SANDHYA BHAGU WADHWA Digitally signed by SANDHYA BHAGU WADHWA Date: 2022.12.14 14:21:43 +0530

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO.640 OF 2005
IN
ARBITRATION PETITION NO.95 OF 2003

M/s. Shilpa Shares And Security .. Appellant/Petitioner
v/s.
D.K. Agrawal, Managing Director
Surajmukhi Securities Ltd. & Ors. .. Respondents

APPEAL NO.639 OF 2005
IN
ARBITRATION PETITION NO.303 OF 2003

Shilpa Shares And Security .. Appellant/Petitioner
v/s.
M/s. Surajmukhi Securities Ltd. .. Respondents

…

Mr. Neerav Merchant with Mr. Nadeem Sharma i/b Thakordas & Madgaonkar for the appellants.

None for the respondents.

…

CORAM : K. R. SHRIRAM &
KAMAL KHATA, JJ.
DATED : 8TH DECEMBER, 2022.

P.C. :

APPEAL NO.640 OF 2005

1. Appeal is filed under Section 37 of the Arbitration and Conciliation Act, 1996 ("said Act"), impugning the order dated 15th March, 2005 passed by learned Single Judge of this Court under Section 34 of the said Act.

2. Appellant herein was a stock broker. Respondent was the client of appellant. It appears respondent instructed appellant to sell certain shares and accordingly transactions were made by appellant on 12th February 1996 and 13th February, 1996. For the transactions done on 13th February 1996 the pay-in date was 19th February 1996 on which date respondent was to deliver the shares to petitioner. Respondent did not deliver and therefore an auction was held on 22nd February 1996 which resulted in appellants suffering some losses. It is this amount that appellant wanted to claim from respondent.

3. Appellant accordingly made a reference to the National Stock Exchange of India Ltd. (NSEIL) for referring the dispute to arbitration. The Arbitral Award came to be made on 4th June 1997 rejecting appellant's reference. That award was challenged by appellant by filing

an Arbitration Petition No.28 of 1998. The said petition came to be disposed by an order dated 22nd March, 2000 and the Court in paragraph 5 of the order observed as under:-

> *"The petitioner is at liberty, if in law, he is so entitled to apply a fresh to the National Stock Exchange for arbitration as the Award of the Arbitrator has been set aside for the reasons set out earlier."*

4. Consequently, a fresh reference was made on 28th June 2001. Pursuant to the reference, Arbitral Tribunal was constituted and the Arbitral Tribunal made and published an award dated 8th June 2002. That award was impugned by both appellant as well as respondent in the underlying Arbitration Petition no.303 of 2003.

5. The primary defence of respondent before the learned Single Judge was the request for reference by appellant herein to the Arbitral Tribunal, was time barred. It was respondent's case that even if the date of the first order dated 22nd March, 2000 while disposing Arbitration Petition no.28 of 1988 is taken as the date of cause of action, still the reference should have been made within a period of six months from 22nd March 2000. Since the reference was made on 28th June 2001 the reference was barred by limitation.

6. The response of appellant to this objection before the learned Single Judge was that parties were holding settlement talks and therefore the period for talks of settlement is liable to be excluded. Respondent's case was that the provisions of excluding the time is only in relation to conciliation proceedings and there is no provision in the bye-laws for exclusion of time taken in settlement proceedings.

7. The learned Single Judge after referring to the provisions of bye-laws 3 of Chapter XI of the National Stock Exchange, came to the conclusion that the limitation provided for six months from the date on which differences or disputes arose, and only the time taken in conciliation proceedings has to be excluded. The Court also observed that it was nobody's case that conciliation proceedings, within the meaning of the Act, were held between the parties. Hence, the question of excluding any time which was taken for talks of settlement is not permissible and the reason given by the Arbitral Tribunal for excluding the time taken for talks of settlement is perverse.

8. Mr. Merchant, at the outset, submitted that appellant is only proceeding on the basis that the finding of the learned Single Judge that the time could not have been excluded for settlement talks, is not

correct. Mr. Merchant is relying upon the bye-laws of NSE which is in force today. Mr. Merchant submitted that the bye-laws, as on date, provided that the limitation period would be three years and not six months and therefore the learned Single Judge was not correct in holding that the reference was time barred. Mr. Merchant submitted that the bye-laws are with retrospective effect.

9. Mr. Merchant submitted that the explanation in the bye-laws provides that Arbitration Applications filed prior to 1st September 2010, where the Arbitration application has been dismissed solely on grounds of limitation and three years from the date of dispute have not yet elapsed, will be covered in the limitation period stated above. Mr. Merchant submitted that since the reference in the case at hand was prior to 1st September, 2010 the learned Single Judge was not correct in holding that the reference was barred by limitation.

10. First of all this appeal is not against any order passed by the Arbitral Tribunal dismissing any arbitration application on the grounds of limitation. Therefore, this explanation would not help.

11. In any event, these provisions of law were not in force when the impugned order was passed. When the impugned order was passed, the

bye-laws provided only for six months. Therefore, We do not find any error in the order passed by the learned Single Judge.

11. Appeal dismissed.

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In view of our findings in Appeal no.640 of 2005, this appeal also stands dismissed.

(KAMAL KHATA, J.) **(K.R. SHRIRAM, J.)**