

2014 (1) CTC 87

IN THE HIGH COURT OF MADRAS

V. Ramasubramanian, J.

O.P. No.409 of 2008

4.12.2013

A. Chandrasekaran

.....Petitioner

Vs.

Yoha Securities Limited, T. Nagar, Chennai-17. 2. M.V. Badrinath, Sole Arbitrator.
National Stock Exchange of India Limited, Chenna-4

.....Respondents

Indian Contract Act, 1872 (9 of 1872), Section 28 — Limitation Act, 1963 (36 of 1963), Section 29(2) — National Stock Exchange Bye-laws, Bye-law (3) of Chapter XI — Securities Contracts (Regulation) Act, 1956 (42 of 1956), Section 9(1) — Limitation period prescribed under Bye-laws framed by Stock Exchange for resolution of disputes by Arbitration — Legality — Bye-law prescribes six months' time for reference to arbitration — Bye-laws framed by Stock Exchange are only in realm of contract — Arbitration Agreement between subscriber and service provider is an implied contract — Contract simpliciter entered into between two parties including contract into by Statutory Authority or State itself cannot be construed as "Law" — Limitation period prescribed under Bye-law for reference to Arbitration is violative of Section 28 of Contract Act — Award passed by Arbitrator holding that claim is barred by Bye-law cannot be sustained — NSE directed to nominate an Arbitrator to resume hearing of claim — Award set aside.

Facts : The claim raised by subscriber of National Stock Exchange of India before the Arbitrator was rejected by holding that the claim is barred by limitation under Bye-law (3) of Chapter XI, NSE Bye-laws.

Held : But the above Hierarchy of Laws do not take within its fold, a contract simpliciter entered into between two parties including a contract entered into by a Statutory Authority or the State itself. On the contrary, there are indications in the Contract Act itself to the effect that there is a distinction between what we perceive as law and what we perceive as a contract. The very definition of the expression "contract" as found in Section 2(h) of the Contract Act is that "it is an Agreement enforceable by law". Section 21 of the Contract Act makes a contract not voidable merely because it was caused by a mistake as to any law in force in India. The question as to whether the objects and considerations of an Agreement are lawful or not, in terms of Section 23, has also to be determined only with reference to what the law is. Therefore, a contract pure and simple, entered into between two parties, cannot be taken to be a special or local law so as to fall within the scope of Section 29(2) of the Limitation Act, 1963. [Para 24]

But the Memorandum and Articles of Association of a Company, do not constitute either a local or special law. Despite the Memorandum and Articles of Association of a Company taking the form prescribed by statute and despite the fact that any alteration thereto requires the approval of the Central Government, they are only in the realm of a contract. By the same analogy, the Bye-laws framed by a Stock Exchange, despite being approved by SEBI, continue to be only in the realm of a contract. If so, Section 29(2) of the Limitation Act, 1963 will have no Application. Consequently, Section 28 of the Contract Act would be a bar. [Para 28]

In view of the above, I hold that the Arbitral Award dated 5.11.2007, holding the claim of the Petitioner to be barred by Bye-law 3, cannot be sustained. If it cannot be sustained and if the Arbitrator is obliged to consider the claim of the Petitioner on merits, the only option available to me is to take recourse to Section 34(4) of the Act. Section 34(2) merely enables this Court to set aside an Arbitral Award. The question as to whether the power to set aside would include a power to remand the matter back or to modify the Award, has become a debatable one. Therefore, the only way of resolving the present stalemate is to take recourse to Section 34(4). [Para 31]

CASES REFERRED

Biba Sethi v. Dyna Securities Ltd., MANU/DE/1325/2009	16
Explore Computers Pvt. Ltd. v. Cals Ltd., 2006 (131) DLT 477	17
H.P. State Forest Company Ltd. v. United India Insurance Co. Ltd., 2009 (2) SCC 252..	18, 29
HCG Stock & Share Brokers Ltd. v. Gaggar Suresh, 2007 (73) SCL 1 (SC)	19
HDFC Securities Ltd. v. S. Vivekanandan, 2010 (5) MLJ 686.....	18, 30
National Insurance Co. Ltd. v. Sujir Ganesh Nayak & Co., 1997 (2) CTC 275 (SC)	17
Pandit Construction Company v. Delhi Development Authority, 2007 (3) Arb.L.R. 205	17
Vulcan Insurance Co. v. Maharaj Singh, AIR 1976 SC 287.....	13

Ramakrishnan Viraraghavan, Advocate for Petitioner.

K.G. Vasudevan, Advocate for Respondent No.1.

PROCEEDINGS IN O.P. ADJOURNED BY 6 MONTHS WITH DIRECTION

Prayer : Petition under Section 34(3) of the Arbitration and Conciliation Act, 1996 to set aside the Arbitration Award dated 5.11.2007 in AM. No.CM/C 0059/2007 passed by the Second Respondent with costs.

JUDGMENT

1. This is a Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996, seeking to set aside an Arbitration Award passed by the Second Respondent-Arbitrator.

2. The Petitioner opened a trading account with the First Respondent and started operations from December 2003. It appears that by the end of 2003-2004, the Petitioner was holding huge stocks traded through the First Respondent. The Account Number of the Petitioner was SC-1.

3. It was the claim of the Petitioner that he was introduced to the First Respondent by a Sub-Broker by name T.K. Srinivasan, to whom, commission used to be paid. But, after the relationship between T.K. Srinivasan and the First Respondent got severed, the Petitioner started making a claim for bringing down the brokerage structure. At one time, the

123

Petitioner claimed that there was an excess brokerage of ₹7,80,000/- and the Petitioner protested on 8.2.2005. Thereafter, the Petitioner filed a Criminal Complaint on the file of the VI Metropolitan Magistrate, Egmore. It appears that the matter was referred under Section 156(3) of the Code of Criminal Procedure.

4. The Petitioner stopped trading from 8.2.2005. Thereafter, the Petitioner made a claim with the National Stock Exchange and invoked the Arbitration clause and the matter was referred to the Second Respondent for arbitration. Noting that the last trade was made on 8.2.2005, but the claim was made to the concerned Authority in the National Stock Exchange only on 17.10.2006 and that the Applicant actually filed an Application for Arbitration only on 11.5.2007, the Arbitrator passed an award rejecting the claim, on the basis of the limitation prescribed by Bye-law 3 of Chapter XI of NSE Bye-Laws, by his Award dated 5.11.2007. Therefore, the Petitioner is before this Court.

5. It must be mentioned here that after the Petitioner filed an Application on 11.5.2007 for Arbitration, the Respondent raised the question of limitation. Therefore, the Petitioner also filed an Application before this Court under Section 43(3) of the Act, seeking extension of time. It was filed on 22.10.2007, but was not pursued.

6. In the above background of facts, the only question that arises for consideration is as to whether the Arbitrator was right in rejecting the claim on the ground of limitation or not.

7. Before I go into the said question, it should be pointed out that according to Mr. K.G. Vasudevan, learned Counsel appearing for the First Respondent, the Arbitration award was not solely on the basis of limitation, but was actually on merits also. Drawing my attention to Paragraphs 4.2, 4.3, 4.4 & 4-5, the learned Counsel appearing for the First Respondent submitted that the whole claim of the Petitioner was found to be baseless by the Arbitrator and that in addition, the Arbitrator also rejected the claim on the basis of limitation.

8. But I find that in the last portion of Paragraph 4.1 of the award, the Arbitrator has stated "*at the outset, the present Application for Arbitration was barred by limitation.*" Therefore, I think the observations made from Paragraphs 4.2 to 4.5 were only incidental and cannot be considered to be a pronouncement on merits. Moreover, the actual findings of the Arbitrator are recorded only in Chapter V of the award from Paragraphs 5.1 to 5.4. Therefore, I do not consider the award to be one on merits.

9. Coming to the question of limitation, it is seen that Bye-law 3 of Chapter XI of NSE Bye-laws, as it stood at that time, reads as follows:

"All claims, differences or disputes referred to, shall be submitted to Arbitration within six months from the date on which the claim, difference or dispute arose

