

Deepika Vijay Nihalani Vs INA Stock Broking Co. Pvt. Ltd.

Court: Bombay High Court

Date of Decision: Jan. 15, 2010

Citation: (2010) 2 BomCR 7

Hon'ble Judges: Mohta Anoop V., J

Bench: Single Bench

Advocate: Prakash Punjabi, for the Appellant; Simil Purohit, instructed by Jayesh Patel, for the Respondent

Final Decision: Dismissed

Judgement

Mohta Anoop V., J.

The petitioners, of these two petitions, are in relation. The respondent (original applicant) is common. The basic

defence/plea as raised before the Arbitral Tribunal under the Rules and Bye-laws and Regulations of Bombay Stock Exchange Limited are similar.

The Arbitrator was also same. Therefore, this common judgment/order.

2. In Arbitration Petition No. 112 of 2009 the challenge is to the award in Arbitration Reference No. 71 of 2008 dated 29th September, 2008

whereby, the petitioner (original respondent) has been directed to pay to the respondent (original applicant) a sum of Rs. 8,69,234.17 along with

interest @ 18% p.a. from the date of reference till payment and or realization.

3. In Arbitration Petition No. 113 of 2009 the challenge is to the award in Arbitration Reference No. 70 of 2008 dated 29th September, 2008

whereby, the petitioner (original respondent) has been directed to pay to the respondent (original applicant) a sum of Rs. 2,39,385.10 along with

interest @ 18% p.a. from the date of reference till payment and or realization.

4. In both the matters, there is a clear finding given as the petitioner (original respondent) has not persuaded the counter claim and therefore, both

the counter claims of the petitioners were disposed of as not pressed. It also means that the petitioner's allegations that the respondent had done

bogus trading without any instructions/or authorization also remained unproved. There is no other material to support the said allegations of bogus

or uninstructed trading or business by the respondent. The defences raised by both the parties in Reference No. 70/2008 Vijay and Reference No.

71 of 2008 Ms. Dipika, also remained uncorroborated by any documents or material. The submission that the respondent had taken blank

documents and did not give any information about the shares or transactions is also not supported by any material. The petitioners are father and

daughter and both are staying at the same place. Both the parties were represented by the common Advocate.

5. The case of the petitioner in Arbitration Petition No. 112 of 2009 in short, is as under:

6. In the month of January, 2007, one Mr. Amish Mehta of the respondent approached the petitioner and represented that the respondent is

dealing in shares of good companies and assuring of very good return on investments, made the petitioner sign certain blank documents.

7. The respondent, without any instructions or payment from the petitioner kept on trading in the name of petitioner in the stock market without

sending any contract notes or bills or even demanding any payment from the petitioner and allowed to build up a huge debit balance of Rs.

8,69,234.17 in the alleged account of the petitioner with the respondent.

8. On 22/4/2008, the respondent through its Advocate's notice and called upon the petitioner to pay a sum of Rs. 2,39,385.10 paise being the

alleged debit balance standing in the account of the petitioner with the respondent.

9. On 29/4/2008, the petitioner received the said notice dated 22nd April, 2008.

10. On 12/5/2008, the petitioner through her Advocates replied to the said notice dated 22nd April, 2008, and denied her liability to pay any

amount to the respondent. This was never counter or even replied by the respondent.

11. The respondent filed Arbitration Reference No. 71 of 2008 before the Arbitration Committee of the Bombay Stock Exchange.

12. The petitioner filed affidavit in reply to the Arbitration Reference. The respondent filed rejoinder.

13. On 29/9/2008, an award passed by the learned Arbitrator appointed by the Arbitration Committee of the Bombay Stock Exchange.

14. On 6/10/2008, the award received by the petitioner.

15. The case of the petitioner in Arbitration Petition No. 113 of 2009 in short is as under:

16. In the month of January, 2007, one Mr. Amish Mehta of the respondent approached the petitioner and represented that the respondent is

dealing in shares of good companies and assuring of very good return on investments, made the petitioner sign certain blank documents.

17. In the month of February, 2007, the petitioner handed over shares worth Rs. 5,00,000/- to the said Mr. Mehta of the respondent.

18. In July, 2007, at the request of the said Mr. Mehta of the respondent, the petitioner deposited a sum of Rs. 50,000/- with the respondent.

19. The respondent, without any instructions from the petitioner kept on trading in the name of petitioner in the stock-market without sending any

contract notes or bills or even demanding any margin money in spite of the fact that there was allegedly debit balance in the account of the

petitioner with the respondent.

20. On 22/4/2008, the respondent through its Advocate's notice and called upon the petitioner to pay a sum of Rs. 2,39,385.10 paise being the

alleged debit balance standing in the account of the petitioner with the respondent.

21. On 29/4/2008, the petitioner received the said notice dated 22nd April, 2008.

22. On 12/5/2008, the petitioner through his Advocates replied to the said notice dated 22nd April, 2008, and denied his liability to pay any

amount to the respondent. This was never counter or even replied by the respondent.

23. The respondent filed Arbitration Reference No. 70 of 2008 before the Arbitration Committee of the Bombay Stock Exchange.

24. The petitioner filed affidavit in reply to the Arbitration Reference. The respondent filed rejoinder.

25. On 29/9/2008, an award passed by the learned Arbitrator appointed by the Arbitration Committee of the Bombay Stock Exchange.

26. On 6/10/2008, the award received by the petitioner.

27. The respondents case is based upon an agreement dated 1st February, 2007 and the consequential Account Nos. 74207 (Vijay) and 74208

(Ms. Dipika) as client code for trading through the respondent and also the risk disclosure documents dated 8th June, 2007 (Ms. Dipika) and 1st

February, 2007 (Vijay). The petitioners have accepted and acknowledged the contract notes without any objection and all trades were done as

per the specific instructions of the petitioners. The claim so raised were based upon the debit balance as on 13th March, 2008/19th March, 2008

for the amount of Rs. 2,39,385.10 (Vijay) and Rs. 8,69,234.17 (Ms. Dipika) respectively, along with the interest @ 18% p.a. from the respective

dates.

28. The parties appeared and based upon the material, the two different awards in questions have been passed.

29. The written and signed documents are not in dispute. The submission that those documents were obtained by misrepresentation or they signed

in blank and therefore, not binding, has also no force, in view of the transaction and the payment of deposit of Rs. 50,000/- and handing over of

alleged shares of Rs. 5,00,000/- to Mr. Mehta.

30. No demand of any margin amount as alleged, in spite of debit balance, that itself cannot be the reason to overlook the signed documents and

the undertakings. The respondent in a given case, still entitled to recover the margin money if already deposited on behalf of the respondent with

the concerned authorities, subject to the Rules and Regulations. The fact that the petitioners had already handed over the shares of Rs. 5,00,000/-,

which in a given case, the respondent would consider the same as security towards the margin money. No margin money were demanded. The

petitioner never objected for keeping possession of such shares of Rs. 5,00,000/-.

31. The facet of signing of a letter of authority by the petitioner having Clause 10 which is as under:

To issue me/us a consolidated contract note and also in order to provide order confirmation/trade modification/cancellation slips and trade

confirmation slips in the normal course of dealings and if needed, I/we shall ask for the same.

32. There is nothing brought on record to show that the petitioners, at any point of time, called upon the consolidated contract notes or any slips

nor about his case of pledge of share or dealing in shares though they entered into the documents as referred above.

33. The petitioners who made specific averments and raised specific pleadings, failed to substantiate the same by leading any contra material

whereas, the respondents have placed on record duly executed and signed documents as referred above, provided that the petitioner had

complied and completed all the formalities by filling Depository Participant Account opening Form, Clients Registration Forms, as per the Bye-

laws and Rules of SEBI and got enrolled them as constituent and became beneficial owner of Depository Participant (DP). They also provided all

the personal documents like the Ration Card, PAN Card, Driving License, Bank Account Statement, Photographs and specimen signature, apart

from undertaking and letter of authorities as referred above. Such commercial document by knowing fully its effect and its use, just cannot be

permitted to deny without contra material on record. They are bound by the same. In view of above, it is clear that the Arbitration under the Rules

and Bye laws and Regulations of Bombay Stock Exchange (the Bye-laws) as filed and as decided even though the existence of the agreement itself

was agitated, as the difference and dispute arising out of the agreement/contract between the parties, as contemplated under the Bye-laws, 226(a)

and 226(c). (Hemendra V. Shah Vs. Stock Exchange, Bombay and others, .

34. The defence, therefore, so raised by the petitioners and as failed to substantiate the same, also goes against the petitioners. It, in fact,

substantiate the case of the respondent that the petitioners are raising false and bogus defence.

35. The respondent's case of giving credit for the petitioner for every transaction and the statement of account and the confirmation of Account by

acknowledging the same by the petitioners, is also substantiated by the documents and the same cannot be controverted by the petitioners

including deposit of Rs. 75,000/- on 27/2/2007 and Rs. 50,000/- on 16/7/2007, as mentioned in the affidavit respectfully, further supports the

case of the respondents.

36. The submission therefore, with regard to non-supply of contract notes and the submission on the binding constituent, have also no force.

37. In view of above, the reasoning so given by the Arbitrator cannot be said to be beyond the record and the law. The view so expressed based

upon the material available also cannot be stated to be perverse or contrary to law. I see, there is no reason to interfere with the same.

38. Resultantly, both the petitions are dismissed with no order as to costs.