(1999) 12 BOM CK 0081

In the Bombay High Court

Case No : Arbitration Petition No. 163 of 1999

Poise Securities and Exchange Ltd. APPELLANT

Vs

Mansu Investment Pvt. Ltd. and Others RESPONDENT

Date of Decision : 23-12-1999

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 16, 34
Companies Act, 1956 — Section 434
Negotiable Instruments Act, 1881 (NI) — Section 138, 141

Citation : (2000) 2 ALLMR 84 : (2000) 2 BomCR 876 : (2000) 1 BOMLR 613 : (2000) 3 MhLj 84

Hon'ble Judges : D.K. Deshmukh, J

Bench : Single Bench

Advocate : R.D. Dhanuka, instructed by A.R. Dhanuka, for the Appellant; M.A. Patil, for the Respondent

Judgement

D.K. Deshmukh, J.—By this petition, the petitioner challenges the award dated 13th November 1998 made by the sole Arbitrator-National Stock Exchange of India Ltd. The only ground on which the award is challenged is that the claim is barred by limitation. The learned Counsel appearing for the petitioners submits that the respondents filed their statement of case. In the said statement of case, they stated that they are customer of the petitioners and they sold securities through the petitioners by contract notes dated 6th September 1996 and 4th October 1996 and for discharging the liability incurred by the petitioners because of that sale, the petitioners issued cheques on 30th June 1997. Those cheques were presented to the bank immediately, however they were dishonoured and therefore the respondents made a claim for Rs. 6,90,000/- with interest. The learned Counsel appearing for the petitioners submits that it is clear from the statement of the claim filed by the respondents that cause of action arose to the respondents on 6th September 1996 and 4th October 1996. He submits that according to Regulation No. 5 of the Regulations framed by the respondent No. 2-Stock Exchange, a reference of a claim to arbitration can be made within a period of three months from the date on which the claim arises. In the present case, the reference has admittedly been made on 13th March 1998 and therefore according to the learned Counsel, the claim was barred by the limitation as prescribed by Regulation No. 5 on the date on which it was referred to the Arbitrator. The learned Counsel submits that this objection was specifically raised before the Arbitrator, however the Arbitrator on a total misconception and misconstruction of B3''e-laws and Regulations of respondent No. 2 stock exchange has overruled this objection and awarded the claim. The learned Counsel appearing for the respondents, on the other hands submits that the cause of action does not accrue to the respondents on 6th September 1996 and 4th October, 1996 the dates on which the securities were sold, but on expiry of a period of six months from 30th June 1997 because according to the learned Counsel, the cheques continue to be valid for a period of six months from the date of its issue. The learned Counsel also advanced some submissions on the basis of the provisions of section 34 and section 16 of the Arbitration and Conciliation Act 1996 but I must state that I was not able to comprehend the submissions made by the learned Counsel. Therefore, I am unable to deal with those submissions.

2. Now, in the light of these rival submissions that I have been able to understand, if the record of the case is perused, it becomes clear from the statement of the claim filed by the respondents themselves that the cause of action for raising the claim arose on 6th September 1996 and 4th October 1996. The submission of the learned Counsel for the respondents, however is that the cause of action would not arise on 30th June 1997 when the cheques were issued, it will also not arise when the cheques were dishonoured in August 1997, but according to the learned Counsel the cause of action would arise in December 1997 when the period of six months of the validity of the cheques expired. In my opinion this submission is merely to be stated to be rejected, According to the respondent the cheques were issued on 30-6-1997, they were dishonoured in July, 1997. Even if it is assumed that the dispute did not arise when the securities were sold, the cause of action would definitely arise in July, 1997 when the cheques were dishonoured. In August, 1997 the respondent not only issued notice demanding the amount but also filed proceedings u/s 138 r/w section 141 of the Negotiable Instruments Act, and also issued statutory notice u/s 434 of the Companies Act demanding the amount. It is thus clear from the conduct of the respondent that the amount had become due to it from the petitioner and despite demand made by the respondent the amount was not paid by the petitioner so it can be safely said that a dispute had arisen between the parties in August, 1997, and hence the dispute ought to have been referred within three months from August, 1997. The Counsel submitted that the dispute between the parties had arisen in December 1997 however, he could not explain the action taken by the respondent in August, 1997 if there was no dispute between the parties at that time. The Arbitrator however, has held that the period of limitation is not applicable. That finding is erroneous. Regulation No. 5

of the Regulations framed by the respondent No. 2 provides for arbitration of the disputes between the member and constituent as also between the members and provides a period of three months from the date on which the dispute arises. It however lays down that the provisions of Bye-law will prevail in case the provisions of the Bye-laws are not consistent with provision for the Regulation No. 5. The Bye-laws framed by the respondent No. 2 show that the subject of arbitration is dealt with by Chapter XI which is divided into two parts, part A deals with arbitration between members and constituents and part B deals with arbitration between the members. Part A does not have any provision which can be said to be inconsistent with the provisions of Regulation No. 5 and part B has a provision which is consistent with the provision of Regulation No. 5. Therefore, as there is no provision in the Bye-law which can be said to be inconsistent with the provisions of Regulation No. 5 dealing with the aspect of limitation, it is Regulation No. 5 quoted above which will govern the period of limitation. The dispute therefore had to be referred to arbitration within three months from the accrual of cause of action. The cause of action would arose in September and October 1996 or at best, in June 1997 or July/August, 1997 when the cheques were issued or in the month of July/August 1997 when the cheques were dishonoured and the respondent took various steps for recovery of the amount from the petitioner. By no stretch of imagination, the date of accrual of the cause of action can be extended to December 1997. The award is of a subject matter which was not clearly arbitrable since it was barred by limitation and therefore the award is liable to be set aside. It is accordingly set aside. The petition is granted in terms of prayer Clause (a).

Certified copy expedited.

3. Petition allowed.

