

18.06.2025
Item No. 02.
Court No.37.
AB
(ID 266330)

F.M.A. 1219 of 2022

Jitendra Kumar Sahu
Vs
M/s. SMC Global Securities Ltd. & Anr.

Mr. Alope Kr. Das,
Mr. Farhan Ghaffar,
Md. Zafar JilaniFor the Appellant.

Mr. Shreyas Jain,
Ms. Preetu Chaudhury.....For the Respondents.

Dictated by Arijit Banerjee, J.

1. This appeal under Section 37 of the Arbitration and Conciliation Act, 1996 (in short “the 1996 Act”) is directed against a judgment and order dated July 8, 2022, passed by the learned IXth Bench of the City Civil Court at Calcutta in Misc. Case No.1547 of 2016 being an application filed under Section 34 of the 1996 Act by the appellant herein for setting aside of an arbitral award.
2. The relevant facts of the case are that the respondent company, at all material times carried on and still carries on the business of trading in shares. The appellant registered as a client of the respondents some time in 2008, by filing an account opening form. It is not in dispute that the relationship between the parties was governed by the bye-laws of Securities and Exchange Board of India read with the bye-laws

of National Stock Exchange. Such bye-laws contain an arbitration clause for resolution of disputes between the parties.

3. It appears that disputes arose between the parties. The respondents herein claimed that an amount of approximately Rs.5.87 Lacs became due and payable to it from the appellant. The dispute was referred to arbitration. The parties participated in the arbitration proceeding. By an award dated September 26, 2011, the sole Arbitrator allowed the claim of the respondents herein save and except the sum of Rs.22,566/- which the respondents herein had claimed on account of litigation expenses in connection with a suit that it had filed in a Civil Court for recovery of its dues and which subsequently it withdrew. The amount awarded was Rs.5,66,604/-.
4. Being aggrieved the appellant herein challenged the said award by filing an application for setting aside the award after a substantial delay of about four years. The delay was, however, condoned by the Court. Although learned Advocate for the respondents herein says that the learned Court was misinformed and ought not to have condoned the delay, yet, at this stage, we see no reason to go into that question.

5. The appellant's application under Section 34 of the 1996 Act was dismissed by the learned Trial Court by the judgment and order impugned herein. Hence, this appeal.
6. Learned Advocate for the appellant argued that the award in question is perverse. All the findings are in favour of the appellant herein. However, an award was made in favour of the respondent herein.
7. Learned Advocate submitted that an account closing form was filed by the appellant in the Bhubaneswar Office of the respondents on September 1, 2008. It is mentioned at the bottom of the form that the account would be closed within three working days. However, the respondents instead of stopping all trading activities in the appellant's account, continued with such activities resulting in huge debit entry in the account of the appellant. This was wholly illegal. This amounts to fraud. Since the arbitral award has been induced by fraud, it is liable to be set aside under Section 34(2)(b)(ii) of the 1996 Act read with Explanation 1 thereof. The said provision is to the effect that an arbitral award may be set aside by the Court if it is in conflict with the public policy of India. The Explanation is to the effect that an award is in conflict with public policy of India, inter alia, if the making of

the award was induced or affected by fraud or corruption or was in violation of Section 75 or Section 81 of the Act. It was submitted that since fraud was practised on the arbitrator by the respondents, the arbitral award needs to be set aside.

8. Learned Counsel relied on the decisions of the Hon'ble Supreme Court in the cases of ***Haryana Tourism Limited Vs M/s Kandhari Beverages Limited, Oil & Natural Gas Corporation Limited Vs Saw Pipes Limited*** and ***Ssangyong Engineering & Construction Co. Limited Vs National Highways Authority of India*** reported at ***(2022) 3 SCC 237, (2003)5 SCC 705*** and ***(2019) 15 SCC 131*** respectively.
9. We have not called upon learned Advocate for the respondents to make submission.
10. We see from the arbitral award in question that the Arbitrator has come to a categorical factual finding that the appellant herein was well aware that even after September 1, 2008, trading activities in the appellant's account were continuing. The respondents were prevented from closing the appellant's account since even after September 1, 2008, shares were lying in his account and there was a debit balance which had not been squared off by the appellant. In spite of having due knowledge of the continuing

trading activities in his account, the appellant raised no objection. Therefore, the appellant acquiesced and consented to continuation of such trading activities. Accordingly, the Arbitrator allowed the claim of the respondents herein.

11. We are not sitting as an Appellate Court insofar as the arbitral award is concerned. The Court considering an application for setting aside an arbitral award under Section 34 of the 1996 Act as well as the Appellate Court acting under Section 37 of the 1996 Act, must operate within the parameters of the provisions of Section 34 of the 1996 Act. The grounds for setting aside an arbitral award are limited. The setting aside Court or the Appellate Court will not enter into re-appreciation of evidence or factual disputes. Even an error of law within the jurisdiction of the Arbitral Tribunal may not be interfered with. There should be minimum interference with an arbitral award.

12. We find that the Arbitrator has passed a reasoned award. There is no apparent infirmity in the reasons recorded. It is not the appellant's case that the award is perverse because it is based on no evidence.

13. The learned Trial Court also rightly observed that it was not sitting in appeal over

the arbitral award. It declined to interfere with the factual findings of the Arbitrator and in our view rightly so.

14. We have considered the decisions of the Hon'ble Supreme Court relied upon by learned Advocate for the appellant. While the propositions of law laid down in those cases have been reiterated in other cases also by the Hon'ble Supreme Court, the same do not help the appellant to any extent in the facts and circumstances of this case.

15. In view of the aforesaid, we see no reason to interfere with the judgment and order sought to be assailed before us. The appeal stands dismissed.

16. There will be no order as to costs.

17. All parties shall act in terms of server copy of the order downloaded from the official website of this Court.

(Rai Chattopadhyay, J.)

(Arijit Banerjee, J.)