

(2012) 07 BOM CK 0064

In the Bombay High Court

Case No : Arbitration Petition No. 649 of 2009

Ramesh K. Patel, an Indian inhabitant	APPELLANT
Vs	
Prashant J. Patel of Mumbai	RESPONDENT

Date of Decision : 18-07-2012

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 19, 23, 34

Citation : (2012) 07 BOM CK 0064

Hon'ble Judges : Anoop V. Mohta, J

Bench : Single Bench

Advocate : Simil Purohit instructed by M/s. Purohit and Co, for the Appellant;
Ajay Khandar instructed by y Mr. Ajay Khandar and Co., for the Respondent

Judgement

Anoop V. Mohta, J.—The Petitioner, has invoked Section 34 of the Arbitration and Conciliation Act, 1996 (for short, the Arbitration Act) thereby challenged award dated 16 April 2009 passed by the Arbitral Tribunal of the National Stock Exchange of India Limited (for short, "NSEIL") based upon its rules, byelaws and regulations. The Petitioner appointed the Respondent as its share and stock broker to effect transactions in Securities at NSEIL. The Petitioner appointed M/s. JHP Securities Private Limited to effect transactions in Securities at Bombay Stock Exchange Limited (for short, "BSEL") As alleged, M/s. JHP Securities Private Limited are associated with each other and also share common office.

2. The Petitioner got the I.D. Code. There arose dispute in relation to the transactions. The Respondent, therefore, invoked Arbitration and filed an application on 28 August 2008 for recovery of Rs.5,67,834.59 with 18% interest and costs. The last transaction as stated to be on the NSE was on 29 February 2008. The Petitioner failed to make the payment and, therefore, invocation of arbitration. The Petitioner admittedly not filed any detailed and/or specific reply to the statement of claims. He never attended the hearing also as recorded by the learned Arbitral Tribunal. The Petitioner vide letter dated 18 December 2008 denied the claim by forwarding the copy of the ledger account and contended

that there were no outstanding dues against him. The same was disputed. On 23 March 2008, on second hearing, none was present. The Arbitral Tribunal directed to submit their reply/counter reply. On 19 March 2009, the third hearing was held. The Petitioner was absent. The Respondent filed reply referring to entries of 30 March 2008 which was taken on record. As the Petitioner did not appear as recorded on earlier three occasions also, admittedly the matter was proceeded ex parte and closed for Award. Strikingly, by covering letter dated 3 April 2009 the Respondent/trading member forwarded an additional statement of claims dated 31 March 2009 stating it to be on the instructions by the learned Arbitral Tribunal to provide detail explanation of the transactions of the Respondent, from 7 February 2009 till 31 March 2008. The details of events and accounts were provided datewise and column wise with comments. A copy of margin statement was also enclosed and thereby prayed to pass the Award as claimed. About 11 entries, explanations given on record for the first time by the Respondent, admittedly after closing of the matter on 19 March 2009 as recorded above and even in the letter dated 20 March 2009 issued by NSEI's Department. Admittedly, the Respondent was absent when the direction was issued to submit the detailed additional information. Based upon the same, without intimating and/or without giving copy to the Petitioner, the additional statement was submitted.

3. The Arbitral Tribunal dealt with those details while passing the Award basically on the ground that the Petitioner never disputed any transactions in his Account. This is not correct in view of letter which was placed on record whereby the liability itself was denied by the Petitioner. The reasoning therefore given and based upon the explanations so provided, after closing of the matter, therefore, as contended rightly is in breach of principles of natural justice, fair play and equity.

4. Though the strict principles of provisions of CPC (CPC) and/or the Evidence Act are not applicable as provided u/s 19 of the Arbitration Act, yet the basic principle of reasonable and fair opportunity read with the equal treatment to be given by the Tribunal to all the parties, goes to the root in the present matter. Section 23 of the Arbitration Act also cannot be utilised to support the Award. In a situation like this, the pendency of arbitration proceeding cannot be equated with closing of arbitration proceeding for final order/award. This admitted position though tried to be justified by the learned counsel appearing for the Respondent to say that as there was no denial to the liability, therefore, the result would not have been different without this additional submission, is also of no assistance. The Arbitral Tribunal while passing the final Award and having once closed the matter for orders ought not to have taken on record the detailed explanation so given without notice to other side, which was admittedly not available when the claim was filed in such detail. The question is of giving opportunity again, as admittedly the documents with such detail was taken behind the back of the Petitioner. This, in my view, affects the rights of the Petitioner to raise appropriate defences at appropriate time. The justification, even if any, just cannot be accepted in Section 34 Petition for the first time as

such contended by the learned counsel for the Petitioner. The scope of Section 34 is quite limited. The question is of clear breach of principles of natural justice, fair play and equity. Therefore, interference is called for.

5. Taking overall view of the matter, therefore, I am inclined to quash and set aside the impugned order with direction to rehear the matter and pass appropriate order after giving opportunity to both the parties.

6. It is not the case that some part and/or some portion of the Award can be retained and/or for remaining part the remand would serve the purpose. The additional reply so filed deals with the whole claim as raised by the Respondent. The part remand or remand for particular clauses/issue is of no use. Therefore, there is no option, but to quash and set aside the whole Award. It is not severable. Resultantly, the following order :

(I) The impugned Award dated 16 April 2009 is quashed and set aside;

(II) The Tribunal is directed to reconsider the matter, by giving an opportunity to both the parties, preferably within four months from the date of the receipt of the order.

(III) The parties to take steps accordingly.

(IV) The Petition is accordingly allowed. There shall be no order as to costs.