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O.P.Nos.365 and 366 of 2008

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 18/8/2021

C O R A M

THE HONOURABLE Mr.JUSTICE N. SATHISH KUMAR

O.P.Nos.365 and 366 of 2008

V. Kanchana Petitioner in
O.P.No.365 of 2008

V. Elango ... Petitioner in
O.P.No.366 of 2008

Vs

1. S.M.C.Global Securities Ltd
having its office at No.17
Netaji Subhash Marg
Darya Ganj
New Delhi 110 002.

2. A.V.Haridasan
Sole Arbitrator. ... Respondents in
O.P.Nos.365 and 366 of 2008

PRAYER : Petition filed under Section 34 r/w. Section 16 (6) of the Arbitration and Conciliation Act, 1996, to challenge the Award, dated 13/3/2008, in the Arbitral Proceedings in Arbitration Matter (A.M) Nos.CM/C 0087 and 0086 of 2007 as illegal.

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For Petitioners ... Mr.Arvind Srevatsa

For Respondents ... Mr.N.P.Kumar
for R.1.

COMMON ORDER

Challenge has been made to the award, dated 13/3/2008, passed in A.M.Nos.CM/C.0087 and 0086/2007, by the sole Arbitrator.

2. The case of the petitioners is as follows:-

The first respondent is one of the leading stock broking companies. The petitioners are having rich experience in Trading and securities, registered as a constituent of the first respondent, executing a member client agreement. For about five months, the petitioners have traded regularly. On the order of the first respondent, on 21/8/2007, they traded in SEL Manufacturing Co Scrips, resulted in a loss of Rs.5,48,824.14 and Rs.40,90,085.86, respectively. From the very next day, the first respondent undertook to pay the debit balance, but did not do so within a reasonable



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time. Despite the accounts statement, sent on 28/8/2007, first respondent failed to pay the amount. Therefore, the matters have been referred to the Arbitrator.

3. The petitioner in O.P.No.365 of 2008 took a stand before the learned Arbitrator that there was no agreement between her and the first respondent; that the first respondent who took over the business of M/s. Somayajalu and Co., with whom the first respondent had transactions got the petitioners signature in some blank forms. Since there is no agreement, on 21/8/2007, they had placed telephonic orders.

4. Learned Arbitrator has framed the following issues for determination:-

(i). Whether there is a valid arbitration agreement between the parties and has the arbitrator jurisdiction to decide that issue?



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(ii). Whether the disputed transactions in SEL manufacturing Co scrips on 21/8/2007 were done at the instance of the respondent?

(iii). What amount if any is the applicant entitled to recover from the respondent?"

5. The learned Arbitrator has passed the award, as follows:-

(a). in C.M./C.0087 of 2007, directing the first respondent to pay a sum of Rs.3,57,444/-, with interest @ 18% p.a., from the date of award till the date of payment.

(b). in C.M./C.0086 of 2007, directing the first respondent to pay a sum of Rs.5,33,780.76, with interest at 18% p.a., from the date of the award till the date of payment.

6. Being aggrieved, these Original Petitions have been filed, praying for the relief as stated therein.



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7. Heard Mr.Arvind Srevatsa, learned counsel for the petitioners and

Mr.N.P.Kumar, learned counsel for the first respondent.

8. Mr.Arvind Srevatsa, learned counsel appearing for the petitioners submitted that the award is vitiated on the ground that there is no agreement between the parties to refer the dispute before arbitration. Without looking into the documents, the learned Arbitrator has decided merely on the basis of preponderance of probabilities. The documents placed by the first respondent are contradict to each other. It is his further contention that without evidence, learned Arbitrator has recorded the finding, which is nothing but perverse and would go the root of the matters. Hence prayed for allowing the Original Petitions.

9. Learned counsel appearing for the first respondent submitted that the learned Arbitrator was appointed as per the bye-laws Rules and Regulations of National Stock Exchange of India Ltd. The learned Arbitrator has decided the matter on the basis of evidence, viz., documents available on record and prayed for dismissal of these Original Petitions.



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WEB COPY 10. Heard both sides and perused the materials available on record.

11. The claim was preferred for recovery towards the trade said to have conducted on 28/8/2007, at the instance of the first respondent. The main contention of the learned counsel for the petitioners is that on 21/8/2007, there were many phone calls made by the applicant and instructions were given through telephone. From the very next day onwards, debit note was issued. The first respondent produced mobile call details from 15/8/2007 to 31/8/2007 and also a copy of the letter dated 8/9/2007 from Umapathy to Bharti Aircell requesting for the call details stating that he had been using that number since 2005.

12. It is also relevant to note that the learned Arbitrator has given reasons to disagree the contention putforth by the petitioner herein. The learned Arbitrator took note of the fact that the signature has not been denied



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by the parties at any point of time. Learned Arbitrator has also recorded the findings on the basis of the documents and evidence adduced. Hence, this Court is of the view that merely some other view or perception is possible that may not be a ground for the well reasoned award passed by the learned Arbitrator. Since the learned Arbitrator has factually recorded the finding based on the documents by its appreciation, this Court, cannot re-appreciate the entire evidence while exercising the jurisdiction of Section 34 of the Arbitration and Conciliation Act.

13. Accordingly, these Original Petitions are dismissed.

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