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MADAN MOHAN RAJGARHIA

v.

M/S. MAHENDRA R. SHAH & BROS. AND ANR.

JULY 31, 2003

B

[V.N. KHARE, CJ., K.G. BALAKRISHNAN AND S.B. SINHA, JJ.]

*Arbitration Act, 1940:*

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*S.34—Stay of suit—Stock exchange—Non-member filing a recovery suit against a member—Member filing an application before trial court for stay of suit contending that the dispute was covered under the arbitration clause—Contention of plaintiff that as he was a non-member, arbitration clause does not apply to the case—Held, a reading of the relevant clause in the Bill, as a whole, would clearly show that the clause is quite wide and comprehensive enough to cover the cause of the plaintiff—Contract—Clause in a Bill—Effect of.*

D

*Words and Phrases—‘any other person’—Meaning of.*

E

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 12645 of 1996.

From the Judgment and Order dated 4.8.1995 of the Delhi High Court in F.A.O. (OS). No. 188 of 1995.

Arun K. Sinha, Rakesh K. Sinha for the Appellant.

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M.D. Adkar, S.D. Singh, Vijay Kumar and Anurag Kishore for the Respondents.

The following Order of the Court was delivered:

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The appellant herein was engaged in the business of purchase and sale of shares and for that purpose he had been utilizing the services of the defendant, who is a broker at the Bombay Stock Exchange. The appellant herein filed a suit for recovery of Rs. 5,63,334 against M/s. Mahendra R. Shah & Bros., who are the respondents herein. The respondents herein on receipt of the summons in the suit, filed an application under Section 34 of

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the Indian Arbitration Act, 1940 for staying the proceeding on the ground that there is a provision for arbitration as regards the dispute in the suit. The learned Single Judge of the High Court accepted the contention of the respondents herein and directed the stay of proceedings of the suit. Aggrieved, the appellant filed the First Appeal from the said order, which was dismissed. It is against the said order of the High Court, the appellant has filed this appeal by way of special leave petition.

Learned counsel appearing for the appellant urged that the arbitration clause printed on the bills does not include the persons like plaintiff and, therefore, the appellant being a non-member is not required to seek arbitration. We do not find any merit in the contention. One clause of the Bill, which is printed on the front, reads as under :

"All the claims (whether admitted or not) difference and disputes between a member and a non-member or a non-member (the terms "non-member" shall include a remisier, authorized clerk or employee or any other person with whom the members shares brokerage) arising out of or in relation to dealing transactions and contracts made subject to the rules and bye-laws and regulations or the Exchange or with reference to anything incidental thereto or in pursuance thereof or relating their construction, fulfillment or validity or relating to the rights, obligation and liabilities of remisier authorised clerk, employees or any other person with whom the member shares brokerage in relation to such dealing, transactions and contracts shall be referred to and decided by arbitration as provided in the rules, bye-laws and regulations of the Exchange."

Another clause of the Bill, which is printed on the back side, reads as under;

"In the event of any claim (whether admitted or not) difference or dispute arising between you and us out of these transactions the matter shall be referred to arbitration in Bombay as provided in the Rules, Bye-laws and Regulations of the Stock Exchange, Bombay."

The learned counsel appearing for the appellant urged that a non-member will only be covered if he falls under the definition of a non-member. Since the appellant is neither a remisier or authorised clerk or employee or shares any brokerage with the member, he cannot be covered by the said definition and, therefore, the said rules, definition and bye-laws do not apply to him.

- A In fact, the argument is that the words 'any other person' should take colour from the preceding words, namely, remisier, authorised clerk or employee' and since the appellant is not one of those mentioned, he does not fall within the expression 'any other person'. The reading of clause quoted above, as a whole, would clearly show that this clause is quite wide and comprehensive enough to cover the case of the plaintiff.
- B In order to make it comprehensive, unauthorised clerk and employee and other persons like remisier, who are or have been receiving brokerage from the Members of the Exchange have been included in the definition of 'non-member' person. In fact by including these categories, the definition of a 'non-member' has been widened. The inclusion of such persons does not mean that no person like the appellant who is not
- C a member of the Exchange has been excluded from the definition of the non-member. This aspect may be examined from another angle. The other clause in the same bill puts the matter beyond doubt. The said clause shows that any claim (whether admitted or not) difference or dispute arising between you and us' out of these transactions, the matter shall be referred to arbitration in Bombay as provided in the rules, bye-laws and regulations of the Stock
- D Exchange. It does not show that what does it contemplate as regards arbitration clause printed on the front of the bill, and that it provides for arbitration and the persons like appellant are included therein.

E For the aforesaid reasons, we do not find any merit in the appeal. It, accordingly, fails and is dismissed. There shall be no order as to costs.

R.P

Appeal dismissed.