

(2012) 02 BOM CK 0094
In the Bombay High Court
Case No : Arbitration Petition No. 611 of 2010

Arun T. Gujrathi

APPELLANT

Vs

M/s. Angel Capital and Debt Market Ltd.

RESPONDENT

Date of Decision : 28-02-2012

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 34

Citation : (2012) 02 BOM CK 0094

Hon'ble Judges : Anoop V. Mohta, J

Bench : Single Bench

Advocate : V.P. Sawant with Mr. Prabhakar Jadhav, for the Appellant; Deepak Dhane with Mr. Shantibhushan Nirmal, for the Respondent

Judgement

Anoop V. Mohta, J.—Heard finally.

2. The Petitioner has invoked Section 34 of the Arbitration and Conciliation Act, 1996 (for short, the Arbitration Act) thereby challenged the impugned Award dated 13.11.2009 passed by the sole Arbitrator in the matter of arbitration under the Bye-laws, Rules and Regulations of National Stock Exchange Ltd. (NSE). As the Arbitrator rejected his counter claim on merits as well as on limitation and by overlooking the same awarded the claim of the Respondents.

3. So far as the rejection of counter claim on the ground of limitation, I have already observed in Arbitration Petition No. 610/2010-Dipesh A. Shah vs. Angel Capital and Debt Market Ltd as under:

3 The learned counsel appearing for the Respondent submits that the Arbitrator has referred the submissions and then passed the Award though by giving very short reasons. The reasons are necessary for dismissing the claim or counter claim basically when the parties are not admitting the rival positions on the record. The fact is that there is dispute raised. Therefore, unless supported by evidence and/or material and unless the Arbitrator analyse the same by giving detailed reasons or at least sufficient reasons, such dismissal, in my view, is

impermissible.

4. In addition to above, in the present case, there is a serious dispute with regard to the Petitioner's intimation of closure of account dated 16 December 2007. There are documents which were part of record, such as client registration form which shows the name of sub broker. The transaction as per the Petitioner were always through the sub-broker. There is another letter which was addressed of Angel Broking Limited (ABL) to the Petitioner referring to the Depository Account number dated 13 March 2008 by which it was communicated to send further correspondences on the given address. By letter dated 16 December 2007 addressed to ABL, the Petitioner requested to close the account and stop the transaction/business. The same was received/acknowledged by the sub-broker. The same was the position with regard to the account closure request.

5. The Arbitrator, however, accepted the case of the Respondents in view of the affidavit of the concerned official of the sub-broker. The Arbitrator, however, failed to consider the above documents and on the contrary accepted the case of the Respondents that these letters were addressed to ABL and not to them and even accepted the case that the ABL never received those letters. For these disputed facts and non-consideration of the above documents apart from specific plea of the above relevant factors, detailed reasoning are necessary.

6. If we consider the case of the Petitioner that the letter dated 16 December 2007 which was duly received by the authorized person, in that case, any transaction after 18 December 2007, even if made, need to be tested on this background as it would be without instructions. The value of collateral dated 27 January 2008 which were sold in April 2008 and proceeds towards the part of the claim if any also required to be considered from this angle of intimation of closure of account on 18 December 2007.

7. The submission with regard to the counter claim and/or balance of Rs. 4 lacs in the account of Petitioner that there was no claim made by them at any point of time even after closure of account, though made first time in the Court, but the Arbitrator in fact not considered the same and rejected the counter claim on a ground of limitation itself, though there is a observation made that the counter claim is rejected both on merits and limitation. The Arbitrator has not accepted the case of the Petitioner with regard to the balance of the amount. The balance, even if any, in the Petitioner's account subject to limitation, need to be considered in detail, specifically when the Petitioner's counter claim was of Rs. 8,53,740/-. Therefore, grant of claim in favour of the Respondents is again a matter of detail and fresh reasoning. The claim so awarded by overlooking the counter claim, in view of the above reasoning, is unsustainable.

8. Resultantly, the following order:

- (i) The impugned Award dated 13.11.2009 is quashed and set aside.
- (ii) The matter is remitted back to the Arbitral Tribunal for reconsideration.

(iii) The Arbitrator to decide all the points in accordance with law by giving full opportunity to both the parties.

(iv) All points are kept open.

(v) Rule is discharged.

9. The Arbitration Petition is disposed of in the above terms. There shall be no order as to costs.