

*Subramanian*  
9

Y 588944  
P.S. SHANMUGA SUNDARAM  
STAMP VENDOR,  
L No B4 / 109 / 88  
HIGH COURT CAMPUS,  
CHENNAI-600 104 (TAMIL NADU)

BEFORE THE SOLE ARBITRATOR : S.SUBRAMANIAN

In the matter of Arbitration under the  
Bye-Laws, rules and regulations of  
the MCX – Stock Exchange Ltd.  
Mumbai

ARBITRATION MATTER No. CHE – 01/2011

Mrs. Jayasree Vijayakumar  
26, Thasami Park, Singanallur  
Coimbatore – 641 005  
(Constituent)

Vs.

M/s ANANDRATHI SHARE and  
STOCK BROKERS LTD.  
4<sup>th</sup> Floor, Silver Metropolis  
Jai Coach Compound, Opp. to Bimbisar Nagar  
Goregaon (E) Mumbai 400 063  
(Trading Member)

... Applicant

MCX
Inward No: 9206/412
Inward Date: 25/4/12
Receiver: _____
Signature: <i>[Signature]</i>

... Respondent

*[Signature]*





தமிழ்நாடு தமில்நாடு TAMILNADU  
57065  
21/2.2011

Subramanian  
9

Y 588944  
P.S. SHANMUGA SUNDARAM,  
STAMP VENDOR,  
L No B4 / 109 / 88  
HIGH COURT CAMPUS,  
CHENNAI-600 104 (TAMIL NADU)

BEFORE THE SOLE ARBITRATOR : S.SUBRAMANIAN

In the matter of Arbitration under the  
Bye-Laws, rules and regulations of  
the MCX – Stock Exchange Ltd.  
Mumbai

ARBITRATION MATTER No. CHE – 01/2011

Mrs. Jayasree Vijayakumar  
26, Thasami Park, Singanallur  
Coimbatore – 641 005  
(Constituent)

... Applicant

Vs.

M/s ANANDRATHI SHARE and  
STOCK BROKERS LTD.  
4<sup>th</sup> Floor, Silver Metropolis  
Jai Coach Compound, Opp. to Bimbisar Nagar  
Goregaon (E) Mumbai 400 063  
(Trading Member)

... Respondent

S. Subramanian





Subramaniam  
2.12.2011

V484495  
P.S. SHANMUGA SUNDARAM,  
STAMP VENDOR,  
L No 117/109/88  
HIGH COURT CAMPUS,  
CHENNAI-600 104 (TAMIL NADU)

2

AWARD DATED THIS THE 18<sup>th</sup> DAY OF JANUARY 2012

1. According to the applicant the dispute had arisen under the following circumstances. Her husband Mr.Vijayakumar a retired Airport Director became a client of the respondent in June 2010 to trade in cash segment of the National Stock Exchange. Later in November 2010, he had opened another trading account in the name of the applicant in November 2010 with the same view of trading in cash segment of the National Stock Exchange (NSE). She had signed various documents given by the respondent without going through in detail because of the trust and confidence reposed on the officials of the respondent Branch at

S. S.



Coimbatore particularly of one Salman and one Karthick. She had deposited Rs.5,00,000/- with the respondent. Mr.Vijayakumar was also trading in his account. In April 2011, Vijayakumar was informed about the sale of certain shares from his Demat account to meet his trading obligations. Only at that time her husband started probing into the circumstances which caused the account to go into Debit side. The applicant came to know that the respondent had unauthorisedly diverted her entire deposit of Rs.5,00,000/- to trade in the currency derivatives of the MCX – Stock Exchange right from November 2010 and by during April 2011 all the money was lost due to the trade in MCX – SX. Her husband Mr.Vijayakumar had calculated the loss to both of them due to the unauthorized trades and estimated it as Rs.10,00,000/- (Rupees ten lakhs only). Hence in her request for arbitration she had demanded Rs.10,00,000/- from the respondent as seen from Form I, the arbitral application. Though she had not filed a separate statement of case as contemplated in Regulation 14:10(a)(i), she had signed and enclosed a copy of the complaint given by her husband as her statement. She prays for an award for that amount.

2. The respondent resists the claim. They say in their statement of defence that the applicant had on her own volition became a client of them to trade in the currency derivatives of the MCX-Stock Exchange besides in various segment of other Exchanges and had executed a Member-client agreement and deposited Rs.5,00,000/- in the cash segment of the NSE. She had also executed an authority letter in favour of



the respondent to transfer her funds from one Exchange account to the other Exchange account by the respondent themselves. Later on her own volition she had started trading in the Currency Derivatives of the MCX – Stock Exchange and due to that the amount of Rs.5,00,000/- deposited by her was transferred to her MCX-SX account. All the trades in the MCX Stock Exchange were done as per instructions and with the prior approval of the applicant. Electronic contract notes were sent to the Email I.D. furnished by her, SMS confirmation of trades were sent to the mobile phone No. given by her. Hence they pray that the claim of the applicant to be dismissed.

3. Personal hearing of the parties were heard on 28.11.2011 and 20.12.2011. Applicant was represented by her husband Mr.Vijayakumar. Respondents <sup>was</sup> ~~were~~ represented by Mr.J.Sankaran and S.Muthu the officers attached to the respondent company. The oral representations of the parties were heard. Before the conclusion of the hearing on 20.12.2011 the respondent made a representation that it is not as if the applicant do not know anything about Currency Derivatives since her husband was trading in the same segment in MCX-SX and produced Ledger account. Copy relating to his account. Hence though the personal hearing was concluded the applicant at her request was permitted to file written submissions about the new information given by the respondent. In her written submissions she had stated that her husband had paid Rs.50,000/- on 09.08.2010 only to be credited in his NSE cash segment account. But the respondent officials had misused that and started trading in currency

S. d. h. -



derivatives fraudulently without informing Mr.Vijayakumar. Once he came to know that something different from what he was familiar with is happening he asked Mr.Salman to refund the money and it was refunded by him in six instalments starting from 18.08.2010 to 24.02.2011. Barring that he never traded in Currency Derivatives and produced copies of Bank Account for receipt of that amount. To counter this written submission the respondent had filed a sub-joinder and had stated that it is false to state that Mr.Jayakumar paid that Rs.50,000/- on 09.08.2011 to the credit of his NSE Cash Segment since on the same day he had deposited Rs.1,12,150/- in his NSE Cash Segment account. He is well aware of his trades in the currency derivatives.

4. Though the applicant had sent copies of letters, hard copy of Email, complaints etc. sent to various authorities, the following are the documents which are relevant to the dispute on hand. They are

- A1. Receipt given by the respondent to the applicant on 22.11.2010 for payment of Rs.5,00,000/-
- A2. Ledger Account copy for the trades in Currency Derivatives of the MCX – SX from 01.04.2010 to 31.03.2010 relating to this applicant
- A3. Welcome letter by the respondent to the applicant dated 30.04.2010
- A4. Copies of Bank Pass Book of Mr.Vijaykumar.

The respondent had filed copies of the following documents in support of their defence. They are

R.1 Client registration form and Member-Client agreement between the applicant and the respondent.



R.2 Letter of authority dated 13.11.2010 given by the applicant for transfer of funds from one Exchange to the other in her accounts.

R.3 Log report for sending ECN

R.4 SMS log.

R.5 Ledger statement for the period 24.11.2010 to 17.03.2011 relating to the applicant's Trade in MCX-SX

R.6 Postal Certificate UCP

R.7 Ledger statement for the period from 09.08.2010 to 14.03.2011 in respect of the Trades done by Mr.Vijayakumar in the Currency Derivatives of MCX – SX.

The documents produced by either side were also perused.

5. Now the issues that arise for consideration are

1. Is it true that the applicant had traded in the Currency Derivatives of the MCX – Stock Exchange?
2. Whether the claim of the applicant is true and acceptable? If so to what extent?

6. Before starting to answer the issues, I would like to place on record that it was made clear to the parties that this arbitration is confined only regarding the alleged trades in MCX-SX. It is the case of both sides that the amount of deposit in MCX-SX is only Rs.5,00,000/-. Hence the applicant can make a claim here only for Rs.5,00,000/-. Further it is also seen that it is only the applicant's husband Mr.Vijayakumar who was trading in the applicant's account. So his actions do have an impact in deciding this dispute.





7. **Issue No.1** It is the specific contention of the applicant and Vijayakumar that they did not know anything about Currency derivatives trade. But it is falsified by their own written submission received on 04.01.2012. From Document R7 it is seen that Mr.Vijaykumar had traded in currency derivatives from August 2010 itself. It is not denied by Mr.Vijayakumar. He only says that too was only without his knowledge and the amount of Rs.50,000/- shown in R-7 was given by him for trades in cash segment of NSE. In the written submission it is stated as follows: "Once I came to know that something different from what I am familier with is being done Salman was asked to refund the money". According to Vijayakumar the amount of Rs.50,000/- was refunded in six instalments starting from 18.08.2010 to 24.02.2011. So he came to know in August 2010 itself that Salman had started diverting Vijayakumar's money unauthorisedly to the currency derivatives segment. His contention that the amount was refunded to him is of no importance here. Fact remains that he knows currency derivatives from August 2010. Therefore he who was trading on behalf of the applicant cannot plead ignorance when in the applicant's account also trades were done in currency derivatives, since in her account trades starts from November 2010. Further as rightly pointed out by the respondent if really the applicant had invested that Rs.5,00,000/- to trade in NSE Cash segment, she must have started trading in that segment. But she had not traded in NSE cash segment at all. The respondent says that it is only under the applicant's instructions that amount was diverted to the Currency Derivatives Segment of the MCX – SX. If we have to believe Mr.Vijayakumar then having known that what



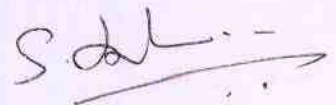


had happened for him in August 2010, he would have been vigilant to know whether the applicant's investment is correctly utilised in cash segment of NSE. Therefore there is no point in projecting a plea that the applicant do not know anything about currency derivatives. If the applicant's case is true, they should have protested immediately after receiving the contract note for the first trade done on 24.11.2010. But protest came for first time only on 05.04.2011. In between forty trades had taken place in her Currency Derivatives account.

To conclude I hold that the applicant or her husband had either traded in the Currency Derivatives of the MCX Stock Exchange themselves or atleast know that such trades are taking place even during the period November 2010 to March 2011.

**8. Issue No.2**

The applicant claims Rs.10,00,000/- on her claim form No.I. As I have already stated that in this arbitration matter, the dispute is for Rs.5,00,000/- only. The applicant do not deny the receipt of contract notes, receipt of SMS and receipt of ledger statement. From the documents A2, R3, 4 and R5 it is clear that her trades had resulted in loss and by 17.03.2011 there was only a Debit balance of Rs.1269.54. Though the applicant had invested Rs.5,00,000/- to trade in NSE cash segment as seen from document. A1, later on the strength of the authority letter document R2 dated 13.11.2010 executed by the applicant the respondent had diverted that amount for her trades in MCX – SX. But it is to be seen whether such transfer of funds from one Exchange account to another exchange account can be accepted as legal and it is in conformity with the





Exchange Regulations. To my knowledge the regulations of the Exchange Ch.XIII Rule 3 expressly recognizes only cash and/or securities as initial margin. In my considered opinion that such transfer of funds from one Exchange account to the other Exchange account cannot be accepted at all. Each exchange have their own regulations and the Trading Member is expected to maintain separate account for each client in each segment in each exchanges. If the transfer of funds from one Exchange account to another exchange account is made automatically by the Trading Member without informing the client it may generate more disputes than smooth running of trades. For example a client may have dispute in certain trade in one Exchange which may show debit balance, while in another Exchange account he may have good credit balance. In such case if the Trading Member transfers the credit balance to the other Exchange account and adjust the disputed debit balance, that may only multiply the disputes. Further the client cannot have a precise idea of his Debit and Credit balance in each account and adjust his trades. We can understand such transfers by the client in some emergency. In this case using the letter of authority the respondent had transferred the entire amount of Rs.5,00,000/- specifically given to be credited to the NSE cash segment trade to the currency Derivative Segment of MCX – Sx, that too without informing the client. That apart the payment was on 22.11.2010 as per Document A1. The transfer of that fund takes place on 24.11.2010. So really the applicant wanted to trade in Currency Derivatives, she could not have mentioned the particular account in which the amount should be





credited. Further the letter of authority R.2 does not seem to be given by the applicant voluntarily rather it appears that it is obtained by the respondent. It is a printed form in which the signature of the client is obtained among other documents. No doubt that the relationship between the client and the Trading Member is that of Principal and agent. The principal can give any authority to the agent so long it is not against any law in force. But if we look into the document <sup>R.</sup>2, it is only beneficial to the respondent and as already stated it does not appear to be a voluntary document. So I am unable to recognize document R2 as an acceptable document. Therefore it follows that all the trades in the Currency Derivatives are non est in the eye of law and hence not acceptable, more so when the trades had taken place without any margin paid by the applicant. So the amount of Rs.5,00,000/- transferred from the NSE trading account to the Currency Derivatives account has to be refunded to the applicant.

9. However, in view of the finding for issue No.1, we have to consider the fact that all the trade had taken place to the knowledge of the applicant or atleast it should be presumed so. Had the applicant objected when she had seen the first contract note on 24.11.2010, further trades would not have taken place and the loss could have been averted. If we assume that the case of the applicant is true then the gross negligence or utter indifference and blind trust reposed or shown by the applicant towards her trade may be the main cause for the loss. Therefore I feel that the loss of Rs.5,00,000/- in the Currency Derivatives to be borne by both parties equally. To conclude I hold that the claim of the applicant is acceptable to the extent of Rs.2,50,000/-.





10. In the result an award is hereby passed directing the respondent to pay to the applicant a sum of Rs.2,50,000/- (Rupees two lakhs fifty thousand only) with interest at 9% per annum from the date of award till the date of payment. Parties to bear their own costs. The cost incurred by the MCX-Stock Exchange towards this arbitral proceedings to be borne by the respondent. The original award engrossed in the stamp paper as contemplated in the Stamp Act to be retained by the Exchange and copy of the award duly signed by the arbitrator to be sent to both parties as contemplated in Section 31 (5) of the Arbitration and Conciliation Act 1996.

Dated and signed at Chennai this the 18<sup>th</sup> day of January 2012

  
**SOLE ARBITRATOR**