



2023:DHC:8162-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **FAO (COMM) 229/2023 & C.M.Nos.57256-57258/2023**

SMC GLOBAL SECURITIES LTD

..... Appellant

Through: Mr.Amar Nath Saini with Mr.Shreyas
Jain, Advocates.

versus

URMILA GOEL

..... Respondent

Through: None

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Date of Decision: 06th November, 2023

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MS. JUSTICE MINI PUSHKARNA

J U D G M E N T

MANMOHAN, J: (ORAL)

1. Present appeal has been filed under Section 37 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the 'Act') challenging the order dated 22nd August, 2023 passed by the learned Additional District Judge- 03, North West District, Rohini, Delhi in ARBTN No.57521/2016, whereby the objections filed by the appellant against the award were dismissed. Appellant also challenges the arbitral award dated 15th December,



2014 passed by the Sole Arbitrator as well as the award dated 15th April, 2015 passed by the Appellate Arbitral Tribunal.

2. Learned counsel for the appellant states that the objections filed by the appellant have been dismissed by the learned Additional District Judge without considering any of the arguments advanced by the appellant highlighting the fraud and mis-representation by the respondent as well as the violation of the National Stock Exchange Bye-laws.

3. Learned counsel for the appellant states that the disputes between the appellant and the respondent was with respect to a transaction dated 16th May, 2014 when respondent had an open position of bearish stocks / product. He states that on 16th May, 2014 the results of the parliamentary elections were announced and as one of the political parties secured an absolute majority, the stock market suddenly shot-up and the stocks purchased by the respondent in view of its bearish nature started going down/weakening and consequently the margin money started eroding and within a time span of 30-45 minutes of opening of the market, almost 95% of margin money in the account of respondent was eroded. He further states that the grievance of the respondent was that her stocks had been sold by the appellant without her consent. He states that it is also the respondent's contention that she suffered losses due to squaring off the position by the appellant. He, however, asserts that the transaction was carried out by the appellant only after obtaining the respondent's consent on telephone and that too on account of non-payment of margin.

4. A perusal of the paper book reveals that the Appellate Arbitral Tribunal vide award dated 15th April, 2015 has upheld the award dated



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15th December, 2014 passed by the Sole Arbitrator on the ground that the appellant did not have the right to square off the respondent's position without her consent. This Court has also perused the affidavit filed by the respondent's husband, in which he has categorically taken a stand that he had informed the dealer that his position should not be squared off as he was willing to deposit the additional money either by way of cheque or RTGS mode. In the said affidavit, the respondent's husband had further stated that Rs.10-20 lakhs worth of idle cash balance was lying in the family account with the respondent. He has further alleged in the said affidavit that the transaction of closure of four lots was done under pressure from the appellant.

5. In view of the different versions put forward by the appellant and respondent, the Appellate Arbitral Tribunal as well as the Trial Court have taken a view in favour of the respondent, which by no standards, can be called perverse or arbitrary, warranting any interference under Section 37 of the Act.

6. Further, reliance of the appellant on Clause 19 of the Risk Disclosure document that allows the broker to sell the client's securities without giving notice, is misconceived on facts. The said Clause clearly specifies that the broker can sell its client's securities only in the event there is non-payment of margins or other amounts or outstanding debts. Since in the present case, the available margin had not been fully eroded and, according to the respondent's husband, respondent was willing to 'pump in more money', this Court is of the view that reliance on Clause 19 of the Risk Disclosure document is misconceived.



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7. It is further settled law once an arbitral award has been confirmed in an application filed under Section 34 of the Act, the Appellate Court must be extremely cautious in disturbing concurrent findings of the fact and law as they are ordinarily not amenable to interference under Section 37 of the Act (See: *MMTC Ltd. vs. Vedanta Ltd. (2019) 4 SCC 163* and *M/s Mangalwar Filling Station vs. Indian Oil Corporation Ltd. dated 07th July, 2021 in FAO(COMM) 75/2021*).

8. In view of the aforesaid, present appeal along with pending applications being bereft of merit is dismissed.

MANMOHAN, J

MINI PUSHKARNA, J

**NOVEMBER 06, 2023
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