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

% *Date of decision: 18th July, 2024*

\+ **FAO (COMM) 134/2024**

NIRMAL BANG COMMODITIES PVT. LTD. .....Appellant
Through: Mr Debopriyo Moulik, Advocate.

versus

MR. GOUTAM SANTARA .....Respondent
Through: None.

CORAM:
HON'BLE MR. JUSTICE RAJIV SHAKDHER
HON'BLE MR. JUSTICE AMIT BANSAL

[Physical Hearing/Hybrid Hearing (as per request)]

RAJIV SHAKDHER, J. **(ORAL)**

CM APPL. 40000/2024

1. Allowed, subject to just exceptions.

FAO (COMM) 134/2024 and CM APPL. 39999/2024 ***[Application filed on behalf of the appellant for interim relief]***

2. This appeal is directed against the judgment dated 21.05.2024, passed by Ms Vineeta Goyal, learned District Judge (Commercial-03), Patiala House, New Delhi.

3. *Via* the impugned judgment, the learned District Judge has dismissed the appellant's petition under Section 34 of Arbitration & Conciliation Act, 1996.

4. The issue involved in the present case lies in a narrow compass.

5. The appellant is a registered commodities broker with the

commodities exchange, who was party to an arbitration proceeding taken out by the respondent.

6. The genesis of the arbitration proceedings was the remittance of Rs.25 lakhs by the respondent *via* four (04) cheques. These cheques, the details of which are provided in the impugned order, were handed over by the respondent to the appellant's agent, one, Mr Lalit Punetha. For convenience, the details of the four cheques that were handed over are set forth hereafter:

(i) Cheque No. 679683 drawn in favour of Nirmal Bang Commodity Pvt Ltd for an amount of Rs.5 lakhs,

(ii) Cheque No. 679685 drawn in favour of Nirmal Bang Commodity (Pvt Ltd) for an amount of Rs.5 lakhs,

(iii) Cheque No. 679691 drawn in favour of Nirmal Bang Commodity for an amount of Rs.9 lakhs,

(iv) Cheque No. 679692 drawn in favour of Nirmal Bang Commodity for an amount of Rs.6 lakhs.

7. It is not in dispute that in so far as the present appeal is concerned, it is confined to only two (02) out of the four cheques, which are valued at Rs.5 lakhs each.

8. The respondent appears to have remitted the amounts, *via* the four cheques, as he wished to trade in the commodities market.

8.1 Unfortunately, the amounts were remitted to an account which was opened by the appellant's agent Mr Lalit Punetha.

9. It appears that the appellant's agent had opened an account, in the name which, according to the appellant, was deceptively similar to that of the appellant.

10. It is the appellant's case that the suffix 'Pvt Ltd' did not appear in the account maintained by the appellant's agent i.e., Mr Lalit Punetha, therefore,

the argument throughout, which had been advanced by the appellant before the Grievance Redressal Committee, the Arbitral Tribunal and the Appellate Arbitral Tribunal as also before the learned District Judge, is that the money has not been remitted to the account of the appellant. In support of this submission, the learned counsel, who appears on behalf of the appellant, has relied upon the following communication dated 07.05.2022 received from Canara Bank.

> " *TO WHOMSOEVER IT MAY CONCERN*
>
> *This is to certify that Account No. 87183070000130 was maintained in the name of Nirmal Bang Commodities and the proprietor of the firm was Mr. Lalit Punetha. Further, we also confirm that cheque nos. 679683 and 679685 have been cleared in the name of 'NIRMAL BANG COMMODITIES'. We are not in the possession of the original physical cheques as at that time the cheque used to clear through manual clearing and we have verified the details with our deposit slips. For your reference we are attaching the deposit slips of both the cheques with this letter.*"

11. A careful perusal of extract of the aforesaid communication, on which reliance is placed by the appellant, would show that Canara Bank was not in possession of the original physical cheques because at the relevant time, cheques were cleared through manual clearing process. Therefore, the basis of the communication is the deposit slips.

12. Experience would show that at the time when beneficiaries of banking instruments fill deposit slips, the names are often truncated. In this case as well, the depositor appears to have filled in the name of the beneficiary as "Nirmal Bang Commodities", sans the suffix 'Pvt Ltd'.

12.1 As against this, it is sought to be argued by the learned counsel for the appellant that the suffix 'Pvt Ltd' was added after the cheques were drawn, in view of the manner in which the said suffix is positioned.

13. According to us, this is the matter which would fall in the realm of appreciation of evidence. Since the matter has been examined at four (04) stages, we need not re-examine the issue. As indicated above, the appellant is placing its defence on the 'whomsoever' communication issued by its banker i.e., Canara Bank.

14. The banker's letter of communication does not, in our view, support the case of the appellant as it is not based on original cheques that were received by it at the time of clearing.

15. That said, in our view, the arguments as advanced by the learned counsel for the appellant is completely misconceived as the burden in the impugned judgment is not pivoted on receipt of money by the appellant.

16. The appellant, apparently, did not receive the money that was remitted by the respondent.

17. The impugned judgment proceeds on the basis that Mr Lalit Punetha acted as the agent of the appellant not only in the transaction involving the respondent, but on 400 other transactions as well.

17.1 Therefore, the learned District Judge concluded that Mr Lalit Punetha, being the agent of the appellant, portrayed that he had the authority to collect the payments to enable the appellant to trade in commodities.

18. In our opinion, given the past conduct of Mr Lalit Punetha, *qua* which no dispute is raised by the appellant, he had ostensible authority to act on behalf of the appellant. Therefore, if the agent has short-changed the appellant, the remedy of the appellant lies against the agent and not the remitter of the money i.e., the respondent. The doctrine of 'indoor management' would be squarely applicable in this case. [See ***Royal British Bank vs Turquand*** **(1856) 6 E&B 327**].

19. Strangely, when we queried the learned counsel for the appellant as to whether any civil proceedings were taken out against Mr Lalit Punetha for recovery of the money, the learned counsel submits that the appellant has only triggered criminal proceedings and no civil proceedings have been taken out.

19.1. This conduct of the appellant has lingering doubt in our minds as to whether or not the agent, somewhere, has acted at the behest of the appellant.

20. We, therefore, find no merit in the appeal. The appeal is accordingly dismissed.

21. Pending application shall also stand disposed of.

RAJIV SHAKDHER
(JUDGE)

AMIT BANSAL
(JUDGE)

JULY 18, 2024
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