
(2014) 01 BOM CK 0086
In the Bombay High Court
Case No : Arbitration Petition No. 90 of 2011

Reliance Securities Limited

APPELLANT

Vs

Mr. Badrinath, M. Bodhai and Principle Investments

RESPONDENT

Date of Decision : 27-01-2014

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 34

Citation : (2014) 4 ALLMR 817 : (2014) 4 BomCR 402 : (2014) 2 MhLj 697

Hon'ble Judges : N.M. Jamdar, J

Bench : Single Bench

Advocate : Deepak Dhane, for the Appellant; Vibhor D. Barla, instructed by Mr. Vikas J. Takalkar, for the Respondent

Final Decision : Dismissed

Judgement

N.M. Jamdar, J.—By this petition, the Petitioner seeks to challenge the Award passed by the Sole Arbitrator appointed under the bye-laws, rules and regulations of the National Stock Exchange of India Limited. The Petitioner is a member of National Stock Exchange and Bombay Stock Exchange and is a stock broker. Respondent No. 1 is a constituent registered with the Petitioner. Respondent No. 2 is a Sub-Broker affiliated to Petitioner and registered with the Securities and Exchange Board of India Act, 1992-SEBI. The Respondent No. 1 is a resident of village Saikheda, taluka Niphad, District Nashik. He runs a medical shop in the village.

2. On 28 December 2006, Respondent No. 1 approached the Petitioner for opening a Trading account. A Member Client Agreement and other documents were executed between the parties. It is a case of the Petitioner that the Respondent registered himself as an On-line client of the Petitioner and voluntarily had opted for digital mode of communication. On 20 May 2007 there were certain transactions in the account of Respondent No. 1. According to the Petitioner, the Petitioner furnished a Contract Note for the transaction executed on 28 May 2007. On 23 June 2009, the Respondent No. 1 filed a complaint with

the Investor Grievance Redressal Cell-IGRC of National Stock Exchange which was disposed of on 12 January 2010. On 19 April 2010, the Respondent No. 1 filed Statement of Claim before the Arbitrator who was appointed as per rules and bye-laws of National Stock Exchange. The Petitioner filed it's reply and both the parties filed their Written Submissions. By Award dated 18 August 2010, the Sole Arbitrator directed the Petitioner and the Respondent No. 2 to pay an amount of Rs. 4,13,867/- along with interest at the rate of 12 % p.a. from 1 July 2007. The Petitioner filed an appeal before the Appeal bench of National Stock Exchange which was disposed of as not maintainable. Thereafter the present petition u/s 34 has been filed.

3. The learned Arbitrator came to the conclusion that the claim filed by the Respondent No. 1 is within limitation. The learned Arbitrator also held that fraud was played upon the Respondent No. 1 in as much as he was kept in the dark about the transactions routed through the account of Respondent No. 1 without authority of Respondent No. 1. The learned Arbitrator held that from the facts on record it was clear that the Respondent No. 1 was not aware about the transactions carried through his account. The learned Arbitrator accordingly proceeded to pass the award which is impugned in the present petition.

4. The learned counsel for the Petitioner submitted that the claim of the Respondent No. 1 was not within limitation and the Circular dated 2 December 2009 by SEBI relied upon by the Arbitrator was not applicable. He submitted that considering the starting point of limitation as 17 March 2009 is incorrect and 1 June 2008 ought to have been taken as starting period of limitation. On merits he submitted that the Respondent No. 1 had executed an Agreement for on-line transaction and he was supplied the Security Token Key and had also carried out transactions through that account. The learned counsel submitted that by executing an Agreement and acting upon it Respondent No. 1 had agreed that he will receive communications in digital form. He further contended that the findings recorded by the learned Arbitrator are not borne out by the facts in that regard and the Arbitrator has based its findings on pure conjectures. He submitted that the findings regarding the Respondent No. 1 not possessing a computer are not relevant as the Respondent No. 1 had voluntarily agreed to enter into a transaction of on-line trading. He submitted that the Award, being contrary to the material on record and based on conjectures should be set aside.

5. The learned counsel for the Respondent No. 1 submitted that Respondent No. 1 had not opted for accepting communications in digital form as all the communications including the Contract Notes etc. were to be sent through E-mail id only if it was so requested. He submitted that there was no such specific request ever made. He further submitted that the fact that the Respondent No. 1 is deceived and transactions were carried out without his knowledge are findings of fact and should not be disturbed in a Petition u/s 34 of the Arbitration and Conciliation Act, 1996. He submitted that Circular issued by SEBI is applicable and date of knowledge is rightly considered by the learned Arbitrator. He

submitted that even otherwise, claim is within the period of six months.

6. As regards the issue of limitation, the learned Arbitrator has held that fact of fraud was discovered by the Petitioner when he received Statement of accounts from the Respondents on 17 March 2009. The Respondent No. 1 could not have raised dispute unless he knew about the details of the transactions. The learned Arbitrator has excluded the time taken by the Investors Services Cell for negotiations and has held that the Respondent No. 1 was entitled to a period of exclusion from one month from 19 May 2009. The argument of the learned counsel for the Petitioner states that the Circular issued by SEBI cannot be relied upon since it does not refer to date of knowledge, cannot be accepted. When the Circular refers to limitation period of six months from the end of quarter during which disputed transactions were executed, it obviously means the knowledge of disputed transactions. No fault can be found with the learned Arbitrator for placing reliance of this Circular and construing to 17 March 2009 as the starting period of limitation.

7. As far as the merits of the claim are concerned, no doubt learned Arbitrator has made sweeping observations about the on-line transactions in general which may not be warranted, as on-line trading is an established mode of transactions entering into share transactions, one question remains whether the Respondent No. 1 had authorised the Petitioner to carry on transactions which were reflected in his account. The welcome letter issued by the Petitioner can be read as giving an option to the Respondent No. 1 for receiving communications in digital form. The learned counsel for the Petitioner submitted that the option is only for password and not for receiving the communications. The learned Arbitrator has construed this document as giving an option to the Respondent No. 1. On the face of it two constructions can be placed on the welcome letter, one of which has been accepted by the learned Arbitrator. It is not for me to set aside the Award only on the ground that other possible construction of this document should have been followed by the Arbitrator. The Arbitrator has held that merely because the Agreement was signed, in absence of a specific request by the Respondent No. 1 correspondence ought not to have been routed through the E-mail account.

8. The main question to be decided is whether the Respondent No. 1 had knowledge about the transaction from his account. In a given set of facts a person who has entered into an agreement for on-line trading may not be able to complain that information should not have been sent to him by an E-mail. The learned Arbitrator has however come to a conclusion that Respondent No. 1 was unaware of the transactions, considering the background of the Respondent No. 1. The learned Arbitrator has considered the totality of the circumstances to come to a finding that Respondent No. 1 was unaware of the transactions traded in his account. The learned Arbitrator has considered facts such as the Petitioner being from a rural area, without a computer, running a medical shop, and the volume of transactions carried on his account. These cannot be considered as

irrelevant considerations for coming to a conclusion that the Respondent No. 1 was aware of the transactions. The learned Arbitrator has found that it was inconceivable that such voluminous trading could have been carried on in the account of Respondent No. 1. The learned counsel for the Respondent No. 1 has placed a volume giving details of such on-line transactions and they indeed show several transactions have been carried out from this account.

9. All facts mentioned above which formed basis of factual findings, are part of the record and the learned Arbitrator has used them to infer that the Respondent No. 1 was unaware of the transactions. This is a pure finding of fact. It is not that in all cases of on-line trading a person can be encouraged to dispute the trading but there could be cases where a party is genuinely unaware of the transactions. The learned Arbitrator has found this case to be as one such case after considering the facts on record.

The jurisdiction u/s 34 being limited, no interference is warranted in the impugned award.

The petition is accordingly rejected.