no.2 had admitted on behalf of the respondent no.1 in the correspondence as well as in the affidavit filed by him that the sale instructions were received from the appellant and his family members and that various amounts were due and payable to the appellant by the respondents. He submits that under aforesaid Rules of the said MCX, the respondent no.1 broker was liable for each and every acts performed by the respondent no.2 as an authorized agent on behalf of the respondent no.1. The respondent no.1 thus could not disown the liability admitted by the respondent no.2 and the losses suffered by the appellant and his family members due to the acts on the part of the respondent no.2 carried out as an authorized agent on behalf of the respondent no.1.

14. It is submitted that though these Rules were specifically pointed out to the Arbitral Tribunal by the appellant, there is no reference of any of these Rules in the impugned award. There was no findings rendered by the Arbitral Tribunal on various issues raised by the appellant during the course of the argument. Though the defense raised by the respondent no.1 in the arbitral proceedings were untenable, the

Arbitral Tribunal accepted those defences and rejected the claims made by the appellant and his family members. According to the learned counsel, the arbitral award was a non speaking award in respect of various issues though urged by the appellant but not having been dealt with in the impugned award at all.

15. It is submitted by the learned counsel that the Arbitral Tribunal has erroneously construed the email dated 13th May, 2011 sent by Anil Madgavkar to the respondent no.1. He submits that though all other emails sent by Anil Madgavkar were sent for himself and his family members, the said mail was sent by Mr. Anil Madgavkar only in respect of his own account with the respondent no.1 and was not on behalf of all the family members. He submits that in any event, the said email was in respect of the problems faced by his account specially with reference to how the market operated during circuits and thus could not have been construed as the email on behalf of the entire family. He submits that email dated 8th May, 2011, disputing the transactions carried out by the respondent no.1 was sent on behalf of the appellant and all his family members having account with the respondent no.1. The family members of the appellant not having withdrawn the earlier email 8th May, 2011 and not having agreed to continue the account with the respondent no.1, the Arbitral Tribunal could not have rejected the claims made by the family members on the basis of such email dated 13th May, 2011 which was sent only by Mr. Anil Madgavkar in his individual capacity to the respondent no.1.

16. Learned counsel for the appellant strongly placed reliance on the

letter dated 11th May, 2011 sent by the respondent no.2 to the appellant and his family members and submits that the said letter was sent by the respondent no.2 on behalf of the respondent no.1 admitting his negligence and the loss caused to the appellant and his family members. The respondent no.2 had also admitted liability on behalf of the respondent no.1 and had issued a cheque for Rs. 5 crores in favour of the appellant. The Arbitral Tribunal did not consider the other correspondence entered into between the parties in the entire arbitral award. The Arbitral Tribunal also did not consider the affidavit dated 13th June, 2011 filed by the respondent no.2 admitting the liability on behalf of himself and respondent no.1.

17. Learned counsel for the appellant placed reliance on the following judgments in support of the submission that the respondent no.1 was liable for all the losses suffered by the appellant and his family members due to acts of the respondent no.2 while carrying out the trading in the accounts of the appellant and his family members under the said MCX Business Rules.

- a) An unreported judgment passed by a Single Judge of this Court on 21st June, 2018 in Arbitration Petition No. 1543 of 2014 in case of ***Keynote Capitals Ltd. v/s. Eco Recycling Ltd.***
- b) Judgment of this Court in case of ***Bonaza Commodities Brokers Pvt. Ltd. v/s. Mrs. Roshanara Bhinder, 2015 SCC OnLine Bom 1411.***
- c) Judgment of this Court in case of ***Mrs. Kaberi Mondal v/s. BMA Commodities Private Limited, 2015 SCC OnLine Bom 3353.***

18. Mr. Charles D'Souza, learned counsel for the respondent no.1 on the other hand submits that there were no pleadings on the applicability or otherwise of the said MCX Rules and more particularly on the issue whether the acts committed by the respondent no.2 as an alleged authorized agent were binding on the respondent no.1 or not. No such arguments had been advanced before the Arbitral Tribunal by the appellant. He submits that on the contrary the oral arguments advanced before the Arbitral Tribunal were contrary to the pleadings filed before the Arbitral Tribunal by the appellant. In support of this submission, learned counsel for the respondent no.1 invited our attention to various paragraphs of the arbitral award and the statement of case in case of Anil Madgavkar and submits that the similar pleadings and the arguments were advanced by other appellants also before the Arbitral Tribunal.

19. Learned counsel for the respondent no.1 invited our attention to a letter dated 14th April, 2011 from the appellant to Finance Factory and would submit that the said letter was neither addressed to the respondent no.1 nor received by it. In any event the said letter was alleged to have been addressed to Finance Factory requesting the said Finance Factory to instruct P-Word/TFIL Commodities Limited to stop all other investment / management of his fund and to close all their accounts and to refund their moneys to them. He invited our attention to the alleged writing dated 11th May, 2011 between the appellant and P-Word/TFIL which was witnessed by Rajesh Cheda annexed at page 82 of the compilation. He submits that the said writing was alleged to

have been executed between the appellant and the said P-Word/TFIL.

20. The respondent no.1 was not at all party to any such agreement or communication *inter-se* and arrived at between the appellant and his family members and the said P-Word/TFIL. It is submitted that the said Finance Factory was the personal advisor of Madgavkar family. The respondent no.1 was not concerned with the said Finance Factory at all. It is the case of the respondent no.1 that the said P-Word/TFIL was the sole proprietrix concern of Ms.Rashmi M. T. The respondent no.1 had appointed only Ms. Rashmi M. T. as an authorized person. Rajesh (Raj) Sharma was not an authorized representative or authorized person or agent or franchise of the respondent no.1. The said Ms.Rashmi M. T. who was proprietrix of P-Word/TFIL had ceased to be the authorized person of the respondent no.1 with effect from 19th July, 2011.

21. Learned counsel for the respondent no.1 invited our attention to the letter dated 13th May, 2011 addressed by Anil Madgavkar to the respondent no.1 and would submit that the said letter has to be read with e-mail dated 8th May, 2011, which was even according to the appellant was not only on his behalf but also on behalf of his family members and all subsequent correspondence between the appellant and the said Rajesh Sharma and not between the appellant and the respondent no.1. The said Rajesh Sharma was not authorized by the respondent no.1. In any event, the affidavit disclosed admission of personal liability on the part of said Rajesh Sharma and not on behalf of the respondent no.1.

22. It is submitted that the fact that the said Rajesh Sharma had given his own cheque for Rs.5 crores in favour of the appellant and had agreed to mortgage his personal property would also clearly indicate that there was personal transaction between the appellant and his family members with Rajesh Sharma. He submits that even the said affidavit was identified by Rajesh Cheda who was concerned with the said Finance Factory. The respondent was not a party to any such transaction between the appellant, Finance Factory and Mr. Rajesh Sharma.

23. Learned counsel for the respondent no.1 invited our attention to the written statement filed by the respondent no.1 before the Arbitral Tribunal contending that the respondent no.1 had appointed the counsel Ms.Rashmi MT, who was proprietrix of P-Word/TFIL as an authorized person and had ceased to be the authorized representative of the respondent no.1 with effect from 19th July, 2011. The respondent no.1 had no legal or contractual relationship with Rajesh Sharma. Rajesh Sharma was not even an employee or authorized representative or an agent of the respondent no.1. The so called promises, assurances or representations, if any, made by Rajesh Sharma to the appellant and his family members was their private arrangement and was not binding on the respondent no.1.

24. It is submitted that the said Rajesh Cheda of Finance Factory was not authorized or had no authority to deal with the appellant and his family members on behalf of the respondent no.1. Learned counsel

for the respondent no.1 invited our attention to the letter dated 29th September, 2011 from the respondent no.1 to the legal department of the said MCX in response to the complaint made by one of the family member of the appellant to the said Exchange denying such allegations made by the said family member of the appellant.

25. The respondent no.1 also had denied that the appellant had ever submitted any letter or e-mail to the respondent no.1 in the month of April, 2011 requesting the respondent no.1 to stop the transactions / close the account. He submits that on receipt of e-mail from Anil Madgavkar in the last week of 2011, the respondent had remitted the fund available in the account to the bank account of the family members of the said Anil Madgavkar. He submits that the appellant never made any application before the Arbitral Tribunal for seeking liberty to lead oral evidence. The onus was on the appellant to prove that the respondent no.2 was an authorized agent/representative of the respondent no.1 and had admitted the alleged liability of the respondent no.1 to Anil Madgavkar and his family members which onus the appellant had failed to discharge.

26. Learned counsel for the respondent no.1 invited our attention to various findings rendered by the Arbitral Tribunal in the impugned award and would submit that the learned single Judge in the petition filed by the appellants under section 34 of the Arbitration Act has rightly not interfered with those findings of fact. He invited our attention to the arguments advanced by the appellant before the Arbitral Tribunal and recorded in the arbitral award that the

transactions between the parties were in the nature of Mutual Fund Deposit. He submits that the said arguments advanced before the Arbitral Tribunal were contrary to the pleadings filed by the appellant in the Arbitral Tribunal. The Arbitral Tribunal has also rendered various findings of fact on the issue that the respondent no.2 was not an authorized agent/representative of the respondent no.1. He submits that the powers of the Appellate Court under Section 37 of the Arbitration Act are very limited. This Court cannot interfere with the findings of fact rendered by the Arbitral Tribunal while hearing an appeal under section 37 of the Arbitration Act.

27. Learned counsel for the respondent no.1 relied upon paragraph 60 of the judgment of this Court in case of **Keynote Capitals Ltd.** (supra) relied upon by the learned counsel for the appellant and would submit that the said judgment would support the case of the respondent no.1 and not the appellant. It is submitted that in the said judgment, learned single Judge has held that the Arbitral Tribunal could not have allowed the claim of the constituent based on confessional statement obtained by the constituent from the agent of the member without proving the authenticity of such employee to send such email and assign such financial statement thereby allegedly admitting the alleged liability of the member. He submits that the judgment of this Court in case of **Kaberi Mondal** (supra) and in case of **Bonaza Commodities Brokers Pvt. Ltd.**(supra) relied upon by the learned counsel for the respondent no.1 do not apply to the facts of this case even remotely.

28. Mr. Ashwin Shanker, learned counsel for the appellant in

rejoinder submits that the appellants have raised the ground in the petition under section 34 of the Arbitration Act though the appellant had relied upon the Rules of the said MCX on the issue that the respondent no.1 member was liable to pay for the loss suffered by appellant due to the acts of the respondent no.2, the Arbitral Tribunal did not consider those Rules. He submits that judgments of this Court in case of ***Kaberi Mondal*** (supra) and in case of ***Bonaza Commodities Brokers Pvt. Ltd.***(supra) had clearly held that the Rules of the said MCX were statutory and were binding on the member and also on the constituent.

REASONS AND CONCLUSION :

29. A perusal of the record indicates that there was a private arrangement between the appellant, Rajesh Cheda of Finance Factory and Rajesh Sharma who claimed to be an authorized representative of the respondent no.1. The appellant could not prove that respondent no.2 was an authorized representative or agent of the respondent no.1 to deal with the appellant in respect of any of the alleged transactions. No evidence was led by the appellants before the Arbitral Tribunal to prove their case.

30. A perusal of the statement of claim filed by the appellants would indicate that it was the case of the appellants that they were approached by Rajesh Cheda of Finance Factory in the month of February, 2011 and made a representation that there would be safe and guaranteed return on the investment of the claimant. The funds / investment made

by the appellant would be managed by P-Word/TFIL, an authorized person / (sub-broker) of the respondent no.1. Learned counsel for the respondent no.1 rightly invited our attention to the Management Mandate Agreement alleged to have been entered into between the P-Word/TFIL and Rajesh Cheda.

31. The said agreement does not refer to the respondent no.1 at all in respect of any of the alleged transaction. The correspondence placed on record would also indicate that various representations were alleged to have been made by the Finance Factory to the appellants and his family members for reasonable return on the investment proposed to be made by the appellant and his family members and not by the respondent no.1. It was not the case of the appellant that the said Finance Factory was authorized agent of the respondent no.1. The said letter dated 14th April, 2011 relied upon by the learned counsel for the appellant was alleged to have been addressed to the Finance Factory thereby requesting to instruct P-Word/TFIL commodities to stop all further investments / management of his funds and to close all account and to refund their moneys. The said letter was disputed by the respondent no.1.

32. Even otherwise the said letter was addressed to the Finance Factory and not to the respondent no.1. E-mail dated 8th May, 2011 was between the appellant, his family members and Rajesh Sharma alleging negligence and fraud on the part of Rajesh Sharma. In our view, since the appellant failed to prove that the respondent no.2 was authorized agent of the respondent no.1 and had acted on behalf of the respondent

no.1 while allegedly carrying out any transaction on behalf of the appellant as authorized representative of the respondent no.1, the respondent no.1 was rightly held not liable to pay to the appellants towards any loss suffered by the appellant.

33. In our view, the admission of the alleged liability by the respondent no.2 on behalf of the respondent no.1 to the appellant and his family members was not binding on the respondent no.1 as the same was not authorized by the respondent no.1. The judgment of this Court in case of **Keynote Capitals Ltd.** (supra) relied upon by the appellant would support the case of the respondent no.1 and not the appellant.

34. In our view, the Arbitral Tribunal as well as the learned Single Judge have rightly not considered such alleged confessional statement obtained by the appellant from the respondent no.2 without proving the authority of the respondent no.2 to make such confession and admission of liability on the part of the respondent no.1. There cannot be any implied authority even to the agent on behalf of the principal to acknowledge the alleged liability on behalf of the principal or to make any such confessional statement on behalf of the principal. This Court in the said judgment in case of **Keynote Capitals Ltd.** (supra) had adverted to the judgment of this Court in case of **Kotak Securities Ltd. v/s. Prakash S. Khanokar and Anr.** (supra) in Arbitration Petition (L) No. 643 of 2002 delivered on 30th July, 2013 and judgment of Supreme Court in case of **Lakshmirattan Cotton Mills Company Limited v/s. Aluminium Corporation of India Limited, AIR 1971 SC 1482.** We

are not inclined to take a different view from the view taken by the learned Single Judge of this Court in case of **Keynote Capitals Ltd.** (supra) which view was based on another judgment of this Court and also the judgment of Supreme Court in case of **Kotak Securities Ltd. v/s. Prakash S. Khanokar and Anr.** (supra).

35. There is no substance in the submission of the learned counsel for the appellant that the impugned award is contrary to Rule 13 ii, v, vi, vii(c), 5.24 and the directives issued by the said MCX on 30th September, 2009 and more particularly clause (b). Since, the appellant failed to prove that the respondent no.2 was the authorized agent of the respondent no.1 to carry out transactions between the appellant and his family members with the respondent no.1, there would be no question of the Arbitral Tribunal allowing the claims made by the appellant on the basis of those Rules framed by the Multi Commodity Exchange or the directives issued by the Multi Commodity Exchange on 30th September, 2009. No reliance was placed by the appellant and his family members on those Rules in the statement of claim filed before the Arbitral Tribunal.

36. The arguments advanced before the Arbitral Tribunal by the appellant and his family members were inconsistent with the pleadings filed before the Arbitral Tribunal. The Arbitral Tribunal after considering the agreement entered into between the appellant and the respondent no.1 has rendered a finding that the appellant had entered into an agreement with the respondent no.1 to trade in securities and derivatives transactions. The terms of the agreement did not spell out

that the same was in the nature of mutual fund deposit as contended by the appellant during the oral hearing. The Arbitral Tribunal had interpreted the said agreement and had recorded a finding that there was no transaction in the nature of mutual fund deposit. The possible interpretation of the agreement entered into between the appellant and the respondent no.1 by the Arbitral Tribunal was rightly not substituted by another interpretation by the learned Single Judge.

37. A perusal of the award clearly indicates that Arbitral Tribunal has referred to the various correspondence forming part of the record before the Arbitral Tribunal and has recorded a finding that by letter dated 13th May, 2011, whatever problems the appellant had with the respondent no.1 were resolved and the contention of the appellant that the respondents traded on their whims and fancies without obtaining the consent of the appellant and his family members was unwarranted. It was thus not open to the appellant to contend in the statement of claim that what was transacted by them with the respondent no.1 was a mutual fund account or that they had not placed any orders for trading or that the respondent no.1 had carried on the trading activity without the knowledge and consent of the appellant.

38. The Arbitral Tribunal also dealt with the affidavit filed by Mr.Rajesh Sharma dated 13th June, 2011 allegedly admitting the liability on behalf of the respondent no.1 and has rightly recorded a finding that the said affidavit reflected a private arrangement between the appellant and Mr. Rajesh Sharma and was thus not binding upon the respondent no.1. The learned counsel for the appellant could not

dispute before this Court that the 3P World was appointed as the authorized person by the respondent no.1 and not the said Mr. Rajesh Sharma. He also could not demonstrate before this Court as to how the said Finance Factory managed by Mr.Rajesh Chheda came in picture in the transaction between the appellant and the respondent no.1 with authority and consent of the respondent no.1. The learned Single Judge rightly did not interfere with the findings of fact rendered by the Arbitral Tribunal. There is no substance in the submission made by the learned counsel for the appellant that the Arbitral Tribunal did not deal with any of the arguments advanced by the appellant and his family members in the impugned awards. The record of the arbitral proceedings speak for itself. There is thus no substance in this submission of the learned counsel for the appellant.

39. The learned counsel for the appellant could not demonstrate before this Court that the letter dated 14th April, 2011 from the appellant to the Finance Factory was ever served upon the respondent no.1. Be that as it may, there was no such transaction between the said Finance Factory and the respondent no.1. The said Finance Factory was personal advisors of Madgavkar family. The respondent no.1 was not concerned at all with the said Finance Factory. The appellant could not dispute before this Court that the said 3P World was the sole proprietor concerned of Ms.Rashmi M.T. who alone was appointed as authorized agent of the respondent no.1 and not the said Mr. Rajesh Sharma.

40. In our view, the learned counsel for the respondent no.1 is right

in his submission that the letter dated 13th May, 2011 addressed by Mr. Anil Madgavkar to the respondent no.1 has to be read with email dated 8th May, 2011, which was even according to the appellant was not only on his behalf but also on behalf of his family members. All through out the said Mr. Anil Madgavkar was representing the entire family members in those transaction with the respondent no.1 had addressed all the letters on behalf of the entire family and also in the arbitration proceedings. We are thus not inclined to accept the submission of the learned counsel for the appellant that the said letter dated 13th May, 2011 was only on behalf of the said Mr. Anil Madgavkar.

41. The appellant did not make any application before the Arbitral Tribunal for leading any oral evidence. The onus was on the appellant to prove that the respondent no.2 was an authorized agent of the respondent no.1 and had admitted the alleged liability of the respondent no.1 to the appellant and his family members, which onus the appellant and his family members had failed to discharge. The appellant failed to prove before the Arbitral Tribunal that he and his family members had made any request to the respondent no.1 for closure of the accounts at any point of time.

42. Insofar as the judgment of this Court in case of ***Bonanza Commodities Brokers*** (supra) relied upon by the learned counsel for the appellant is concerned, this Court in the said judgment had held that since the member of the Multi Commodity Exchange had failed to carry out his obligation of squaring up the transactions when there was

a shortfall in the margin money which according to the member was not paid by the constituent though demanded, the member cannot be allowed to make any claim against the constituent for such unauthorized transactions. In that context, the learned Single Judge had held that the by-laws of the MCX referred to in the said judgment were mandatory and the transaction carried out in violation of such mandatory by-laws would not make the broker entitled to make any claim against the constituent based on such unauthorized trade effected by the member of the exchange. In our view, the said judgment would not even apply remotely to the facts of this case.

43. There is no dispute in the proposition of law that the Rules and by-laws of the Multi Commodity Exchange Limited are mandatory and binding on the member as well as constituent. However, in the facts of this case, since the appellant failed to prove that the respondent no.2 was an authorized agent of the respondent no.1, the appellant cannot take shelter of the Rules providing that the member shall be responsible of all acts, omission and commission of the authorized person or that all the acts, omission and commission of the authorized shall be deemed to be those of the member.

44. Under Rule 13 of the said Rules, it is clearly provided that the members desirous of dealing through authorized person are required to seek approval of the exchange by submitting an application as per the modes specified by the exchange duly completed in all respect to the membership department of the exchange as per the regulatory framework of the SEBI and also the circulars issued by the said MCX from

time to time. The appellant did not produce any document in support of the case that the respondent no.2 had acted as an authorized person on behalf of the respondent no.1 pursuant to any approval granted by the Multi Commodity Exchange in the prescribed manner under Rule 13 by following the procedure for appointment of such authorized person under Rule 13(iii).

45. In our view, Rule 13(V) which provides that the member shall be responsible in all acts, omission and commission for the authorized person would apply only if such authorized person is appointed pursuant to the approval of the Multi Commodity Exchange in the manner prescribed under Rule 13(iii) after following the eligibility criteria and not otherwise. In our view, conditions prescribed under Rules 13(v) and 13(vi) were not satisfied in the facts of this case. Insofar as the judgment of this Court in case of **Kaberi Mondal** (supra) relied upon by the learned counsel for the appellant is concerned, a learned Single Judge of this Court in the said judgment after adverting to the judgment of this Court in case of **Bonanza Commodities Brokers** (supra) has reiterated that the by-laws of the Multi Commodity Exchange of India are mandatory and the broker member cannot make any claim against the constituent based on any unauthorized trade effected by him. The said judgment also would not advance the case of the appellant.

46. The powers of the Court under Section 37 of the Arbitration Act are very limited. The learned counsel for the appellant could not make out a case for interference with the judgment delivered by the learned

Single Judge. This batch of appeals are thus devoid of merits.

47. We therefore pass the following order :-

- (a) The Appeal Nos.8 of 2021, 5 of 2021, 6 of 2021, 7 of 2021, 10 of 2021, 11 of 2021, 12 of 2021 and 13 of 2021 are dismissed.
- (b) In view of dismissal of aforesaid appeals, all pending Interim Applications in the said appeals are also dismissed.
- (c) There shall be no order as to costs.

(V.G. BISHT, J.)

(R.D. DHANUKA, J.)