
(2017) 08 DEL CK 0042

In the Delhi High Court

Case No : 86 of 2016

ANAND RATHI SHARES AND STOCK BROKERS LTD.

APPELLANT

Vs

SHASHI PRABHA GUPTA

RESPONDENT

Date of Decision : 17-08-2017

Acts Referred:

[Arbitration and Conciliation Act, 1996](#), [Section 37](#), [Section 34](#) - Appealable orders - Application for setting aside arbitral award

Citation : (2017) 08 DEL CK 0042

Hon'ble Judges : Valmiki J.Mehta

Bench : SINGLE BENCH

Advocate : Bala Subramanian, Siddharth Nath, Rajat Aneja, Nisha? Sharma

Final Decision : Allowed

Judgement

1. This appeal filed under Section 37 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as "the Act") impugns the judgment of the court below dated 16.09.2015 whereby the objections filed by the respondent herein under Section 34 of the Act have been allowed, and the Award of the Arbitrator dated 23.08.2013 passed in favour of the present appellant (claimant in the arbitration proceedings), awarding a sum of Rs.4,50,498.67 to the appellant/claimant, has been set aside. I may note that by the same Award counter-claim filed by the present respondent/objector for a sum of Rs.1,86,256.75 was dismissed and no objections were filed by the present respondent against the Award dismissing the counter-claim

filed by the respondent.

2.(i) The facts of the case are that the appellant herein filed a claim petition in the arbitration proceedings pleading that the respondent herein approached the appellant/claimant for conducting of trades in the Bombay Stock Exchange (BSE) and the National Stock Exchange (NSE). The appellant is Share and stock broker registered with SEBI and is a trading and clearing member of BSE. The appellant pleaded that the appellant and the respondent entered into a Member-Client agreement on 17.02.2007 and the respondent was allotted a client ID GDL 1S081. The appellant further pleaded that on instructions of the respondent various transactions were affected by the appellant through BSE Capital segment till 27.07.2007. With respect to all the trades appellant is said to have sent the contract notes cum bills as also the statement wise bill to the respondent through digital mail system on the registered e-mail ID of the respondent. As per the books of the appellant, there remained a sum of Rs.5,29,718.74. On 18.08.2007 the respondent had issued a cheque no.032255 of Rs.3 lakhs towards payment of outstanding which was returned dishonoured for insufficient funds. The appellant pleaded that it served a legal notice on the respondent dated 18.09.2007 for payment of dues. Appellant thereafter internally transferred an amount of Rs.27,942.86/- lying in the account of respondent and further balance amount along with interest totaling Rs.5,28,748.05/- was claimed in the subject claim petition filed in arbitration.

(ii) Respondent appeared in the arbitration proceedings and filed her pleadings. It was pleaded by the respondent in her reply as also in the counter claim filed by her, that, one executive of M/s Navratan Capital and Securities Private Limited had taken signatures on various blank forms of the respondent and also obtained a blank cheque as security. It was pleaded by the respondent that she never gave any

instructions for effecting transactions of the BSE. It is further pleaded that the claim petition should be dismissed because the claim petition is based on frivolous and manufactured documents. It was further pleaded by the respondent that a cheque no.032255 was given to M/s Navratan Capital and Securities Private Limited and not to the appellant. The respondent in fact filed a counter-claim against the appellant for a sum of Rs.1,86,256.75.

3. The Arbitrator framed issues and parties submitted arguments and asked the case to be decided on the basis of the documents.

4. The Arbitrator allowed the claim petition by holding that though no prior written instructions from the respondent to the appellant are found to have been given but the fact of the matter was that the details of the entire transactions after being entered into were regularly sent for a long period from February, 2007 to July, 2007 by the appellant to the respondent on the registered e-mail ID of the respondent. The Arbitrator also found that statements of accounts as also DP statements were sent to the respondent. Arbitrator has also held that the contention of the respondent with respect to the blank papers cannot be believed because signatures are not denied and at no prior point of time respondent had ever complained that the appellant/ M/s Navratan Capital and Securities Private Limited had got signed blank papers and a blank cheque from the respondent. The Arbitrator thus has held that the respondent had entered into a Member-Client agreement and had issued the cheque in question. The Arbitrator also held that the respondent is very conveniently not denying the transactions of NSE and is only denying transactions of BSE. The relevant observations given by the Arbitrator read as under:-

"The respondent has taken the plea that he has not executed the agreement with the applicant and her contention is that some blank papers were got

signed. The plea of the respondent is not tenable and has been taken for sake of denial. Signatures are not denied and at no point of time there had been any objection or any other proceeding against the applicant or any other person regarding signing of blank papers. The claimant has filled the member client agreement with the respondent signed by her. Letter of authority signed by her in which email ID of the respondent has been shown. The applicant has filed the contract notes, ECN log of the respondent, statement of accounts and also filed POD of ledger and DP statements. The respondent is not denying transaction in NSE and only denying transaction in BSE. The applicant has filed detailed report and ECN log of the respondent of the dispatch of the documents to the respondent on the email ID of the respondent. Only transaction on BSE has been denied by the respondent. The plea of the respondent cannot be believed and seems to be evasive denial. The applicant has also filed the POD of ledger and DP statements. Hence in view of the documents and there had been no objections at earliest stages the objections of the respondent is without any substance. Copies of sending of contract notes are on record in ordinary course. There is no hesitation in holding that the contract notes had been received by the respondent." (underlining added)

5. The Court below by the impugned judgment disagreed

with the Award and set aside the Award by making the following

observations:-

"6. The Ld.Arbitrator has recorded two conclusions, one conclusion that the relation between broker and the client cannot be denied. Second conclusion that after the completion of transaction contract notes have been received by the client (petitioner). However, there is no evidence discussed and conclusion drawn as to by which mode these transactions were carried

out at the instructions of the client (petitioner). There are simple averments by the broker (respondent) that the transactions through BSE Capital Segment were at the instruction of the client (petitioner). No evidence of any sort emanating from the client (petitioner) prior to each transaction has been placed on record to demonstrate that each and every transaction was executed on specific instructions of the petitioner. It would serve no purpose to show that after the transactions, some documents were sent to the client (petitioner). The onus for raising denial does not lie on the client (petitioner) for any transaction which has not been duly authorised. If that legal connotation is accepted, then every broker would initiate any transaction at its own without authorization and simply retain a proof of delivery of the ledger/statements of the client. In these set of circumstances, the broker has to show specific authorization which were issued for conducting each trade. An umbrella agreement such a Member-client Agreement is a mere enabling agreement which clothe the broker (respondent) with powers to enter into transaction but not without specific instructions of the client (petitioner) each time. On the contrary, the petitioner herein has been

asking for telephone recording which should have been in possession of respondent authorizing him to carry transaction each time. The Ld. Sole Arbitrator has not discussed or requisitioned any such evidence on record. The respondent broker also did not hand any evidence to demonstrate the transaction wise authorization issued by the petitioner. The above facts show that the award of Ld. Sole Arbitrator suffer from infirmity to the extent that it has fastened liability on the basis of contract note which were not shown to have been authorized by the petitioner. In catena of judgments, it has been held by Hon"ble Higher Courts that if any Arbitrator award suffers from apparent illegality, the same is liable to be set aside being violative of public policy." (underlining added)

6. The scope of hearing of objections under Section 34 of the Act is now well settled. The court hearing objections under Section 34 of the Act can only interfere with the Award on the ingredients of Section 34 of the Act being satisfied and which include the Award being either against the contract between the parties, against the law of the land or the Award being so grossly illegal or perverse that the court should interfere as a matter of public policy. It is seen that the Arbitrator has arrived at one possible and plausible conclusion by observing that the respondent has not denied her signatures on the cheque and the Member-Client agreement and it cannot be held that these documents were documents taken in blank because no such grievance was raised by the respondent at any time during the long period of transactions from February, 2007 to July, 2007. Also, learned counsel for the appellant has rightly argued that the contentions of the respondent is misconceived that the respondent did not have any dealing with the appellant because actually the company of M/s Navratan Capital and Securities Private Limited was merged with the present appellant company by virtue of court's orders and therefore, the earlier agreement with M/s Navratan Capital and Securities Private Limited stood substituted with the present appellant. Also, counsel for the respondent is not justified by placing reliance upon Clause 1.3.5 of Member-Client agreement on the ground that no

doubt ordinarily the transactions are entered into once the client gives the instructions to the member/stock broker, however, Clause 1.3.5 is not a statutory mandatory provision and once after the transactions are entered into, and the details of these transactions over a long period of many months, along with all relevant documents being invoices, accounts etc, were sent regularly to the registered e-mail ID of the respondent and the respondent was never objected to the same, hence, the Arbitrator therefore was justified in arriving at one possible and plausible conclusion that it cannot be held that the transactions were not done with the consent of the respondent. This was all the more because the Arbitrator has rightly held that respondent is conveniently denying only BSE transactions and not the NSE transactions.

7. It is settled law that the court hearing objections under Section 34 of the Act does not sit as an appellate court against the Award passed by the Arbitrator. The impugned judgment shows that the court below has set aside the Award by taking an alternative view although the Arbitrator was justified in taking the view which he took, and which was one possible and plausible view, and once that is so of the Act, the court hearing objections under Section 34 of the Act had no power to interfere with the Award.

8. In view of the aforesaid discussion, this appeal is allowed. The impugned judgment of the court below dated 16.09.2015 is set aside. Award of the Arbitrator dated 23.08.2013 will stand sustained. Parties to bear their own costs.