



CMA(MD).No.574 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 29.07.2024

PRONOUNCED ON : 31.07.2024

CORAM

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.574 of 2018

Dr.P.Raja

.....Appellant/Petitioner/Respondent

Vs.

M/s.Sharekhan Limited
A 206, 2nd Floor
Phoenix House
Senaipati Bapat Marg
Lower Parel, Mumbai 400 103

...Respondent/Respondent/Petitioner

PRAYER: Civil Miscellaneous Appeal filed under Section 7 (1 and 2) of Arbitration and Conciliation Act, 1996, to set aside the order and decretal order dated 11.04.2018 made in Ar.O.P.No.2 of 2010 on the file of Principal District Court, Madurai.

For Appellant : Mr.J.Lawrance

For Respondent : No appearance

J U D G M E N T

The instant appeal has been filed by the respondent in Arbitration Matter No.F and O /C 0476/2008 challenging the dismissal of his Arbitration O.P.No.2 of 2010 on the file of the Principal District Court, Madurai.



(A) Factual Background:

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2.The respondent herein who is a trading member of National Stock Exchange of India had initiated arbitration proceedings before the Sole Arbitrator contending that the appellant herein had approached for opening of trading account and the appellant had executed a member client agreement.

3.According to the claim petitioner, they have received orders from the appellant herein and they had duly executed through exchange. They have further contended that they had contract notes and bills as and when trades were executed and were dispatched to the address of the appellant herein. They have further contended that the appellant herein had traded in the cash and derivative segment of National Stock Exchange. However, the appellant did not make the payment for the position taken by him. Since the outstanding dues were to the extent of Rs.3,36,145.68, they have initiated arbitration proceedings.

4.The National Stock Exchange of India had addressed a communication to the appellant herein on 08.10.2008 calling upon him to answer the claim petition. On 17.11.2008 the appellant herein had submitted his reply in Form No.III along with a detailed counter.

5.The sum and substance of the counter is that at no point of time, he had acted as a trader, but he was only investing funds in long term equity shares. In the counter, it was further contended that some henchmen and



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goondas engaged by the claim petitioner had disturbed his practice as a Doctor and he had prayed for condoning the delay for the reply and requested for initiating action as against the claim petitioner.

6.A perusal of the Arbitration award indicates that the first hearing was conducted on 21.01.2009 and the appellant herein was absent on that date. It was adjourned to 12.02.2009 and 04.03.2009. The appellant was present on 04.03.2009 and on the said date, the oral representations of both sides were heard. Based upon the documents produced, the Arbitrator had proceeded to pass an award holding that the appellant herein was only a trader. The Arbitrator had further found that the appellant had executed a member client agreement to trade in cash and F and O segments of the National Stock Exchange and Bombay Stock Exchange. Therefore, the appellant was fully aware of his dealings and the resultant loss during the market fall. The Arbitrator had proceeded to partly allow the claim to the extent of Rs. 2,26,321.20 with 12% interest. This award was challenged by the appellant herein before the Principal District Judge, Madurai.

7.The learned District Judge by his order dated 11.04.2018 had dismissed the petition on the ground that both the parties have appeared and participated in the hearing before the Arbitrator and the appellant herein had made an endorsement that he has no document to file. Therefore, there is no violation of principles of natural justice. The learned District Judge had



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further found that the Arbitrator had considered the counter filed by the appellant herein and has passed a reasoned award. He had further found that the during the written submission except the ground of non-furnishing of opportunity, no other ground was raised. The learned District Judge had proceeded to hold that after giving sufficient opportunity to the respondent in the claim petition, the Arbitrator had proceeded to pass an reasoned award and ultimately dismissed the petition. Challenging the same, the present appeal has been filed by the respondent in the arbitration proceedings.

(B)Contentions of the counsel for the appellant:

8.The learned counsel for the appellant had contended that the proceedings were initiated by issuance of notice by the National Stock Exchange by their letter dated 08.10.2008 for which a reply was sent by the respondent on 17.11.2008. Without offering any further opportunity for filing of any document or submissions, the Arbitrator had proceeded to decide the arbitration on merits. Hence, it is clear there is violation of principles of natural justice.

9.The appellant herein had further contended that only three documents were annexed to the claim petition as Annexure A to C. However, five documents are being referred to in the award as if they have filed by the claim petitioner. Therefore, the document which were not marked on the side of the claim petitioner have been taken into consideration by the Arbitrator and an



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award has been passed based upon those documents. Hence, he prayed for allowing the appeal and to set aside the arbitration award.

10. Though the respondent herein has been served and his name is printed in the cause list, there is no appearance either in person or through counsel. This Court proceeds to pass an order on merits on the basis of the submissions made by the learned counsel for the appellant.

(C) Discussion:

11. The primary contention of the appellant herein is that the award has been passed without offering reasonable opportunity to the respondent in the arbitration proceedings. A notice of initiation of arbitration proceedings has been sent by the National Stock Exchange of India on 08.10.2008. On receipt of the same, the appellant herein had submitted his reply in Form No.III. A perusal of the said form clearly indicates that the appellant has said that he had no document to mark. Along with Form No.3, the appellant has sent a detailed counter to the claim petition.

12. A perusal of the award indicates that due to the non appearance of the appellant, the Arbitrator has adjourned the hearing on 21.01.2009, 12.02.2009 and 04.03.2009. Finally the appellant had appeared on 04.03.2009. On the said date, oral submissions on either side has been heard by the Arbitrator and the documents were also marked. Based upon the oral submissions and the documents marked by the applicant, the Arbitrator has



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proceeded to pass an award. Though the claim was made for a sum of Rs. 3,36,145.68, the award has been passed only for Rs.2,26,321.26.

13.The narration of the above said facts will clearly indicate that sufficient opportunity was provided to the appellant herein and after hearing his submission, a reasoned order has been passed by the Arbitrator. Therefore, the contention of the learned counsel appearing for the appellant that his client was not provided with sufficient opportunity and the award is in violation of the principles of natural justice is not legally sustainable.

14.The learned counsel for the appellant had further contended that though only three documents were mentioned as annexure to the claim petition, the learned Arbitrator had pressed into service five documents to pass an award as against him. A perusal of the annexure as exhibits A,B and C would indicate that a bunch of documents have been filed as Exhibits A, B and C and they have been segregated and marked as Exhibits A1 to A5. Therefore, it is clear that only the annexure A to C have been marked as Exhibits A1 to A5 and no new document has been pressed into service to pass an award as against the appellant herein.



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(D)Conclusion:

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15.Considering the fact that the instant appeal has been filed under Section 37 of the Arbitration Act, there is very narrow scope for interfering in the award as well as the order passed in the arbitration petition. Therefore, there are no merits in the appeal and this Civil Miscellaneous Appeal stands dismissed. No costs.

31.07.2024

Index : Yes/No
Internet : Yes/No
NCC : Yes/No
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To

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1. The Principal District Judge
Madurai
2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR,J.

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Pre-delivery Judgement made in
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