

BALMUKAND JOSHI V. SURESH RATHI SECURITIES PVT. LTD.

1. BALMUKAND JOSHI

.....Petitioner(s)

Versus

1. SURESH RATHI SECURITIES PVT. LTD.

.....Respondent(s)

Case No: REVISION PETITION NO. 1178 OF 2021

Date of Judgement: 11 Jan 2023

Judges:

HON'BLE MR. JUSTICE R.K. AGRAWAL, PRESIDENT

For the Petitioner : For the Petitioner : Mr. Balmukand Joshi, In person

For the Respondent : For the Respondent : NEMO

Facts:

Petitioner had a share trading account with respondent broker. Petitioner alleges unauthorized trading was done in his account by respondent causing loss of Rs 1,62,439/-. Petitioner approached arbitrator and award was passed on 18.01.2010. Petitioner also filed consumer complaint before District Forum. District Forum and State Commission dismissed complaint due to existing arbitration award. Revision petition filed before National Commission against state commission order.

Court's Opinions:

It is settled law that once arbitral award is passed, it can only be challenged under Arbitration Act by filing section 34 application. Supreme Court has held that once award is passed,

consumer complaint would not be maintainable. In the present case, the award attained finality as it was not challenged by the petitioner under Section 34 of Arbitration Act. Hence, the consumer complaint is not maintainable as per settled law. No interference warranted in revisional jurisdiction.

Arguments:

By Petitioner:

Seeking recovery of loss caused by unauthorized trading done by respondent in his account.

By Respondent:

Matter already decided by arbitrator and award complied with. Consumer complaint not maintainable.

Referred Laws and Cases:

Reference made to Supreme Court judgment in Navneet Jha vs Magma Shrachi Finance Ltd. Provisions of Arbitration Act 1996 regarding challenging arbitral awards.

Orders:

Revision petition dismissed. No interference in state commission order dismissing consumer complaint.

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Court

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Full Text of Judgment:

1. The present Revision Petition has been filed under Section 21(b) of the Consumer Protection Act, 1986, against the Impugned Order dated 11.11.2021 passed by the Rajasthan State Consumer Disputes Redressal Commission Jaipur (hereinafter referred to as State Commission) in First Appeal No. 1168 of 2011, whereby the State Commission had dismissed the Appeal filed by Sh. Bal Mukand Joshi (hereinafter referred to as the 'Petitioner/Complainant') by affirming the Order dated 06.04.2011 passed in Complaint No. 33 of 2016 by the District Consumer Disputes Redressal Forum, Bhilwara (for short "the

District Forum") vide which the District Forum had dismissed the Complaint filed by the Petitioner/Complainant.

2. Brief facts of the case are that Mr. Bal Mukand Joshi, Petitioner/Complainant opened a share trading Account No. 135 BJ 02 with Suresh Rathi Securities Pvt. Ltd., Opposite Party/Respondent (hereinafter referred to as the Respondent), who is a broker in share market. Petitioner carried out trading like, purchase and sale of share through Respondent, who in turn charged brokerage from the Petitioner. In March 2008, Petitioner purchased some shares through the Respondent, payment for which were made through cheques. Despite making all payments in a timely manner, on 7.8.2010, Respondent sent a message on the cell phone of the Petitioner, making a demand of ₹79,309/- as debit balance in his account. On 3.11.2008, the Petitioner went to Jodhpur in

order to discern the ledger or bill and contract received and discerned the ledger dated 2.4.2008 to 4.11.2008, wherein he found that the Respondent indulged in unauthorized trade through the Petitioner's account. Due to the unauthorized trading carried out by the Respondent through the Petitioner's account, the latter suffered a loss of ₹1,62,439/-. Alleging deficiency in service on the part of the Respondent, the Petitioner filed a Consumer Complaint before the District Forum praying for recovery of his economic losses along with 12% interest, damages for mental agony, expenses of court, fees of court and advocate's fee.

3. The Respondent contested the Complaint before the District Forum and it was submitted that the Petitioner himself has filed Application for referring the matter to Arbitrator before the National Stock Exchange and the same is pending before NSE. It was further submitted that the Complainant cannot raise complaint arising out of same cause of action before more than one courts/forum and prayed that the Complaint be dismissed.

4. After hearing both the Parties and perusal of material on record, the District Forum vide Order dated 06.04.2011 in view of the Judgment passed by this Commission in "Instalment

Supply Ltd. Vs Kangda Ex- Service Men Transport Company and Others [2006(3) CPR 339(NC)], wherein it has been held that once the arbitrator decide the matter then the party cannot move in any other court for the same relief, dismissed the Complaint by observing that since the Arbitrator has already passed the award on 18.01.2010. Therefore according to section 21b, 13, and 14 of the Consumer Protection, Act 1986 the court has no jurisdiction to trail the matter, hence the suit is dismissed.

5. Aggrieved by this Order, the Petitioner filed Appeal No. 1168 / 2011 before the State Commission. The State Commission vide Order dated 18.09.2012 dismissed the Appeal by observing as under:-

"Since the arbitration award has been passed by the arbitrator on the request of the appellant himself and compliance of the award has already been made without any objection, we find no error or illegality in the impugned order dated 6.4.2011 passed by the District Forum, Bhilwara so as to call for any further interference in the present appeal. The same is dismissed accordingly as having no merits."

6. Feeling aggrieved, the Petitioner filed Revision Petition, i.e., RP No. 2198 of 2013 before this Commission, challenging the Order dated 18.09.2012 passed by the State Commission.

7. This Commission vide Order dated 21.08.2019, restored the Appeal on the files of the State Commission by observing as under:-

"....It is not in dispute that the Application for referring the matter to Arbitrator was filed by the Petitioner before the National Stock Exchange, sometime in the year 2009 and simultaneously a Complaint under the Consumer Protection Act, 1986 was also filed before the District Consumer Disputes Redressal Forum, Bhilwara (hereinafter referred to as "the District Forum"). When the Consumer Complaint was filed, the Arbitrator had not given the award. The award was given only on 18.1.2010. At that time, the Consumer Complaint was pending before the District Forum.

In view of the principles laid down by the Hon'ble Supreme

Court in M/s National Seeds Corporation Ltd. vs. M. Madhusudhan Reddy & Anr. reported in (2012) 2 SCC 506, the Complaint was maintainable when it was filed as the award had not been given. We, therefore, set aside the impugned orders passed by the State Commission and restore the Appeal on the file of the State Commission. We request the State Commission to decide the Appeal as expeditiously as possible, preferably within a period of three months from the date when a certified copy of the order is filed before it..."

8. On remand, the State Commission vide its Order dated 11.11.2021 dismissed the Appeal. English translation of the relevant para of the Order dated 11.11.2021 passed by the State Commission, reads as under:-

"From the perusal of the Order of the District Forum it appears that the Appellant deals in purchase and sale of shares and maintained trading account for this purpose. Accordingly, he is involved in the commercial activities. Opponent also deals in share trading. Both Parties are involved in commercial transaction. Therefore, Appellant does not fall under the category of 'Consumer'. Even otherwise, Arbitration Award on the issue in question has already been passed between the Parties on 18.01.2010 and the said award has already been complied with. Therefore, keeping in view the provisions under Order 2 Rule 2 r/w Section 10 & 11 of C.P.C., the Complaint is not maintainable. Consequently, there is no merit in this appeal and it is dismissed."

9. Being aggrieved with the Impugned Order dated 11.11.2021 passed by the State Commission, the Petitioner has filed the present Revision Petition before this Commission.

10. I have heard Mr. Bal Mukan Joshi, Petitioner/Complainant, who was present in person. No one was present on behalf of the Respondent.

11. It is not in dispute that on application for referring the matter to Arbitrator filed by the Petitioner before the National Stock Exchange, matter was referred to the Arbitrator and the Award had been passed on 18.01.2010. The Award attained finality as the Complainant / Petitioner did not

challenge the Award under Section 34 of the Arbitration and Conciliation Act, 1996. The Award has also been complied with. It is settled principle of law that the Arbitration and Conciliation Act, 1996, is a complete code and once an arbitral award is passed, it is to be challenged in the manner provided in the Arbitration and Conciliation Act, 1996 by making an application under Section 34 for setting aside of the award, within the time stipulated under Section 34(3) of the said Act.

12. A reference can be made to the Order dated 13.09.2021 passed by the Hon'ble Supreme Court in 'Navneet Jha vs. Magma Shraci Finance Limited' [SLP No. 13778 / 2021] wherein it has held as under:-

"It appears that there were criminal proceedings, complaints, etc. It may be pertinent to point out that the agreement executed contained an arbitration clause. The matter was apparently referred to arbitration. The arbitrator passed an award dated 06.07.2011. The complainant neither complied with the award nor took any steps to challenge the award under Section 34 of the Arbitration and Conciliation Act, 1996, but instead, filed a complaint under the Consumer Protection Act, 1986 in the District Consumer Redressal Forum (District Forum), Karwadha in Kabirdham District in Chhattisgarh. The District Forum dismissed the complaint observing that there was evidence of an arbitral award passed against the petitioner. The complaint was, therefore, held not to be maintainable. Against the aforesaid order, an appeal was filed before the State Consumer Disputes Redressal Commission, Chhattisgarh (State Commission). The State Commission affirmed the order of the District Forum and dismissed the appeal. The revision petition filed by the petitioner has been dismissed by the judgment and order impugned. It is well settled that the Arbitration and Conciliation Act, 1996, is a complete code and once an arbitral award is passed, it is to be challenged in the manner provided in the Arbitration and Conciliation Act, 1996 by making an application under Section 34 for setting aside of

the award, within the time stipulated under Section 34(3) of the said Act. This has admittedly not been done.”

13. Undisputedly, in the present case, the Arbitration Award had attained finality as the Complainant / Petitioner did not challenge the Award under Section 34 of the Arbitration and Conciliation Act, 1996. The Award has also been complied with. Accordingly, as rightly held by the State Commission, the Consumer Complaint is not maintainable

14. For the reasons stated hereinabove, I do not find any illegality, material irregularity or jurisdictional error in the Impugned Order dated 11.11.2021 passed by the State Commission warranting interference in revisional jurisdiction under Section 21(b) of the Consumer Protection Act, 1986. Consequently, the Revision Petition is dismissed.