

Ram Singh Vs. Laxmi Enterprises

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Court : Rajasthan

Decided On : Jul-09-2009

Reported in : 2009(3)WLN533

Judge : Gopal Krishan Vyas, J.

Appellant : Ram Singh

Respondent : Laxmi Enterprises

Disposition : Petition allowed

Judgement :

Gopal Krishan Vyas, J.

1. In this revision petition filed under Section 115, C.P.C. the petitioner is challenging the validity of the order dt. 21.07.2003 passed upon the application filed by the petitioner under Order 7 Rule 11, C.P.C. in the Civil Original Case No. 244/03 pending before the trial Court, whereby, the learned Addl. District Judge (Fast Track) No. 2, Bhilwara rejected the application filed by the petitioner under Order 7 Rule 11, C.P.C.

2. The main contention of the petitioner is that the non petitioner filed suit against the petitioner for recovery of money amounting to Rs. 2,37,908/- and the case of the non petitioner plaintiff is that he is registered Sub-Broker under the Securities

and Exchange Board of India and pursuing business of sale and purchase of shares undertaken on delivery basis as well as forward transactions on deposit of margin-money. It is stated in the plaint that all the transactions are carried out under the rules and by-laws framed by the Bombay Stock Exchange. The petitioner is having current running account and share transaction for sale and purchase of shares is carried out by the plaintiff-non-petitioner at the instance of the petitioner-defendant. Suit has been filed by the plaintiff-non-petitioner for recovery of money based on balance due in the above-mentioned account as a result of the transactions.

3. In the said suit, an application was filed by the defendant-petitioner under Order 7 Rule 11, C.P.C. seeking dismissal of the suit on the ground that the plaintiff-non-petitioner is registered Sub-Broker under the Securities and Exchange Board of India Act, 1992 and any client agreement as well as confirmation of transactions are specifically recorded, then, in that event, the civil Court has no jurisdiction in respect of the same. It is also submitted that under the rules and by-laws framed by the Bombay Stock Exchange for any dispute between the Broker, Sub-Broker and client, specific provision of arbitration is provided and dispute is required to be sent for arbitration before the Arbitration Committee constituted by the Bombay Stock Exchange. It is pointed out that the members of the Arbitration Committee include retired Judges of the High Court as well as City Civil Court, Chartered Accountants, Company Secretaries, Advocates and experts of capital market and, accordingly, the disputes are sorted out by due process prescribed under the rules. Further, there is provision of appeal against the award passed as a result of arbitration proceedings.

4. Contention of learned Counsel for the petitioner is that while deciding application filed under Order 7 Rule 11, C.P.C., though specific averment was made by the petitioner in the application that in view of the clear provision of the rules and by-laws of Bombay Stock Exchange, in the event of dispute between broker, sub-broker and client, the matter is required to be referred for arbitration under the rules and bye-laws of the Bombay Stock Exchange. It is contended by learned Counsel for the petitioner that the application filed by the petitioner under Order 7 Rule 11, C.P.C. ought to have been allowed; but, the learned trial Court

did not even consider bye-law 248 at the time of deciding the matter. Complete procedure is laid down in bye-law 248 of the Bombay Stock Exchange.

5. I have heard arguments on behalf of both the parties.

6. Upon perusal of the impugned order, it is revealed that the trial Court has committed error while not considering the provisions of bye-law 248 of the Stock Exchange, Mumbai which ought to have been considered at the time of deciding application filed under Order 7 Rule 11, C.P.C. The application has been dismissed only on the ground that the agreement which is to be executed in between the subbroker and client is not produced before the Court. In my opinion, at the time of deciding application filed under Order 7 Rule 11, C.P.C., when specific ground has been taken that the matter is to be decided as per rules and bye-laws of the Bombay Stock Exchange which is accepted even in the plaint in para 2 thereof, then, the matter was to be decided in consonance with provisions of bye-law 248 of the Bombay Stock Exchange Bye-laws.

7. I have also perused the plaint. In para 2 of the plaint, it is specifically stated that all transactions are governed under the rules and by-laws of the Bombay Stock Exchange. When this fact is admitted by the plaintiff himself, then, it was the duty of the trial Court to take into consideration the by-laws of the Bombay Stock Exchange. More specifically, bye-law 248 of the bye-laws of the Stock Exchange, Mumbai. Obviously, upon perusal of the impugned order, it is revealed that at the time of deciding the application, by-laws of the Bombay Stock Exchange were not taken into consideration, therefore, I deem it just and proper to set aside the impugned order and remit the matter to the trial Court for deciding the application filed under Order 7 Rule 11, C.P.C. afresh.

8. This revision petition is accordingly allowed. The impugned order is set aside and matter is remitted back to the trial Court. Learned trial Court shall decide the application filed by the petitioner under Order 7 Rule 11, C.P.C. afresh while taking into consideration bye-law 248 of the Stock Exchange, Mumbai whereby complete procedure is prescribed. Further, the trial Court shall consider the fact that no agreement has been filed either by the plaintiff or defendant in the proceedings. Learned trial Court is directed to decide the application filed under Order 7 Rule

11, C.P.C. within a period of two months from the date of receiving certified copy of this order.

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