

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO. 1085 OF 2010

IN

ARBITRATION PETITION NO. 89 OF 2009

Rajendra Kumar Bothra,

Having office at 3<sup>rd</sup> floor, Room No.37

Tardeo Air Conditioned Market,

Mumbai 400 034.

.....Appellant

Vs.

M/s. Ventura Securities Limited,

Having registered Office at

Dhanur, 15 "E" Sir P.M. Road,

Mumbai 400 001.

.....Respondent

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Mr. Prashant Chawan, senior counsel a/w Adv. Reshma Nathani and Mr. Ravindra R. Chile for the Appellant.

Mr. Simil Purohit, senior counsel i/by Purohit And Co. for the Respondent.

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CORAM : A. S. GADKARI AND  
KAMAL KHATA, JJ.

DATE : 22<sup>nd</sup> JUNE, 2026.

**JUDGMENT (Per- A.S. Gadkari, J.):-**

1) The Appellant, an unsuccessful claimant has preferred this Appeal under Section 37 of the Arbitration and Conciliation Act, 1996 (for short, the said Act). By the impugned Judgment dated 11<sup>th</sup> March, 2010, the learned Single Judge has dismissed the Petition filed under Section 34 of

the said Act and upheld the Award dated 2<sup>nd</sup> September, 2008, passed by the sole Arbitrator.

2) Heard Mr. Chawan, learned senior Advocate appearing for the Appellant and Mr. Purohit, learned senior Advocate appearing for the Respondent. Perused the record.

3) The record indicates that, the Appellant had filed a claim against the Respondent for a sum of Rs.22,88,708/- with interest thereon at the rate of 15% p.a. that included a sum of Rs. 15,88,708/- towards actual loss and Rs.7,00,000/- towards compensatory costs for unauthorised trading on Petitioner's account on the Respondent's whim and fancy.

3.1) The learned Arbitrator by an Award dated 2<sup>nd</sup> September, 2008, has rejected the claim of the Appellant.

3.2) The Appellant is also unsuccessful in Arbitration Petition No.392 of 2009 filed under Section 34 of the Arbitration Act. It is on this brief premise, the present Appeal is preferred.

4) Mr. Chawan, learned senior Advocate appearing for the Appellant drew our attention to the rules and regulations governing the trading members for payment towards Mark to Market settlement for future contracts.

4.1) He placed reliance on clause No.4.4.16 (a) and (b) of Rules and Regulations of National Stock Exchange, which reads as under:-

*“4.4.16 (a) Trading Member shall not make payment in cash to the constituents and shall not receive payment in cash from the constituents, towards the payment of Mark to Market settlement for future contracts.*

*(b) The Trading Member shall make or receive all payment to/or from the constituents by account payee crossed Cheques/Demand Drafts or by way of direct credit into the respective bank account through Electronic Fund Transfer Facility or any other mode allowed by the Reserve Bank of India.”*

4.2) Mr. Chawan contended that, as a matter of fact, the Appellant has deposited a cheque of Rs.15 lacs with the Respondent for payment towards Mark to Market settlement for future contracts. On 18<sup>th</sup> January, 2008, therefore, the Respondent was holding the said cheque of Rs.15 lacs for squaring off the debit balance. He submitted that, since payment by cash was impermissible, the Respondent was given an account payee cheque that would be cleared on the next date. He submitted that, as the Respondent had accepted the said cheque of Rs.15 lacs, it amounted to waiver of the condition of 2.1.A of the said Regulations. He submitted that, both the learned Arbitrator as also the learned Single Judge, hearing the Appellant’s Arbitration Petition under section 34, erred in not considering the said contention and consequently seeks this Court’s intervention under

Section 37 of the Arbitration Act. He therefore prayed that in view of the aforesaid, the present Appeal be allowed.

5) *Per contra*, Mr. Purohit, learned Senior Advocate appearing for the Respondent, strenuously opposed the Appeal. He drew our attention to the various provisions of the rules and regulations, and submitted that the Petitioner was required to settle his positions in the market on a daily basis. Every day, the open positions are marked to market based on the closing level of the index. Consequently, the margin amount had to be paid by the Petitioner within the stipulated time frame, that is, generally before the commencement of next trading day. In the present case, the Petitioner was required to make payment before 11.00 a.m. of 21<sup>st</sup> January, 2008, as the market had remained closed on 19<sup>th</sup> & 20<sup>th</sup> January, 2008, those days being Saturday and Sunday.

5.1) He submitted that, the Appellant had failed to comply with the contractual obligation prescribed in Clause 2.1.A, and that in view of Rule 'B', the Respondent was not liable to pay him any differential cost or damages as claimed. He submitted that, the Appeal is wholly misconceived as it does not satisfy any of the parameters mentioned in Section 37 of the Arbitration Act and therefore deserves to be dismissed.

6) Clause 2.1.A and B of the said rules and regulations reads as under:-

*“2.1.A Futures trading involves daily settlement of all positions. Every day the open positions are market to market based on the closing level of the index. If the index has moved against you, you will be required to deposit the amount of loss (notional) resulting from such movement. This margin will have to be paid within a stipulated time frame, **generally before commencement of trading next day.***

*B. If you fail to deposit the additional margin by the deadline or if an outstanding debt occurs in your account, the broker/member may liquidate **a part of or the whole position** or substitute securities. In this case, you will be liable for any losses incurred due to such close-outs.”*

7) It is thus absolutely clear that, the margin amount or the differential amount was to be paid by the Appellant within the stipulated time frame and generally before commencement of the trading next day. In the present case, the next day of trading was 21<sup>st</sup> January, 2008, as noted here-in-above. It is an admitted fact on record that, the Appellant did not clear the margin amount or direct credit facility which he was liable to pay to the Respondent within stipulated time and period and therefore the Respondent is not liable to pay any compensation to it.

8) According to us, the plea of waiver raised by the Appellant is of no avail to him as the terms and conditions of the Rules and Regulations as prescribed by the National Stock Exchange of India have not been followed and has in fact committed a default in complying with it. In our view, the rest of the contentions raised by the Appellant amounts to re-appreciation of evidence which is not permissible in an Appeal under Section 37 of the Arbitration Act.

9) After perusing the record and the impugned Judgment passed by the learned Single Judge, we are of the considered view that, there is no error at all committed by the learned Single Judge while dismissing the Petition of the Appellant.

10) In view of the above, we find that there are no merits in the Appeal and is accordingly dismissed.

(KAMAL KHATA, J.)

(A.S. GADKARI, J.)

SANJIV  
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MASHALKAR  
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by SANJIV  
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