



IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

FRIDAY THE 30TH DAY OF JULY 2021

THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

O.P.NO.509 OF 2016

In the matter of Arbitration and
Conciliation Act, 1996

And

In the matter of Multi
Commodity Exchange of India
Ltd., Chennai Region arbitration
award dated 27/04/2016

India Infoline Commodities Limited,
No.143, M.G.R.Road,
Perungudi, Chennai
Represented by its Authorised Signatory,
S.Shankara Narayanan

...Petitioner

Vs

1. Mr.K.Balasubramanian,(Deceased)
No.12, Vanniappar Street,
Periya Ouliampatty,
Aruppakottai,
Virudhunagar,
TamilNadu – 626 101
2. Multi commodity Exchange of India Ltd.,
Chennai Region,
Unit No.0002A, Ground Floor,
Omega Wing,
Reheja Towers,
113,134, General Peters Road,
Chennai – 600 002.



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4. M.Rajeshwari,
W/o.Muthaiya,

5. P.Bakiyalakshmi,
W/o.Paramasivam,

6. K.Pushpavalli,
W/o.Kalidas
3 to 6 are residing at:
No.12, Vanniayappar Street,
Periyapuliyampatti,
Aruppukottai,
Virudunagar – 626 101.

...Respondents

Original Petition praying that this Hon'ble Court be pleased to set aside the award of the arbitrator in Appeal Arbitration Matter No. MCX/ARB/3395A/16 dated 27/04/2016.

This Original Petition coming on this day before this court for hearing in the presence of Mr.G.Surya Narayanan, advocate for the petitioner herein and Mr.K.Kathiresan, advocate for the respondents 3 to 6 herein and upon reading the petition and the award dated 27/04/2016 filed herein and this court having observed that the learned Arbitrator has recorded a factual finding and passed an award to that effect on appreciation of facts, this court while exercising its jurisdiction under section 34 of the Act, cannot re-appreciate the entire evidence and this court does not find any perversity in the impugned award, warranting



WEB COPY That the O.P.No.509 of 2016 be and is hereby dismissed.

2. That there shall be no costs of this petition.

WITNESS THE HON'BLE MR. JUSTICE SANJIB BANERJEE,
CHIEF JUSTICE, HIGH COURT AT MADRAS AFORESAID, THIS
THE 30TH DAY OF JULY 2021.

Sd./-

ASSISTANT REGISTRAR (O.S. II)

//Certified to be true copy//

Dated at Madras this the day of 2021.

COURT OFFICER(O.S.)

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VSP
27/09/2021

O.P.No.509 of 2016

ORDER

DATED : 30.07.2021

THE HON'BLE MR. JUSTICE
N.SATHISH KUMAR

FOR APPROVAL:29/09/2021

APPROVED ON: 29/09/2021



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.07.2021

CORAM :

THE HONOURABLE MR. JUSTICE N. SATHISH KUMAR

O.P.No.509 of 2016

India Infoline Commodities Limited,
No.143, M.G.R. Road,
Perungudi, Chennai,
Represented by its Authorised Signatory,
S.Shankara Narayanan

... Petitioner

Vs.

1.K.Balasubramanian (deceased)

2.Multi Commodity Exchange of India Ltd.,
Chennai Region,
Unit No.0002A, Ground Floor,
Omega Wing,
Reheja Towers,
113, 134, General Peters Road,
Chennai – 600 002.

3.K.Chandrasekar

4.M.Rajeshwari

5.P.Bakiyalakshmi

6.K.Pushpavalli

... Respondents

[Respondents 3 to 6 are impleaded as LR's
of the deceased R1 as per order in Application
No.1747 of 2020 in O.P.No.509 of 2016
dated 22.09.2020]



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Prayer: Original Petition filed under Section 34 of the Arbitration & Conciliation Act, 1996, to set aside the award of the Arbitrator in Appeal Arbitration Matter No.MCX/ARB/3395A/16 dated 27.04.2016.

For Petitioner : Mr.G.Surya Narayanan

R1 : Deceased

For R3 to R6 : Mr.K.Kathiresan

ORDER

This Original Petition has been filed to set aside the Arbitral Award, dated 27.04.2016, passed by the Sole Arbitrator.

2.For the sake of convenience, the 1st respondent shall hereinafter be referred to as “claimant”.

3.The brief facts leading to filing of this Original Petition are as follows :

3.1.The claimant was a retired Employee and he was planning to make investment of his retirement benefits. While so, it is the case of the



claimant that, on the persuasion and assurance given by the petitioner/Trading Company that they would make more profit, the claimant, who did not have any knowledge in the trading field, invested a sum of Rs.5,00,000/- (Rupees Five Lakhs only) on 17.05.2013; while doing so, his signature was obtained in several papers; however, to the shock of the claimant, the entire money was totally lost in the trade. It is the specific case of the claimant that the petitioner had made the transactions without his knowledge or consent.

3.2.Hence, the claimant raised this issue before the Sole Arbitrator, appointed by the National Stock Exchange (NSE), who entered reference in the dispute between the claimant and the petitioner.

3.3.The petitioner/Trading Company took a stand that the trading account was voluntarily opened by the claimant on 11.05.2013 with an unique client code and the claimant had signed all the documents for this purpose. The petitioner contended that the entire transactions were made with the consent of the claimant and the claimant was completely aware of all the transactions carried on in his account, and further, the trading account of the claimant was closed on 13.04.2015 based on request and hence, the claimant cannot make any claim after their Member-Client relationship had ceased to exist.



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3.4. The learned Sole Arbitrator after considering the pleadings of both sides and the documents produced, passed the award, dated 27.04.2016, directing the respondent to pay the claimant the sum of Rs.5,00,000/- (Rupees Five Lakhs only) with interest.

4. The Arbitral Award passed by the Sole Arbitrator has been called in question by the petitioner/Trading Company, before this Court.

5. The main contention of Mr.G.Surya Narayanan, learned counsel for the petitioner, is that the award suffers from non-reasoning and the learned Arbitrator has not considered the documents properly. It is the contention of the learned counsel that, while opening the account, all the documents have been signed by the claimant, and in fact, the e-mail id was created by him and mobile number was also given by him and he has counter-signed in all the documents while filling up the details in Know Your Customer (KYC) Form. The learned counsel further submitted that, from the year 2010 onwards, whenever transaction took place, a message would be sent by the NSE to the claimant's mobile number, which fact has been ignored by the learned Arbitrator. It is the

contention of the learned counsel that the learned Arbitrator has not



considered any document produced by the petitioner/Trading Company, and hence, prayed for setting aside of the impugned award.

6.Per contra, Mr.K.Kathiresan, learned counsel appearing for the respondents/legal representatives of the deceased claimant, would submit that the learned Arbitrator has, in fact, considered the entire aspects and recorded a factual finding, and therefore, this Court cannot re-appreciate the entire evidence at this stage, and prayed for dismissal of this Original Petition.

7.This Court gave its anxious consideration to the rival submissions and also perused the entire award.

8.It is imperative that an Arbitral Award can be set aside only when any ground stipulated under Section 34 of the Arbitration and Conciliation Act, 1996 (“the Act” for brevity) is made out. It is the contention of the petitioner herein that the learned Arbitrator has not considered the fact that the e-mail address and mobile number were filled by the claimant himself, while filling the KYC Form, and all the documents have been counter-signed by the claimant. A perusal of the

award makes it clear that the learned Arbitrator has, in fact, considered



the entire aspects and factually recorded a finding. To be noted, though the claim has been specifically made alleging that the e-mail has been created by the petitioner/Trading Company and messages have been sent to that e-mail without the knowledge of the claimant, the specific allegation is not even denied in the counter or reply statement of the petitioner. This specific allegation, when not denied or objected to by the petitioner/Trading Company, merely on the basis of some signatures obtained in the printed formats, it cannot be held that the e-mail has been created only by the claimant. It is also pertinent to note that the specific assertion made by the claimant that the copies have not been provided, is also not disputed. In fact, the same appears to be probabalized, in view of the production of all the documents by the petitioner herein, as Annexures A to E, before the Arbitral Tribunal, and not by the claimant. Further, it is also well settled that, when a clause contained in a contract is not known to the other side, particularly when the party has no knowledge in the field, such a contract cannot be pressed into service to take advantage of the same.

9. In the light of the narrative *supra*, when the learned Arbitrator has recorded a factual finding and passed an award to that effect on appreciation of facts, this Court, while exercising its jurisdiction under



Section 34 of the Act, cannot re-appreciate the entire evidence. This Court does not find any perversity in the impugned award, warranting interference.

Therefore, this Original Petition is dismissed. No costs.

Sd./-N.S.K.J
30.07.2021

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Dated at Madras this the day of 2021.

COURT OFFICER(O.S.)

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