

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 27TH DAY OF FEBRUARY, 2015

BEFORE

THE HON'BLE MR. JUSTICE A.V.CHANDRASHEKARA

M.F.A. NO.808/2008 (AA)

BETWEEN:

S R KIRON
S/O LATE T A S RAJAN
AGED ABOUT 50 YRS
R/AT NO.95 S J P ROAD
BANGALORE 2

... APPELLANT

(By Sri: REUBEN JACOB, ADV.)

AND:

1. MR K C RAJA
S/O K C SHIVAPPA
AGED ABOUT 45 YRS
R/AT NO.1109 10TH D CROSS
W C R ROAD
BANGALORE 86
2. THE ARBITRAL TRIBUNAL
CONSISTING OF JUSTICE
SRI JAGANNATHA SHETTY RETD
OFFICE OF THE 1ST NATIONAL JUDICIAL PAY
COMMISSION CITY CENTRAL COMPLEX

ANNEX CENTRAL COLLEGE ROAD
BANGALORE.

3. SRI T S GOPALKRISHNA
MEMBER BROKER
BANGALORE STOCK EXCHANGE LTD.,
1ST CROSS J C ROAD BANGALORE 27
4. THE ARBITRATION COMMITTEE
BANGALORE STOCK EXCHANGE LTD.,
1ST CROSS JC ROAD
BANGALORE 27

... RESPONDENTS

(By Sri: M.S. RAJENDRA, ADV. FOR
M/S HILLA & HILLA FOR R4
SRI: SANKETH M. YENAGI, ADV FOR R1(ABSENT)
NOTICE TO R2 D/W,
R3 SERVED)

MFA FILED U/S 37 OF THE ARBITRATION AND CONCILIATION ACT, AGAINST THE ORDER DATED 13.11.2003 PASSED IN A.S.NO.11/2003 ON THE FILE OF VI ADDITIONAL CITY CIVIL JUDGE, BANGALORE CITY, CCH-11, DISMISSING THE SUIT FILED U/S 34 OF THE ARBITRATION AND CONCILIATION ACT, TO SET ASIDE THE AWARD PASSED ON 30.07.2001.

THIS APPEAL HAVING BEEN HEARD AND RESERVED FOR ORDERS COMING ON FOR PRONOUNCEMENT OF ORDERS THIS DAY,
A.V.CHANDRASHEKARA, J., DELIVERED THE FOLLOWING:

JUDGMENT

The present appeal is filed under Section 37 of the Arbitration and Conciliation Act (hereinafter referred to as the Act, for brevity) challenging the judgment passed in A.S.11/03 which was pending on the file of the VI Additional City Civil Judge, Bengaluru.

2. Appellant herein was the plaintiff in the said arbitration suit. Respondents herein are the defendants in the said suit. By filing a petition under Section 34 of the Act, appellant herein had requested the court to set aside the award passed by the arbitrators on 30.7.2001. Parties will be referred to as plaintiff and defendants as per their ranking

3. The plaintiff was an individual member of Bengaluru Stock Exchange carrying on business under the name and style M/s Prime Investments and had later on converted his individual membership into a corporate

entity under the name and style M/s Prime Finstocks (India) Private Limited, S.J.P.Road, Bengaluru. The 1st defendant was a constituent of the above corporate entity dealing in stocks and shares.

4. The 1st defendant was transacting with the respondent from November 1999 to March 2000. The terminal of Prime Investments was regularly getting shut off from February 2000 due to non-payment of margin money to the Stock Exchange and it had become a regular feature from February 2000. The case of the claimant put forth before the Arbitral Tribunal is that plaintiff never used to issue contract notes and give statements regularly. One Prabhu, an employee of the plaintiff, used to deal on his own using the client's code although he was not permitted to trade on his own.

5. The 1st defendant had purchased 100 shares of *Zee Telefilms*, 100 shares of *G.V.Films* and 50 shares of *Kale*

Consultants for which the plaintiff had enough balance to the claimant's credit. But the plaintiff defaulted to the Exchange and hence the shares were got auctioned. The difference between the purchase price and the rates till March end 2000 when the shares were auctioned was debited to the account of the claimant-1st defendant. It is alleged that the claimant had sold lots of high value shares to the plaintiff and there was a credit balance in his account. The plaintiff, therefore, issued a cheque for Rs.5,00,000/- drawn on Canara Bank, Stock Exchange Branch which was bounced for insufficiency of funds. Therefore the plaintiff took back the bounced cheque with a promise to make payment in cash within a week, and requested the claimant not to complain to anybody, as he was facing financial difficulties.

6. It is contended that the plaintiff used to debit trading accounts of one Srinivas to the account of the claimant-1st defendant although there was no such trade

by the claimant by himself or through Srinivas. The transaction, in fact, did not pertain to the claimant, but was debited to his account a sum of Rs.92,657/-. The credit balance to the claimant's account as on 30.3.2000 after dishonour of the issued cheque for Rs.5,00,000/- was Rs.3,62,288-60 and the net amount receivable from the plaintiff was Rs.4,54,945-60. Therefore the 1st defendant-claimant requested the Arbitral Tribunal to pass a decree.

7. Later on the plaintiff as 1st respondent before the Tribunal filed reply. He had denied the averment of the claimant that he had not received Rs.5,00,000/- in cash from him. The claimant is stated to have sold 100 share of Satyam Computers on 6.3.2000 for which due credit was given to him. Prior to the said sale, there was debit balance to the tune of Rs.2,10,828.05. The claimant continued to do business, thus bringing the credit balance to Rs.2,43,033-15. During the period between

6.3.2000 and 26.3.2000, the claimant requested to release minimum sum of Rs.5,00,000/- as he had to pay to his client, i.e. seller of 100 Satyam Computers shares. Therefore he insisted that he would release only the actual sum that was due or to hand over further shares to make up the difference between the actual dues and Rs.5,00,000/-. The claimant had assured him that he would make good the difference by delivering certain shares of his own. Thereafter the claimant promised to give 32 shares of HLL and promised to pay the balance in the next 24 hours. Believing the words of the claimant, he issued a cheque for Rs.5,00,000/- on the condition that the claimant should deliver the shares for the deficit amount. He is stated to have told the claimant that in the event claimant does not make good by delivery of further shares for the deficit, he would not honour the cheque.

8. The claimant is stated to have accepted the cheque on the above condition and left his office, but did not

fulfill his promise. Therefore he, i.e. plaintiff got the cheque dishonoured. On the morning on 31.3.2000 at 10.00 a.m., the claimant went his office with folded hands and literally begged for cash of Rs.5,00,000/- admitting his non-performance of the conditions in the light of certain problems in the family. He assured that he had got the cheque discounted with his banker and pay the amount to the plaintiff. He further pleaded that the last day of banking financial year being 31st March, and if the sum of Rs.5,00,000/- was not remitted to the bank, the manager would lose his job for having favoured the client by discounting the cheque. He is stated to have told him that he might be arrested for cheating.

9. Considering the pathetic condition of the claimant and his renewed promise to pay the balance sum in the next 48 hours, the plaintiff got the amount drawn from Karur Vysya Bank, J.C.Road, Bangalore and got the sum remitted to the claimant's account on 31.3.2007 and

Rs.5,00,000/- was paid in lieu of dishonour of cheque. Later on the claimant became very irregular and he was not available at any point of time. When payment was demanded, he is stated to have threatened with dire consequences. The averment that all transactions of the claimant were got over in March 2000 has been specifically denied. The claimant himself is stated to have asked him to open an account in the name of Srinivas who is said to be living with him. The account was opened and became operational from 13.12.1999. Later on it was discovered that Srinivas's account was a fictitious account operated by a cartel of four of the clients of the claimant of which of which the claimant himself was a party.

10. After coming to know of this, the said account was closed by informing all operators and the balance was transferred to the respective accounts of the four persons. He has averred that 300 shares of *SQL Star* were bought

by the claimant on 22.2.2000. He has admitted the list furnished by the claimant so far as the deliveries are receivable. The averment that he had paid money has been specifically denied. The account of the claimant was a running account and since he owed money, the said shares were not delivered. The claim is stated to be founded on falsehood and myth. On the contrary, the claimant himself owed Rs.3,54,318-05 to the plaintiff as on 19.9.2000.

11. With these pleadings, he had requested the Arbitral Tribunal to dismiss the claim and to allow the counter-claim for Rs.3,54,318-05.

12. On the basis of the above pleadings, the following issues were framed for consideration by the Tribunal as found in page 8 and 9 of the award:

- I. Whether the Claimant proves that Ganapathy Prabhu who is in the register of the Respondent

was trading by using the Claimant's code for trading himself?

II. Whether the Claimant proves that the purchase of the following shares made by him with the Respondent were auctioned in Exchange without intimation to the client?

- a) Zee Telefilms - 100 shares
- b) G.V. Films - 100 shares
- c) Kale Consultants - 50 shares

III. Whether the respondent proves that the aforesaid shares purchased in settlement No.1 of the year 2000-2001 and were taken delivery by the Respondent and 100 Zee Telefilm shares were closed for non-payment on 24.4.2000?

IV. Whether the Claimant proves that he sold high value shares to the Respondent? If so, of which Companies and whether there was a credit in his account of Rs.5 lakhs with the respondent?

V. Whether the respondent proves that the cheque for Rs.5 lakhs was drawn and delivered to the claimant without any credit balance in latter's account?

VI. Whether the respondent proves that the statement of Advance Micronics share transaction referable to the Claimant was true?

VII. Whether the respondent proves that the amount of Rs.92,654-00 debited to the account of the

claimant was out of transaction belonging to the Claimant?

VIII. Whether the Claimant proves that the balance in his account as on 30 March 2000 after issuing a cheque for Rs.5 lakhs was Rs.3,62,288-00?

IX. Whether the Respondent proves that the claimant owes to him as per the counter-claim?

X. Whether any interest is payable? If so, at what rate?

XI. Whether the parties are entitled for costs?

The claimant has examined himself as PW1, and the respondent, i.e. plaintiff is examined as RW1. One H.R.Raghupathi an office associate of the plaintiff is examined as RW2.

13. After hearing arguments, the learned arbitrators have thought it fit to delete all the issues framed earlier and to frame two primary issues for consideration and they are found in page 11 of the award and they are as follows:

- I. Whether the respondent proves that the cheque dated 26.3.2000 for Rs.5,00,000/- issued to the claimant was without adequate consideration, but on the promise of the Claimant that he would make good the balance amount by delivering high value of shares before presenting the cheque to the Bankers?
- II. Whether on 31.3.2000, the respondent proves that he deposited Rs.5,00,000/- to the claimant's account in TGMC Bank at Rajajinagar towards the dishonour of the cheque for Rs.5,00,000/- issued to the claimant?

14. The arbitrators have given reasons in paragraph 8 as to why the issues framed earlier did not reflect the real controversy between the parties. In the light of the pleadings and evidence recorded and contentions raised by the learned counsel for the parties, the Tribunal has thought it fit to re-frame the issues and restrict it to two.

15. The discussion is found in paragraph 10 to 16.2 of the award. Ultimately the Tribunal has come to the conclusion that the plaintiff has purchased at the cost of the claimant 100 shares of Zee Films, 100 shares of G.V.Films and 50 shares of Kale Consultants, out of which 100 shares were auctioned. The other two company shares were neither auctioned nor returned and they were admittedly with the plaintiff, i.e. 1st respondent before the Tribunal. Therefore the Tribunal has come to the conclusion that the claimant is entitled for return of 100 shares of G.V.Fillms and 50 shares of Kale Consultants, apart from entitlement to get Rs.3,82,033-15. The counter-claim of the respondent therein has been dismissed.

16. In fact, the plaintiff-respondent has admitted that as per his own accounts, he was due to the claimant Rs.2,47,032-15 as on 26.3.2000 and the same was pending. The admission so culled out from the mouth of

the plaintiff-respondent has been critically assessed by the arbitrators, and the same is found in paragraphs 16.1 and 16.2 and it reads thus:

‘16.1 The respondent has admitted as per his own accounts that he was due to the Claimant a sum of Rs.2,47,033-15 as on 26.3.2000. It was the opening balance as on 26.3.2000. In his pleadings, he has admitted that he has entered under Item 5 as follows:

“Debit of Rs.40,000/- rectification of wrong posting.”

During the course of cross-examination, the following question was specifically put to the Respondent”

“ I put it to you that if this debit of Rs.40,000/- is added to the opening balance of Rs.2,47,033-15 as on 26.3.2000, the total amount due by you to the Claimant would be Rs.2,87,033-15?”

The respondent has admitted that the balance would be Rs.2,87,033-15. He has further admitted that the Claimant had given 32

Hindustan Lever shares which were received by him on 26.3.2000. The value of the said 32 Hindustan Lever shares would be Rs.70,000/-.

The respondent has further admitted that there was a deposit of Rs.25,000/- from the claimant with him as on 31.2.2000.

Thus, the total amount payable to the claimant works out to Rs.3,82,033-15.

16.2 The respondent has purchased, at the cost of the Claimant, 100 shares of Zee, 100 shares of G.V. Films and 50 shares of Kale Consultants. Out of that, 100 shares of Zee were auctioned. The other two companies shares were neither auctioned nor returned. They were admittedly with the Respondent. Therefore, the claimant is entitled to the return of those 100 shares of G.V. Films and 50 shares of Kale Consultants.'

17. In the light of the specific admissions culled out from the mouth of RW1 about the amount to be paid, the arbitrators have come to a specific conclusion that he has

failed to prove the basis for counter-claim. Apart from this, they have held that 150 shares will have to be returned and those shares pertain to 100 shares of G.V.Films and 50 shares of Kale Consultants. It is also specifically held that the counter-claim of the respondent is based on the computer-generated statement of accounts and no other evidence is placed on record to vouch-safe the same, and therefore the Tribunal has disbelieved the basis for the counter-claim.

18. Apart from this, the plaintiff-respondent has not produced any evidence for having furnished a copy of the statement to the claimant. In fact the arbitrators have come to the conclusion that it was incumbent upon the plaintiff-respondent to have regularly furnished accounts to the account holder, lest, accounts could be prepared from the computer at any time to suit one's convenience. This assumes more importance in the light of the specific denial by the claimant. In fact RW2-Raghupathi has

deposed that all the transactions of Srinivas were operated by the plaintiff himself.

19. It is ununderstandable as to how the plaintiff-respondent authorized the claimant to operate their bank accounts when there was no authorization as such. Therefore the assertion of RW1 has not been accepted. In fact, the arbitrators have held that the claimant did not open a fictitious account in the name of Srinivas which was operated by the plaintiff. The arbitrators have assigned cogent reasons after assessing the oral and documentary evidence adduced by the claimant and counter-claim made by the plaintiff-respondent.

20. On perusing the impugned award passed by the Tribunal and the judgment of the arbitration court, it is evident that the Tribunal has meticulously verified the pleadings by framing issues in the light of the actual dispute involved between the parties. What is argued by

the learned counsel for the appellant is that when the Tribunal has adopted the adversarial system to conduct the case, it should have given opportunity to the plaintiff-respondent, after re-framing issues and restricting it to two only. In fact parties knew very well as to what exactly was the dispute between them. In the light of the exact controversy and evidence adduced by them, the Tribunal has rightly re-framed the issues and has restricted issues to two issues.

21. What is argued before this court by the learned counsel for the appellant is that the award contains perverse conclusions and they are founded on wrong basis. He has relied on a decision of the Hon'ble apex court in the case of **OIL AND NATURAL GAS COMMISSION LIMITED .v. GARWARE SHIPPING CORPORATION LIMITED ([2007] 13 SCC 434)**. In paragraph 13 of the said decision, it is held as follows:

13. The appellant questioned correctness of learned arbitrator's conclusion by filing an application under Section 34 of the Act, Learned Single Judge dismissed the application holding that the conclusion was rational. An appeal filed was also dismissed.'

In the present case, the arbitrators have analyzed the entire evidence in right perspective, more particularly keeping in mind the admissions culled out from the mouth of RW1, and have held that the case put forth by the defendant is not probable, and the case put forth by the claimant is more probable. In fact the Tribunal has assessed the evidence on the basis of broad preponderance of probabilities. Therefore the said decision is not helpful to the facts of the present case.

22. Award has been confirmed by the arbitration court in terms of Section 34 of the Act. The scope to interfere with a well-considered award affirmed by the arbitration court is very limited in an appeal under Section 37(2) of

the Act. Apart from this, the scope of this court is very much limited to go into the niceties of assessment of evidence done by the arbitrators. The finding of the arbitrators on facts and merit of the case is final and binding and the same cannot be re-opened either in a suit under Section 34 of the Act or in an appeal under Section 37, since the arbitrators are masters of law and their decision is final.

23. It is useful to refer to a decision of the Hon'ble Supreme Court in the case of **MUNICIPAL CORPORATION OF DELHI .v. M/s JAGAN NATH ASHOK KUMAR & ANOTHER (AIR 1987 SC 2316)** wherein it is held that '*reasonableness of reasons given by an arbitrator in making the award cannot be challenged in a special leave petition.*' In fact the arbitrator is not expected to pronounce a detailed judgment by framing proper points or issues. In fact in the decision reported in the case of **FIRM MADANLAL ROSHANLAL MAHAJAN**

.v. HUKUMCHAND MILLS LTD., INDORE (AIR 1967 SC 1030), the apex court has held thus:

'An arbitrator is not bound to give a separate award on each claim, but can give a lump sum award. In fact there was a lot of scope for the court to interfere with the award passed under the provisions of the repealed Arbitration Act, 1940, whereas the scope is very limited in the present Act.'

In fact this court cannot sit in appeal and examine the correctness of the award on merit. Apart from this, the award cannot be questioned on the ground that an error is apparent on the face of the record.

24. The Arbitral Tribunal has awarded interest at the rate of 12% p.a. only on the amount of Rs.3,82,033-15, which is very reasonable. In fact, it is lesser than the rate of interest found in the Act itself. Thus viewed from any angle, the approach adopted by the Tribunal and the arbitration court is proper and correct. Hence no grounds are made out to interfere with the well-considered award of the Tribunal as also the judgment passed by the

arbitration court. Accordingly the appeal is liable to be dismissed.

25. In the result, the following order is passed:

O R D E R

The appeal is dismissed. Parties to bear their own costs.

**Sd/-
JUDGE**

vgh*