
(2014) 06 BOM CK 0093
In the Bombay High Court
Case No : Arbitration Petition No. 771 of 2013

Nailesh Swarupchand Mehta	Vs	APPELLANT
JHP Securities Pvt. Ltd.		RESPONDENT

Date of Decision : 26-06-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 14 Rule 2
Evidence Act, 1872 — Section 73
Limitation Act, 1963 — Section 18
Securities and Exchange Board of India Act, 1992 — Section 10, 11(1)

Citation : (2014) 06 BOM CK 0093

Hon'ble Judges : R.S. Dalvi, J

Bench : Single Bench

Advocate : S. Purohit i/b. Purohit and Co., Advocate for the Appellant; Mukesh Vashi, Ajay Khandhar and Jayant Gaikwad i/b. Ajay Khandhar and Co, Advocate for the Respondent

Final Decision : Disposed Off

Judgement

R.S. Dalvi, J.—The petitioner is the Constituent of the respondent who is the member of the Bombay Stock Exchange (BSE). The petitioner has challenged the award dated 7th January, 2011 rejecting the claim of the petitioner herein and granting costs of Rs. 25000/-.

2. The petitioner claimed that certain entries were erroneously made in his account with the stock broker, the respondent herein, and claimed reversal of those entries and payment in lieu thereof from the respondent. The petitioner claimed a total of Rs. 87.04 lakhs under two specified types of transactions, one of which was an unauthorised journal voucher entry (JE) of Rs. 5 lakhs transferring such amount to the account of a third party and the other was Rs. 82.04 lakhs claimed under unauthorised transactions of purchase and sale of shares carried out by the respondent without the authority of the petitioner. The petitioner also claim Rs. 69.01 lakhs towards loss of profit opportunity and interest on the entire amount claimed.

3. The debit entry of Rs. 5 lakhs unauthorisedly made was stated to be under a letter signed by the petitioner for certain group adjustments with other persons. Similar such entries were made in the same account of the petitioner but with the NSE and which came to be held to be wrongfully made under another award. The petitioner claimed that his signature on the letter was forged which came to be considered by the learned Arbitrators in that arbitration.

4. The claim of the petitioner with regard to 4 unauthorised transactions, 2 of purchase and 2 of sale of shares aggregating to Rs. 82.04 lakhs has been disbelieved upon the acknowledgments produced by the respondent before the Arbitrators for the contract notes sent to the petitioner upon the transactions being effected on his oral instructions. The petitioner has challenged the acknowledgments as not having been signed by his agent or employee whose signature was shown on the acknowledgments.

5. The petitioner's case has been held to be barred by the law of limitation. The claim on merits is also considered and rejected.

6. This Court would require to see whether the Arbitrators acted in accordance with the Law of Limitation in respect of both the claims and then consider whether it affected the Award on merits and if so to what extent.

7. The parties had transactions without any dispute between 7th July, 2008 and 19th March, 2009. A running account was maintained between the parties. The petitioner claimed in his letter dated 8th July, 2009 that his account had a credit of Rs. 1.57 Crores on 19th March, 2009. Soon thereafter in his account one JE for the transaction with the BSE and several JEs for transactions with the NSE came to be made therein on and after 26th March, 2009.

8. The petitioner objected to the transactions on 8th July, 2009. The claim was lodged on 10th February, 2010. The petitioner was stated to be required to make a claim within six months of the transaction or the date on which he claims to have given endorsement or order to buy or sell the securities or the date on which he claims to have given instructions or order to buy or sell the securities or the date on which he claims to have paid the money or given security which were earlier as per bye-law 252(2) of the BSE. The learned Arbitrators have held that the claim is barred by limitation because the claim was not made in the period between 26th March, 2009 and 5th February, 2010.

9. The petitioner has relied upon the two circulars of the Securities and Exchange Board of India (SEBI) dated 11th August, 2010 and 9th February, 2011 in exercise of the powers conferred upon the SEBI u/s 11(1) or SEBI Act, 1992 read with Section 10 of the Securities Contracts (Regulation) Act laying down the limitation period as the period governed by the law of limitation and specifying that it would be three years in terms of the Limitation Act 1953. The second circular applies to an arbitration application which was filed and rejected only on the ground of limitation period of 6 months. If 3 years have not passed since such award it would be governed by the extended period.

10. In the case of Kalpana Munish Bumb through her Power of Attorney Munish M. Bumb Vs. M/s. Joindre Capital Services Ltd. and Bombay Stock exchange Limited the binding nature of these circulars has been accepted. It would be binding not only on the parties, but also stock exchanges, as also the Arbitral Tribunal.

11. In the case of M/s. Angel Capital & Debt Market Ltd. Vs. M/s. Dianum in Arbitration Petition No. 530 of 2010 dated 10th June, 2013 of this Court following the Delhi judgment in the case of Hansraj Sohanlal Gouthi Vs. Standard Chartered STCI Capital Markets Ltd. & Anr. in Arbitration Petition No. 897 of 2009 dated 2nd November, 2012 of this Court it is observed that the claims of the parties can be agitated within a period of 3 years and not the restricted period of 6 months as it was prevailing prior to the SEBI circulars.

12. Mr. Purohit would argue that after the learned Arbitrators concluded that the petitioner's claim was barred by limitation, the claim on merits should not have been considered and the learned Arbitrators exceeded their jurisdiction in considering so. The petitioner has relied upon the judgment of this Court in the case of Sudesh Handa Vs. Abdul Ajiz and another holding that an issue of limitation considered u/s 9A is a jurisdictional issue which could be tried before any other issue is tried. The issues before the learned Arbitrators was not an issue u/s 9A of the CPC and have not a jurisdictional issue. The entire arbitration was considered for final hearing. The analogy in Section 9A would not apply; the analogy under Order 14 Rule 2 would apply. The learned Arbitrators had the discretion to decide only the question of limitation or to decide all the issues as they have done. They cannot be seen to have exceeded their authority.

13. The consideration on merits is upon the letter dated 8th July, 2009 of the petitioner. The petitioner has mentioned specific amounts of credits in his account as on 7th October, 2008 and 19th March, 2009. The learned Arbitrators have considered that hence the petitioner was aware of his account. The petitioner takes exception to the observation on the ground that he was not served the accounts as required by the rules quarterly or yearly and the entries stated by him may have been incorrect. He was shown the debit entries only on 26th March, 2009.

14. A consolidated account statement given to the petitioner shows several JEs as also the relevant entries for the purchase and sale of shares.

15. The JEs are as follows:

16. These reversals came to be made on 11th August, 2009. The petitioner received information of the reversals on that day. The petitioner had called upon the respondent to "give" him all his payments on these entries. If all the entries had been reversed, the petitioner would not lodge any claim in arbitration. The respondent, in fact, reversed one JE and one other entry relating to delayed payment claimed from the petitioner in a single consolidated statement of account.

17. In a related arbitration of the NSE under the aforesaid consolidated account the learned Arbitrators have considered the reversal as a part acknowledgment of liability in writing made on 11th August, 2009 in the said account. The petitioner claims that the learned Arbitrators in this arbitration have failed to exercise their jurisdiction with regard to the question of limitation and have in fact erred on the question of law of limitation relating to the acknowledgment of liability u/s 18 of the Limitation Act.

18. There has been no consideration of the acknowledgment of liability u/s 18 of the Limitation Act by the act of reversal of the aforesaid JE entries in this arbitration. To that extent the impugned award must be taken to be against the law and liable to be set aside. The claim being filed on 10th February, 2010 is within 6 months of the acknowledgment of liability in writing giving a fresh period of limitation from 11th August 2009.

19. In this case however, the application was not rejected only on the ground of limitation. Though the learned Arbitrators have held that the claim is barred by limitation, which is not in consonance with the aforesaid circulars of binding nature, they have also considered the petitioner's claim on merits. That could have been considered as not falling within the parameters of the judgment in *Sudesh Handa (supra)*.

20. The statement containing the aforesaid JE is much like several other JEs for the transactions with the NSE, which is a part of the other arbitration in which the petitioner's account has been credited to the extent of his JEs and his claim is granted. In transactions relating to the NSE certain similar entries were shown in the same statement of account submitted on 26th March, 2009. One of the JEs and other entry for delayed payments were reversed on 11th August, 2009 upon the petitioner's objection to entries taken in his letter dated 8th July, 2009 showing a part acknowledgment of liability to that extent. Counsel on behalf of the petitioner contends that since the entries of NSE as well as BSE were in the same consolidated statement of account, the acknowledgment of liability would enure for the benefit of the entries in both NSE and BSE for the commencement of the period of limitation.

21. Further on merits the JE of Rs. 5 lakhs left unreversed is claimed to be under a letter giving authority for group adjustments signed inter alia by the petitioner with one Prosperous Finvest and one Payal Pandya. The petitioner claims, and rather legitimately, that Prosperous Finvest was the sub-broker who introduced the petitioner to the respondent and Payal Pandya was its employee and could never have formed a group in which the petitioners debits and credits could be adjusted. This has been missed by the learned Arbitrators. They have merely accepted the signature stated to be of the petitioner on the said letter showing the said authority to bind the petitioner. The petitioner has contended that the signature stated to be his is forged and has shown how its structure and slant are different from his admitted signatures on the agreement as also other documents such as his passport, PAN card etc. This is seen to be so upon a

comparison of the signatures made as per Section 73 of the Evidence Act by this Court. The learned Arbitrators failed to consider this aspect in its perspective entirely. The claim of Rs. 5 lakhs with regard to the JE would be tenable and would be required to be granted as in the other arbitration between the parties in which it has been allowed. The rejection of the petitioner's claim, to that extent is seen to be upon the Arbitrators not exercising the required jurisdiction.

22. The transactions for the purchase and sale of shares were upon the oral instructions of the petitioner. The learned Arbitrators have relied upon the contract notes sent by the respondent to the petitioner and the acknowledgments of the petitioner from time to time thereto. It may be mentioned that these contract notes are in electronic form showing the date as also the time of the order alongside the order number which was sent to the petitioner and shown to be received. This is the correct basis for considering those contracts.

23. The acknowledgments of the contract notes were considered by the learned Arbitrators. They have been produced by the respondents in this Court also. They are seen to be addressed to the petitioner and received on behalf of the petitioner on the very next date of the transactions for each of the contract notes sent by courier. The petitioner's contention that the acknowledgments are not of the petitioner or his representatives cannot be countenanced and is not substantiated by the petitioner.

24. Hence the rejection of the claim of Rs. 82.04 lakhs under 4 entries of purchase and sale of shares is made upon correct considerations and parameters and cannot be interfered with. The claim with regard to the purchase and sale of shares evidenced by 4 contract notes made out and served upon the petitioner by the respondent and accepted on behalf of the petitioner would seal the fate of the petitioner.

25. Consequently the rejection of the petitioner's claim only to the extent of Rs. 5 lakhs under the aforesaid JE left unreversed is set aside.

26. The Petition is disposed off accordingly.