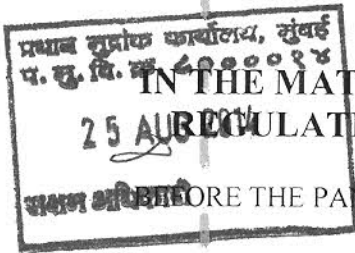




महाराष्ट्र MAHARASHTRA

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LK 885564



IN THE MATTER OF ARBITRATION UNDER BYE-LAWS, RULES AND
REGULATIONS OF MCX STOCK EXCHANGE LIMITED (MCX-SX)

BEFORE THE PANEL OF APPELLATE ARBITRAL TRIBUNAL AT MUMBAI COMPRISING:

- 1 Mr S C Gupta
- 2 Mr Babulal Kisanlal Mundada
- 3 Mr Pankaj M Patel

Presiding Arbitrator
Co - Arbitrator
Co - Arbitrator

APPEAL ARBITRATION MATTER NO MUM- 01/2014

BETWEEN

M/S FAIRWEALTH SECURITIES LIMITED
UG-3, SOMDATT CHAMBERS 11,
9, BHIKAJI CAMA PLAZA,
DELHI-110066

APPELLANT
(ORIGINAL RESPONDENT)

AND

MR LIYAKAT ALI KHAN,
A-1-201, AL SAFA,
MILAT NAGAR,
OSHIWARA, ANDHERI (WEST)
MUMBAI-400053

RESPONDENT
(ORIGINAL APPLICANT)

Appearances

For Appellant

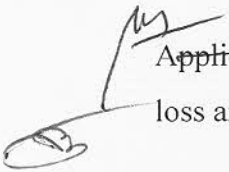

Mr Amit Gautam, AVP -Legal


For Respondent

Mr Liyakat Ali Khan- in person

AWARD

1. M/s. Fairwealth Securities Ltd., the Appellant (the original Respondent), has preferred an appeal dated 30th June, 2014 against the award dated 26th May, 2014 (hereinafter referred to as the impugned Award) passed by the sole arbitrator of MCX-SX (hereinafter referred to as the lower Tribunal) in favour of the original Applicant & the Respondent herein, Mr. Liyakat Ali Khan. The Arbitration Department of MCX-SX has referred the said Appeal to this appellate panel of arbitrators (for short the Appellate Panel) for adjudication under the Bye-laws, Rules and Regulations of the Exchange. The Appellate Panel held its hearing on 3rd September, 2014 when AVP - Legal, Mr. Amit Gautam appeared on behalf of the Appellant. The Respondent was present in person. As soon as the matter was taken up for hearing, Mr. Amit Gautam, the authorized representative of the Appellant fairly submitted that he was not pressing the allegations of biasness made against the sole arbitrator in the Appeal and no order is required to pass under Section 12 of the Arbitration and Conciliation Act, 1996. There after the authorized representative of the Appellant was called upon to address his arguments on merit on the appeal preferred by it. After the detailed arguments of both the parties were over, the hearing of the appeal was concluded for passing of the Award.
2. Before dealing with the Appeal, we may briefly refer to the facts of the dispute between the parties leading to the arbitral reference. It is the case of the original Applicant that he was out of India from 17th August, 2013 to 24th August, 2013. According to him, during his absence, unauthorized trades (in currency derivatives) were executed in his trading account except for the trade executed on 23rd August, 2013. He had also alleged that thousands of trades were executed in his account illegally without his consent or knowledge putting him into loss of Rs 179821/-. He had further alleged in the IGRC meeting, ^{that} the authorized representative of the Original Respondent could not provide proof of his consent in writing or audio conversation, if any, recorded in respect of placement of orders through telephone lines.
3. The original Respondent and the present Appellant in its written statement filed before the lower tribunal contended that the allegations by the Respondent were false, baseless and afterthought and transactions were executed as per his consent. On merits, it had stated that the Respondent had carried over a short position of 100 quantity of USDINRF280813 from 14th August, 2013 to 26th August, 2013 and because of this, the Applicant would have incurred a loss of Rs 302680/- in his account. It alleged that the Respondent was trying to own the profit and disown the losses in his trading account. It also stated that the Respondent had not given any basis for his claim of Rs 179821/-. It also submitted that the

 Applicant sought relief in the lower tribunal by Respondent was based on the hypothetical loss and therefore the claim of the Respondent was liable to be dismissed. 

4. The lower Tribunal, after hearing the parties at length and on the basis of the documents and other material on record, found substance in the averments made by the Original Applicant, allowed his application and passed an award dated 26th May, 2014 directing the Original Respondent to pay to the Respondent a sum of Rs 179821/-.
5. Aggrieved by the award passed by the lower Tribunal, the Appellant has preferred the present appeal and has assailed the legality of the Award of the Lower Tribunal on several grounds. It has alleged that the Lower Tribunal had passed the award without there being any evidence in support of claim and that the Award has been passed on the basis of the hypothetical claim and on the basis of contradictory evidence. It has further submitted that even though the Respondent had not given any calculation in support his claim, the Lower Tribunal still passed the award in favour of the Respondent which is contrary to facts and law. The Appellant has stated that the Lower Tribunal, inter alia, failed to adjudicate that the Respondent, at his fancy, owned the profits and disown the losses in his trading account and for that reason had not disputed the trades executed on 23rd August, 2013. The Appellant has referred to the two emails dated 29th August, 2013 and 25th September, 2013 sent by the Respondent and contended that the Respondent had narrated a false story in support of his claim to own the trades executed on 23rd August, 2013 in the mail of 25-09-2013 (contents of which is different than the contents of 29-08-2013) and disowned the others as there was a huge profit on the trades done on 23rd August, 2013. The Appellant has stated that the Lower Tribunal failed to adjudicate that the Respondent had admittedly held a short position on 100 lots from 14th August, 2013 and if the alleged trades were not executed by the Respondent from 17th August, 2013 to 24th August, 2013, there would have been a loss of Rs 302680/- in his trading account. On the basis of its submissions, the Appellant has prayed for setting aside the Award dated 26th May, 2014 passed by the Lower Tribunal as also a direction to the Respondent to pay the costs to the Appellant.
6. The Respondent, in his reply dated 25th July, 2014, has submitted that the Award dated 26th May, 2014 passed by the Lower Tribunal was made after correctly considering and analyzing all evidences, facts and arguments placed on record by the parties. He further submitted that the unauthorized trades were executed during the period 17th August, 2013 and 24th August, 2013 when he had gone out of India. He also stated that he had not given any instructions for trades done on 19th, 20th and 21st August, 2013 and he had placed order for trades executed only on 23rd August, 2013. Due to unauthorized trades, he had suffered a loss of Rs 179821/- between the period 17th August, 2013 and 24th August, 2013. He also stated that the Appellant has failed to produce any evidence to prove that the impugned transactions were instructed by him. In the premises, the Respondent has submitted that the Lower Tribunal had passed the Award after proper consideration of all relevant facts and arguments, and therefore, did not require any interference. 

7. On merits, Mr. Gautam contested the Award of the Lower Tribunal is erroneous on several grounds. He contended that the Lower Tribunal passed the Award in favour of the Respondent despite the fact that he had revised his claim thrice but failed to provide any calculation in support of his claim. He also submitted that the Lower Tribunal failed to appreciate and take into account that there were lots of inconsistencies in the claim made by the Respondent. He submitted that the Respondent had initially, by his email dated 29th August, 2013 stated that he was out of India from 17th August, 2013 to 24th August, 2013 and that all the trades executed in his trading account were unauthorized but on realizing that there were huge profits in the trades on 23rd August, 2013 he, in his email dated 25th September, 2013 to the Exchange, stated that trades executed in his account from 17th August, 2013 to 24th August, 2013 except for the trades done on 23rd August, 2013 were unauthorized. It was also contended that it was not in dispute that the Respondent had carried over a short position of 100 lot of USINRF280813 from 14th August, 2013 and if the alleged trades were not executed, from 17th August, 2013 to 24th August, 2013, then there would have been a loss of Rs 302680/- due to outstanding 100 lots of USINRF280813. Mr. Gautam also submitted that the Award passed by the Lower Tribunal being unfair and unreasonable, and having been passed without any legal basis, deserves to be set aside by the Appellate Tribunal. Finally the Appellant submitted that there was no prayer in the claim filed by Respondent. In support, Appellant cited the Supreme Court Judgement in the case of Manoharlal (D) Lrs. Vs. Ugrasen (D) by Lrs. in Civil Appeal 973 of 2007 where Supreme Court held that in the absence of prayer no relief can be granted by the Adjudicating authority. In this case also in the absence of prayer the claim of Respondent should have been rejected.
8. The Respondent, in his arguments, stated that he was out of India from 17th August, 2013 to 24th August, 2013 and except for the order dated 23rd August, 2013 all other trades executed during this period in his account were unauthorized. He also submitted that the Appellant had failed to produce the call log or any evidence to prove that he had placed the orders during the period when he was out of India. He, therefore, submitted that there was no merit in the appeal preferred by the Appellant and that the Award passed by the Lower Tribunal was justified.

FINDING AND REASONING:

9. We have heard the detailed arguments advanced by both the parties as also gone through the documents and other material on record. At the outset, we may state that even though an averment of bias was raised as one of the grounds in the grounds of appeal, at the time of oral arguments, Mr. Amit Gautam, the Authorized Representative of the Appellant, fairly stated that he was not pressing the ground of bias and would confine his submissions only on the merits of the case. We, therefore, reject the plea of bias as a ground for setting aside impugned award.
10. It is not in dispute that the Respondent was out of India from 17th August, 2013 to 24th August, 2013. It is also admitted fact that he was holding a short position of 100 lot of

USINRF280813 from 14th August, 2013 and if no trades were executed during this period, there would have been a loss of Rs 302680/- in his account. The Respondent has not been consistent in his claim and had revised his claim thrice without giving any reason why he revised his claim from 179821/- on 7th February, 2014, to Rs 263272/- on 23rd April, 2014 and again on 28th April, 2014 to Rs 417844/-. There is also inconsistency in his claim on the dates on which the unauthorized trades were executed in his account. The Respondent had originally, in his email dated 29th August, 2013, claimed that all trades executed in his account were unauthorized. Subsequently, in his email dated 25th September, 2013, between 17th to 24th August, 2013, he claimed that all trades executed in his account from 17th August, 2013 to 23rd August, 2013 except the trade done on 23rd August, 2013 were not authorized by him. We agree with the observation of Sole Arbitrator in Clause 33 of the Award dated 26-5-2014 that owning transaction of 23-8-2013 by Original Applicant, Respondent herein is an afterthought. No doubt, the Appellant has failed to produce any evidence to prove that the Respondent had authorized the trades during the disputed period. The explanation that the call log was not available due to technical reasons as same got corrupted does not sound very convincing but that in itself is not fatal to the case of the Appellant as only, if at all, adverse presumption can be drawn for non-production of documents but that adverse presumption does not anyway help the Respondent in the present case. The contradictions in the case of the Respondent are such that they render his claim as highly suspect. The claim made by the Respondent was for the loss of Rs 179210/- i.e. for the losses due to trades on 20th and 21st August, 2013 (Rs 127731/- on 20th August and Rs 52090/- on 21st August, 2013) but nothing was said about the losses on 19th August and 22nd August on which dates also number of transactions were executed in his account and no explanation was given by the Respondent. Also, in the IGRC meeting on 22nd January, 2014, it was observed that he was not firm on the date when he claimed to have placed orders with the Appellant i.e. whether it was 22nd August, 2013 or 23rd August, 2013. The Appellant is right in his submission that the Respondent has failed to establish his case that the trades were unauthorized in his account and even if the trades were held to be authorized even in that case also the Respondent constituent having failed to establish as to how the claim amount has been arrived at, we are left with no other option but to interfere with the impugned award. It is fairly admitted by Respondent that on his outstanding position of 14-08-2013 he would have incurred the loss of Rs. 302680/-. If we consider this loss which is not considered by lower bench of Arbitration, no claim would have been payable. There would have been loss amount larger than the claim made by Respondent. It was also urged on behalf of the Appellant that the arbitral tribunal erred in granting the claim of the Respondent in absence of specific prayer to that effect in the claim statement and the award is liable to be set aside on that count also. The Respondent contended that he is a lay man and the award has been passed after considering the material on the record and does not require to be set aside on the ground that there is absence of prayer. If one goes through the statement of claim as filed by the Respondent herein before the Arbitral Tribunal then one can come to an inescapable conclusion that it is in the nature of complaint and that too against a member of IGRC before which he had set out his grievance against

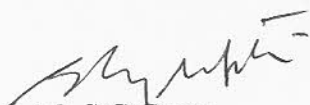
broker. The Statement of Claim which was filed by ^{Law} no stretch of imagination can be treated as statement of claim as understood in the eyes of ^{Law} even if we take most charitable view. The so called statement of claim does not disclose as to how he is entitled to the claim leave aside claim amount and there is absolutely no prayer. It is well settled principle of law that unless there is prayer in the plaint/ Application / Petition no relief can be granted to the party. It is for the party who is seeking relief to plead, prove and make out the case for grant of relief which is prayed and if there is no prayer then party becomes disentitled to the relief and in view thereof also the claim of the respondent was liable to be rejected and hence we upheld the submissions of the Appellant that the Award is vulnerable and liable to be set aside for want of prayer.


We have considered the matter at length and on the basis of the material on record, we are of the opinion that the Lower Tribunal had erred in allowing his claim and the Award dated 26th May, 2014 passed by it needs to be set aside.


11. In view of the above, we allow the appeal dated 30th June, 2014 preferred by the Appellant and set aside the impugned Award dated 26th May, 2014 of the lower Tribunal and hold that the Appellant is not liable to pay any sum to the Respondent herein and make our Award as under:-

AWARD

- (a) The impugned award of the lower Tribunal directing the Appellant herein to pay Rs. 179821/- to the Original Applicant (and the Respondent herein) is set aside.
- (b) There will be no order as to the costs
- (c) This Award is made in three originals. MCX-SX may retain the stamped original and forward one each to the parties.


Mr S C Gupta
Presiding Arbitrator


Mr Babulal Mundada
Co Arbitrator


Mr Pankaj M Patel
Co Arbitrator

Place : Mumbai
Dated : September 24, 2014