# IN THE HIGH COURT OF JUDICATURE AT BOMBAY
## ORDINARY ORIGINAL CIVIL JURISDICTION
## ARBITRATION PETITION NO.532 OF 2024

Sharekhan Limited ....Petitioner
*.Versus.*
Monita Kisan Khade ....Respondent

**WITH**
**INTERIM APPLICATION (L) NO.24723 OF 2023**
**IN**
**ARBITRATION PETITION NO.532 OF 2024**

Sharekhan Limited ....Applicant
**IN THE MATTER BETWEEN**
Sharekhan Limited ....Petitioner
*.Versus.*
Monita Kisan Khade ....Respondent

**WITH**
**ARBITRATION PETITION NO.557 OF 2024**

Sharekhan Limited ....Petitioner
*.Versus.*
Kisan Rajaram Khade ....Respondent

**WITH**
**INTERIM APPLICATION (L) NO.24714 OF 2023**
**IN**
**ARBITRATION PETITION NO.557 OF 2024**

Sharekhan Limited ....Applicant
**IN THE MATTER BETWEEN**
Sharekhan Limited ....Petitioner

*Versus.*

Kisan Rajaram Khade ....Respondent

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**Mr. Kunal Katariya** with Mr. Pulkit Sukhramani, Mr. Anshuman Sugla, Ms. Samreen Fatima & Mr. Juan D'souza i/b M/s. J. Sagar Associates, for the Petitioner.

**Mr. Chirag Dave** with Mr. Shubham Kalbere i/b M/s. Legasis Partners, for the Respondent.

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**CORAM : SANDEEP V. MARNE, J.**

**Judg. Resd. On : 16 DECEMBER 2025.**

**Judg. Pron. On : 24 DECEMBER 2025.**

**JUDGMENT :**

1) This is yet another case of investors seeking to recover from stockbroker losses incurred in trades executed by their trusted person taking advantage of the stockbroker's failure to maintain pre and post trade confirmations. Can stockbroker be made liable to bear the losses incurred by a client in trades in respect of which the stockbroker has failed to follow regulatory Circular issued by Securities and Exchange Board of India is the question this Court is tasked upon to decide in the present Petitions.

2) The Petitions are filed by the Petitioner challenging the Awards passed by the three Member Appellate Tribunal constituted

under the Rules, Bye-laws and Regulations of National Stock Exchange of India Ltd. By the impugned Awards, the Appeals preferred by the Petitioner have been dismissed and the Arbitral Awards dated 14 November 2022 passed by the learned Sole Arbitrator are upheld and confirmed. The learned sole Arbitrator had in turn confirmed the order passed by Investors Grievance Redressal Committee (**IGRC**) dated 31 January 2022 upholding the claim of Respondent and awarded 50% losses incurred by them towards execution of Future & Options Segment.

**3)** Petitioner- Sharekhan Limited (**Sharekhan**) is an incorporated entity and a registered stock broker with Securities and Exchange Board of India (**SEBI**) and is also a member, *inter alia* of National Stock Exchange of India Ltd. (**NSE**) and Bombay Stock Exchange Ltd. (**BSE**). Petitioner provides trading platform to its clients to trade in the stock markets through both modes, online and offline.

**4)** Respondents, Dr. Monita Kisan Khade (**Monita**) and Kisan Rajaram Khade (**Kisan**) herein are the wife and husband, both being medical professionals. They were Petitioner's clients between 2008 to 2020. They desired carrying out trades in Equity Cash Segment and Future and Options (**F&O**) Segment of the Stock Exchanges. Accordingly, Demat Accounts were opened. After Respondent- Dr. Monita Kisan Khade (**Monita**) retired in the year 2015, she joined a class to learn about stock markets and in the class, she met Mrs. Siddhi Pandurang Jagade @ Siddhi Ketan Pednekar **(Siddhi).** Siddhi claimed herself to be an expert in stock market trading who was also Authorized Person (**AP**) of Petitioner-Sharekhan. Siddhi won the trust of Monita and all the family

accounts of Monita and Kisan were transferred to Siddhi authorizing her to carry out trades, inter-alia, in the F & O Segment. Monita used to give instructions by telephonic calls to Siddhi and it is claimed that no order was placed by her for any F & O Trading. Apparently, several F & O trades were effected on behalf of the couple by Siddhi and losses were incurred in such trades. The shares in the accounts of Monita and Kisan were kept as margin money requirement. To square off the liability incurred towards losses in F&O segment trades, the shares in the accounts of Monita and Kisan kept as margin money, were required to be sold.

5) Monita and Kisan approached IGRC set up by the National Stock Exchange (**NSE**) claiming the amount of loss suffered by them due to unauthorised trading by Siddhi. Monita claimed amount of Rs.37,69,497/- and Kisan claimed the amount of Rs.12,60,017/-.

6) IGRC passed order dated 31 January 2022 awarding claim of Rs. 20,45,941/- in favour of Monita and Rs. 5,11,742/- in favour of Kisan. IGRC held in its order that no call recording for pre-trade confirmation or post-trade confirmation for F & O trades were maintained by the Petitioner. It was held that email confirmation of ledger balance by Monita and Kisan did not necessarily mean acceptance of disputed trades. It was further held that Monita and Kisan were also negligent in not monitoring the account and not taking the action for long time. Thus, both sides were held equally responsible for the losses. Accordingly, IGRC proceeded to award claim comprising of 100% F & O brokerage, GST reversal and 50% of losses suffered by Monita and Kisan.

7) Aggrieved by the order passed by the IGRC, Petitioner approached the Arbitral Tribunal comprising of the learned sole Arbitrator constituted under the bye-laws, Rules and Regulations of NSE. By Awards dated 14 November 2022, the learned sole Arbitrator has dismissed the claims raised by the Petitioner, thereby upholding the orders passed by IGRC. The learned sole Arbitrator relied *inter-alia* on SEBI Circular dated 22 March 2018 providing for keeping evidence of clients placing orders in various forms. Thus, the Petitioner is held responsible for not maintaining any call records and pre-trade confirmations as mandated under SEBI Circular dated 22 March 2018. While rejecting the claims of the Petitioner, learned sole Arbitrator directed payment of further amount of Rs. 37,935/- to Kisan.

8) Petitioner filed Appeals before the Appellate Arbitral Tribunal challenging the Awards dated 14 November 2022 passed by the learned sole Arbitrator. The Appellate Arbitral Tribunal has however proceeded to dismiss the Appeals preferred by the Petitioner by orders dated 2 June 2023. The Appellate Arbitral Tribunal has also relied upon SEBI Circular dated 22 March 2018 for holding Petitioner responsible for not maintaining any pre-trade confirmation records and upholding the claim of Respondents for 100% F & O brokerage and 50% of losses incurred in F & O Segment trades. The Appellate Arbitral Tribunal has also directed payment of interest @ 10% p.a. from the dates of passing of orders of IGRC in addition to awarding costs of Rs. 25,000/- each to the Respondents.

9) The Petitioner is aggrieved by Awards dated 2 June 2023 passed by the Appellate Arbitral Tribunal and has accordingly filed the present Petitions.

10) Mr. Katariya, the learned counsel appearing for the Petitioner would submit that IGRC, the learned sole Arbitrator and Appellate Arbitral Tribunal have grossly erred in awarding the claims in favour of the Respondents. That the sole basis for awarding the claims is the SEBI Circular dated 22 March 2018. That the said Circular merely prescribes the guidelines for maintaining pre-trade confirmation by the stock brokers. That the Circular is regulatory in nature, violation of which may entail imposition of penalty on the broker. However, violation of SEBI Circular dated 22 March 2018 does not *ipso-facto* create a right in favour of a trading member to wriggle out of trade obligations when the trades result into losses. He would submit that the issue is no more *res integra* and is covered by judgment of this Court in ***Ulhas Dandekar Versus. Sushil Financial Services Pvt. Ltd.***[1]. He would submit that this Court has taken a view that failure to comply with the procedural safeguards prescribed under SEBI Circular dated 22 March 2018 does not create a right in favour of the client to claim losses resulting out of validly executed trades. He would submit that the instructions in SEBI Circular dated 22 March 2018 are held to be directory in nature. He would also rely upon judgment of Division Bench of this Court in ***Erach Khavar Versus. Nirmal Bang Securities Pvt. Ltd.***[2] in support of his contention that violation of regulatory guidelines cannot be a reason to wriggle out of consequences of a trade, particularly when the trade transaction is confirmed by the constituent. He would submit that in ***Peerless Securites Ltd Versus. Vostok (Fareast) Securities Pvt. Ltd.***[3], this Court has followed the judgments in ***Ulhas Dandekar*** (supra) and ***Erach Khavar*** (supra) and has held that regulatory

1 CARB Petition No-1175 of 2019 decide on 27 March 2025

2 Arbitration Appeal No.12 of 2025 decided on 25 August 2025

3 Arbitration Petition No. 157/2021 decided on 14 October 2025

directions are not mandatory in nature. He would submit that award of 50% claim of losses in absence of proof of actual suffering of loss amounts is irrational and unreasoned approach which is described as panchayati approach by this Court in ***Peerless Securities Ltd***. Mr. Katariya would accordingly submit that since SEBI Circular dated 22 March 2018 cannot be the basis for awarding the claim, the impugned Award suffers from patent illegality and is opposed to public policy of India.

**11)** Mr. Katariya would further submit that Respondents were fully aware of various trades executed in their accounts from time to time. That contact notes were delivered by email in respect of each trade. That additionally, text messages were sent to the Respondents after each trade. Therefore, Respondents cannot be permitted to rely on SEBI Circular dated 22 March 2018 to wriggle out of consequences of trades executed. Mr. Katariya would accordingly pray for setting aside the impugned Awards.

**12)** The Petitions are opposed by Mr. Dave, the learned counsel appearing for the Respondents. He would submit that the three Fora have concurrently held in favour of Respondents after examination of the entire material on record. That this Court exercising power under Section 34 of the Arbitration Act cannot disturb such concurrent findings. That Petitioner is urging this Court to enter into the realm of re-appreciation of evidence, which is impermissible under Section 34 of the Arbitration Act. Absence of call recording and failure to maintain pre-trade confirmations is a finding of fact recorded after appreciation of the evidence on record. That the Arbitral Tribunals have thus recorded plausible findings

and the same cannot be disturbed just because another view is also possible. He would submit that Respondents have been duped by the Authorised Person of the Petitioner (Siddhi) and since Siddhi has acted as agent of the Petitioner, Petitioner has rightly been held responsible to make good for the loss suffered due to negligent and fraudulent acts of the Authorised Person.

13) Mr. Dave would further submit that though Respondents are entitled to claim the entire losses suffered by them due to negligent acts of Petitioner's Authorised Person, IGRC, the learned sole Arbitrator and the Appellate Arbitral Tribunal have restricted the claims only to 50% loss suffered by them. That in the present circumstances, it is impossible to compute the quantum of damages suffered by Respondents and therefore the three Fora have rightly adopted the principle of awarding the claims to the tune of only 50% of losses suffered by the Respondents. That it is well settled principle that where losses are incapable of being computed with exact precision, Arbitrators can determine the same by applying the principle of guesswork. In support, he would rely upon judgment of the Apex Court in ***M/s. Construction & Design Services Versus. Delhi Development Authority*** [4] and judgment of the Delhi High Court in ***Cobra Instalaciones Y. Servicios, Versus. Haryana Vidyut Prasaran Nigam Ltd.***[5] and of this Court in ***Board of Control for Cricket in India & Anr. Versus. Kochi Cricket Private Ltd*** [6]. That therefore no fault can be found in the approach of IGRC, the learned sole Arbitrator and the Appellate Arbitral Tribunal in adopting rough and ready formula and entering into the realm of guesswork for awarding 50%

4 Civil Appeal No. 1440 of 2015 decided on 4 February 2015

5 (2024) SCC Online Del 2755

6 ARB Petition No.-1752-2015 decided on 17 June 2015

losses suffered by the Respondents. He would pray for dismissal of the Petitions.

**14)** Rival contentions of the parties now fall for my consideration.

**15)** Monita and Kisan, both retired medical professionals, decided to try their luck in the stock market. Though initially in 2008, the couple were passive investors and had opened demat accounts only for investment purposes, after their retirements in the year 2015, they apparently decided to actively participate in stock market trading, by learning the nitty-grittiest of the stock market transactions. Accordingly, Monita joined tuitions to learn about stock market trading and during the process, came in contact with Siddhi, who was the authorised person of the Petitioners.

**16)** Instead of stock brokers directly dealing with clients, they are permitted to appoint Authorised Persons who can be both, individuals or entities, to act as an agent of the Stock Broker. Authorised Persons bring in clients for the stockbroker, who then provides access to the Authorised Person on the trading platform. The Authorised Persons take orders from their clients and may also offer investment guidance to their clients. Authorised Persons help the stock brokers to expand the client reach, especially in tier-2 or 3 towns. This is how Authorised Persons essentially bridge the gap between the stock broker and the investor/client. Authorised Persons thus focus on client acquisition, facilitating trades and offering investment guidance working under the broker's license rather than directly dealing with the stock exchanges. On trades executed by the clients of AP, the stock brokers and AP share the

brokerage. Sharekhan apparently permitted the Authorised Persons to retain 80% of the brokerage and only 20% of the brokerage is passed on to Sharekhan.

17) Siddhi was the Authorised Person of the Petitioner, who apparently guided Monita and Kisan in execution of various trades in their respective accounts. Apparently, Monita trusted Siddhi and Siddhi started operating the couple's trading accounts. It appears that Siddhi traded on behalf of the couple in F & O Segment and the trade transactions incurred losses. To square off the losses suffered in F & O Segment, shares in the demat accounts of Monita and Kisan were required to be sold. Monita and Kisan describe the activities of Siddhi as unauthorised trades and claim that they cannot be made to suffer losses arising out of such unauthorised trades executed by Siddhi. On the other hand, Petitioner claims that Respondents must bear the losses arising out of trades executed by Siddhi not just because they had authorised and instructed her to execute the trades but also because intimation of each trade was issued to the couple through contract notes via e-mail, as well as text messages. Petitioner contends that the couple was aware of execution of each trade transaction and cannot claim immunity from resultant losses by taking a specious plea that they had not instructed Siddhi to effect the trades. It is contended by the Petitioner that if indeed trading activities by Siddhi were unauthorised, Respondents ought to have taken necessary preventive measures as they were made aware of execution of each of the trades via contract notes as well as text messages. Petitioner thus contends that the Respondents, having taken the risk of letting Siddhi trade on their behalf in F & O Segment, cannot conveniently adopt the position of retaining profits

out of such trades but making the stock broker accountable for losses.

18) Perusal of the Awards passed by the learned Sole Arbitrator and the Appellate Arbitral Tribunal would indicate that both have essentially relied on SEBI Circular dated 22 March 2018 for holding the Petitioner responsible in respect of the trade transactions. It would be apposite to reproduce the findings recorded by the learned sole Arbitrator and the Appellate Arbitral Tribunal on the basis of SEBI circular dated 22 March 2018. The learned sole Arbitrator has held in paras-7 to 11 of the Award as under :-

> 7. It is not in dispute that no pre-trade confirmation was provided by the Applicant and the transcript which was provided for the date of 18.06.2019 and 27.06.2019 was for cash segment and not for dealing in F & O and that as per the ledger account, trading in F&O commenced on 19.09.2019.
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> 8. Applicant in his submission had stated that the Respondent had deposited a total sum of Rs. 19,14,199.72 with the Applicant and took pay out of Rs. 2,86,710/. On a perusal of ledger account, it is observed that pay-in and pay-out was for cash segment and not for F&O segment. Further it is also observed that interest has been debited by the Applicant from December 2019 (i.e., after the F&O trade commenced) which shows that the Applicant has financed the Respondent which is violation of NSE Bye-laws.
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> 9. When the Applicant was specifically asked by this Arbitral Tribunal to produce recording of the conversation, Applicant expressed their inability to produce recordings as they were not available since there was no landline at the premises of Authorised person. Applicant further submitted that the calls were directly made on mobile of Ms. Siddhi and no recording facility was made available. I am not convinced by the stand of the Applicant that recording facility was not provided at Authorised person's office which is a pre-requisite of trading as mandated by SEBI vide Circular No: SEBI//HO/MIRSD/DOPICIR/P/2018/
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> 10. The Applicant has relied on the interpretation of the SEBI Circular that if recording is not available on the basis of the circular, then one should rely on the post-trade confirmation.

> For ready reference, relevant portion of the circular dated 22.03.2018, issued by SEBI, is produced herein below:
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> xxx
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> 11. On a perusal of the SEBI circular, I am of the opinion that there may be a case for exception of strict compliance if the same is for technical failure, etc. I am of the firm view that the word 'etc.' should be read along with the words technical failure' and not where recording facility is not available. It is also my view that it is only in the case of technical failure or similar failure viz. recording was not properly audible due to technical faults than the exception provided will be triggered. I therefore hold that reliance on the exception of the circular is totally misconstrued since no recording facility was available at all. I am not inclined to afford any benefit to the Applicant on this ground for non-compliance.

**19)** The learned sole Arbitrator has thus held the Petitioner responsible for not maintaining pre-trade confirmations. He found that the transcripts available in respect 18 June 2019 to 27 June 2019 was only for cash segment trades and that trading in F & O segment commenced on 19 September 2019 and that no pre-trade confirmation was maintained in respect of any of the transactions in F & O Segment. The learned sole Arbitrator has accordingly concluded in para-20 of the Award as under:

> 20. Applicant has made a claim of Rs. 5,11,742/- but since they have not maintained any call recordings and no pre-trade confirmation was produced by the applicant and relying on the SEBI Circular No: SEBI//HO/MIRSD/DOPICIR/P/2018/54 dated 22/03/2018, reject the claim. Further the judgment of the Bombay High Court relied heavily upon by the Applicant is not applicable to the facts of the case since Arbitration and Reconciliation Act, 1996 is not applicable to IGRC proceedings and the Bombay High Court is on Arbitration and Reconciliation Act, 1996.

**20)** When the Petitioner approached the Appellate Arbitral Tribunal, the issue of failure to maintain pre-trade confirmations again cropped up. The Appellate Arbitral Tribunal again chose to base its findings mainly on compliance with SEBI Circular dated 22

March 2018. The Appellate Arbitral Tribunal has held in paras- 5.1, 5.2 and 5.4 of the Award as under :-

> 5.1 The crux of this Appeal matter is whether the trading in F&O segment during the disputed period done by the AP of the Appellant was authorised or not. The Appellant could not produce any call recording of order placement/ post trade confirmation calls etc, which is mandatory as per SEBI circular dated March 22, 2018. When asked as to why even a single record of order placement was not available, the Appellant stated that there was no landline available at the office of the former AP and orders were placed directly on the mobile number of the AP. Therefore, the Appellate Tribunal concurs with the observation of the Ld Sole Arbitrator's observation that the Appellant has violated the applicable SEBI guidelines.
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> 5.2 With regard to Ms. Siddhi not having landline & call recording facility at her trading terminal, it was stated by the Appellant that Ms Siddhi was registered as the AP of the Appellate since June 2016, about 2 years prior to issuance of these guidelines. However, in terms of NSE approval dated June 21, 2016, it is the TM's responsibility to ensure compliance on a continuing basis, with the various requirements stipulated by SEBI and Exchange from time to time. The Agreement between the Appellant and the former AP clearly states that "All acts of omission and commission of the AP shall be deemed to be of the TM and the TM shall be responsible for all acts of omission and commission of the AP and/or their employees, including the liabilities arising from them." The Appellant could not offer any convincing explanation for this non-compliance despite lapse of almost 2 years from the time these guidelines becoming effective. In view of this, we are in agreement with the opinion of the Ld Sole Arbitrator that since unauthorised trades were carried out by the AP and the Applicant being the Principal of the AP, is liable for her acts of commission and omission and has to bear the consequences under the principles of vicarious liability.
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> 5.4 The SEBI circular of 22/03/2018 is clear about maintaining records for order placement and only in exceptional cases such as technical failure etc., that other appropriate evidences can be relied upon. The Appellant has failed to provide any of the order placement records mentioned in the above SEBI circular. The Appellant's reliance on the exception of the SEBI circular is misconstrued & out of place, since as per their own admission, there was no telephone recording facility available at the premises/ office of the AP and hence, non-availability of order placement records cannot be treated as exceptional circumstances.

21) Thus, both the learned Sole Arbitrator, as well as the Appellate Arbitral Tribunal have mainly relied upon Petitioner's failure to scrupulously follow the requirement of maintaining pre-trade and post-trade confirmations under SEBI Circular dated 22 March 2018 for upholding the claims of the Respondents.

22) It would therefore be apposite to refer to the SEBI Circular dated 22 March 2018, which is issued to prevent unauthorised trading by the stock brokers. Para (III) of the SEBI Circular directed as follows:

> III. To further strengthen regulatory provisions against unauthorized trades and also to harmonise the requirements across markets, it has now been decided that all brokers shall execute trades of clients only after keeping evidence of the client placing such order, which could be, inter alia, in the form of
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> a. Physical record written & signed by client,
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> b. Telephone recording,
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> c. Email from authorized email id,
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> d. Log for internet transactions,
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> e. Record of messages through mobile phones,
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> f. Any other legally verifiable record.
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> When a dispute arises, the broker shall produce the above-mentioned records for the disputed trades. However, for exceptional cases such as technical failure etc. where broker fails to produce order placing evidence, the broker shall justify with reasons for the same and depending upon merit of the same, other appropriate evidences like post trade confirmation by client, receipt/payment of funds/ securities by client in respect of disputed trade, etc. shall also be considered.

23) The issue of effect of failure to follow directives of SEBI Circular dated 22 March 2018 on trades effected by a member fell for consideration before the learned Single Judge of this Court

(*Somasekar Sundersan J.*) in ***Ulhas Dandekar*** (supra). The issue involved has been captured in para-1 of the judgment as under :-

> 1. The core issue that falls for consideration in these Petitions under Section 34 of the Arbitration and Conciliation Act, 1996 ("the Act") is whether the absence of a prior written or recorded instruction for every transaction effected by a client through a stock broker would be fatal to a claim by the stock broker to settle accounts. For the reasons set out in this judgement, I am unable to agree with the Appellant that in the facts of this case, he has no liability to pay his dues owing to admitted absence of such instructions.

**24)** In case before the learned Single Judge in ***Ulhas Dandekar***, the Petitioner therein attempted to wriggle out of losses suffered from trade transactions accusing the stockbroker of carrying out unauthorised trades. One of the contentions raised on behalf of the Petitioner therein was that the stockbroker had failed to maintain written or recorded instructions for the trades under challenge. Reliance was placed on Regulation-3.2.1 of NSE Regulations, as well as SEBI Circular dated 22 March 2018. Reliance was also placed on judgments of Jharkhand High Court in ***Motilal Oswal Financial Services Ltd. Versus. Chandrabhushan Kumar***[7] and of Delhi High Court in ***First Global Stock Broking Pvt. Ltd. Versus. Tarun Gupta*** [8] in support of the proposition that absence of prior authorisation would acquit the client of obligation to pay for trades which were not backed by evidence of prior authorisation. The learned Single Judge of this Court considered the ratio of the judgments in ***Motilal Oswal Financial Services Pvt. Ltd.*** (supra) and ***First Global Stock Broking Pvt. Ltd.*** (supra) and has held that there cannot be an absolute proposition that absence of prior authorisation would acquit the client of the obligation to pay for the

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7 2024 SCC OnLine Jhar 4347

8 2024 SCC Online Del 4631

trades that are not backed by evidence of prior authorisation. This Court further held that SEBI Circular dated 22 March 2018 is directory and not mandatory from the perspective of evidentiary standard for determining whether the client indeed traded or not ? This Court further held that mere absence of written or recorded authorisation would not absolve trading member of liability incurred through such trades. It would be apposite to extensively quote the observations of the learned Singe Judge, as the same clearly answers the issue involved in the present case. It is held in ***Ulhas Dandekar*** as under:

> 23. Mr. Rajadhyaksha has sought to place reliance on decisions of the Jharkhand High Court in the case of Motilal Oswal and the Delhi High Court in the case of First Global to submit that the proposition of law is absolute that the absence of prior authorisation would acquit the client of the obligation to pay for the trades that are not backed by evidence of prior authorisation. With the greatest respect to the Learned Judges who rendered these decisions, in my opinion, there cannot be an absolute proposition that the absence of evidence of an authorisation is evidence of absence of authorisation. The thick line sought to be drawn between authorisation of a trade and knowledge of a trade does not resonate with me. When a person has knowledge of a trade, if such trade were not authorised by him, it would stand to reason that the knowledge would trigger a protest and lead to a challenge to the trade. If there is no such challenge until the debit balance runs up to a level where the stock broker is forced to make a claim in arbitration, it would be incumbent on the Learned Arbitral Tribunal to assess all the attendant evidence from a commercial and commonsensical perspective and return a finding that relates to the facts of the case.
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> 30. There are other extreme and illogical consequences if one were to let a person who trades in securities get away on the mere premise that there is no written or recorded prior authorisation of the trades. Take a case of a violative trade – say a trade that constitutes market manipulation or violative insider trading. Evidently, evidence in investigations may prove that a person who had not issued prior written authorisation would have been the mastermind behind those trades. If the proposition that only when there is a prior written or recorded authorisation, the mastermind would be accountable, would be absurd and untenable. In a trade that is later held to be violative,

where it is found that the stock broker was not a conspirator to the device or scheme that rendered the trade to be held as manipulative or violative, it would be unjust to hold the broker financially liable even when the client has been held to be guilty of the violation. Although the trade is declared to be violative from the wider regulatory perspective, monies owed by the client for such trade to a stock broker who has not colluded in the manipulation or violation would be have to be held to be an invalid claim. Such a logical progression of the binary and mandatory reading of the SEBI Circular, I must state with the greatest respect, would be absurd. It is for the jurisdictional arbitral tribunal, which is the master of the evidence, to assess upon examination and weighing of the evidence on record to arrive at whether the client consciously exercised his autonomy to effect the trades. If it were to be an absolute proposition that the absence of prior recorded authorisation is evidence of non-participation in the trade, unintended consequences that would be at odds with the very foundation of the regulatory design and the overall scheme of ensuring market integrity would come about.

38. The SEBI Circular that provides for a carve-out for situations where evidence of prior recorded or written authorisation is unavailable, is in fact a demonstration of the deference to trade usages. The payment and receipt of funds, and the conscious and autonomous receipt and delivery of securities are trade usages in the securities market. To be unmindful of them and to read the SEBI Circular as if it were a piece of fiscal statute would be contrary to the statutory mandate of Section 28(3) of the Act, which must be adopted in all cases by the arbitral tribunal.

40. It would be useful to summarise the conclusions drawn in this judgment as follows:-

a) Maintenance of prior written or recorded authorisation of trades given to a stock broker by the client is an important safety feature to protect against disputes between brokers and clients, but the same is not the exclusive and only means of demonstrating that the client exercised his own agency and autonomy to approve of trades;

b) When disputes arise, the arbitral tribunal would be entitled to examine other appropriate evidence to return a finding as to what actually transpired – a feature prominently set out in the SEBI Circular;

c) The reference to situations such as “technical failure” in which a stock broker may be unable to produce evidence of order placement, to allow reliance on other appropriate evidence is not meant to be a limiting factor for consideration of evidence, but is meant to ensure that

the requirement to secure prior trade authorisation is important but not determinative in absolute terms of whether the client traded;

d) Failure to keep prior written or recorded authorisation can lead to regulatory sanction but that would in itself not change the directory nature of the implications of non-availability of such evidence;

e) Absurd, unintended and chaotic consequences can arise if the absence of prior written or recorded authorisation would let the party transacting in the stock market off the hook and permit such party to disown the trades in question;

f) In every case, it is for the jurisdictional arbitral tribunal to assess the evidence at hand, and take an informed, reasoned and nonarbitrary view as to whether the client of the stock broker exercised his conscious and autonomous choice in effecting the trades under dispute; and

g) The evidence has to be purposively interpreted bearing in mind the overall regulatory objective and not in a mechanical and literal manner as if Regulation 3.2.1 of the NSE Regulations were a provision in fiscal statute.

**25)** Thus, the judgment of this Court in ***Ulhas Dandekar*** squarely answers the issue involved in the present case. Mere failure to maintain written or recorded trade confirmations by stock broker cannot be a ground for trading member to wriggle out of losses suffered out of such trades.

**26)** The Division Bench of this Court in ***Erach Khavar*** (supra), of which I was a Member, had an occasion to examine the effect of breach of Regulation-3.4.1 of NSE Regulations, which also provided for maintenance of appropriate recorded confirmations in respect of orders placed by the clients. The Appellant before this Court had attempted to wriggle out of losses suffered through trade

transactions by relying on NSE Regulation-3.4.1. The Division Bench held in paras-17, 18 and 19 as under:

> 17) Faced with the difficulty where the Appellant admittedly confirmed all transactions after they were effected, he cited the pretext of absence of pre-transactions authorisation for the purpose of wriggling out of the losses caused due to the transactions. Appellant has relied upon National Stock Exchange (Futures and Options Segment) Trading Regulations, particularly Regulation No.3.4.1 providing that the trading member shall ensure that appropriate confirmed order instructions are obtained from the constituents before placement of an order on the NEAT System. The Regulation further provides that whenever order instructions are received through telephone, members shall mandatorily use telephone recording system to record the instructions. Taking benefit of Regulation No.3.4.1, the Appellant contends that transactions in question could not have been effected in absence of pre-trade authorisation. However, in Nirmal Bang Securities Ltd. Division Bench of Calcutta High Court has held that pre-trade confirmation was mandatory only pursuant to the SEBI Circular dated 26 September 2017. The SLP against the said judgment is dismissed by the Supreme Court on 17 November 2020. Additionally, in Keynotes Capital Ltd. (supra) this Court has held that if constituent was aware of transactions and did not object to the same, the transactions cannot be treated as unauthorised. This Court emphasized the need to raise the objection within reasonable time. Further, Division Bench of this Court in Maheshbhai Hiralal Champneira (supra) has held that objection to the transactions must be raised within couple of days.
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> 18) Appellant has attempted to distinguish the judgment in Nirmal Bang Securities Pvt. Ltd. by contending that the same is delivered after the Arbitral Award and Appellate Award. However, the judgment merely states the law which existed even at the time of making of the Award. The law thus appears to be fairly well settled that if transaction is not objected to within reasonable time, the Constituent cannot later wriggle out of the transaction. In the present case, far from objecting to the transactions, the Appellant actually confirmed the same from time to time and signed the final Ledger Account without any demur. While we do not propose to delve deeper into the allegation of alleged illegal arrangement made by the Appellant with Mr. Farukh Meshman for sharing of profits of trades, it does appear believable that Mr. Farukh Meshman was giving instructions for the transactions in question and hence Appellant was not raising any objection for the same even after acquiring knowledge of such transactions. The appellant had apparently accepted the losses which is a reason why he signed

the final Ledger account and accepted the balance amount without raising any objection. He appears to have latter grown wiser, possibly on account of an advice and sought to take benefit of NSC Regulations requiring pre-trade authorisations.

19) In our view, violation of NSE Regulations requiring pretrade authorisations can at the highest be a ground for penalising of a stock-broker. The same however cannot be a reason for wriggling out of consequences of a trade, particularly when the trade transaction is confirmed by the constituent. Absence of pre-trade authorisation cannot be permitted to be used as a handle by a person speculating in shares for the purpose of wriggling out of losses resulting out of trade transactions which are confirmed by him. There is a difference between concept of absence of pre-trade authorisation and blatantly unauthorised trade. The present case does not involve the vice of blatantly unauthorised trades. Reliance by the Appellant on order of this Court in Amit Bharadwaj and judgment in Bonanza Commodities Brokers Pvt. Ltd. is therefore inapposite.

**27)** Thus, the Division Bench of this Court in ***Erach Khavar*** has held that absence of pre-authorisation cannot be permitted to be used as a handle by a person speculating in shares for the purpose of wriggling out of resultant losses out of trades This Court drew difference between the concept of pre-trade authorisation and blatantly unauthorised trades. The judgment of Division Bench in ***Erach Khavar*** also underscores an important principle that if the client fails to object to the transactions within a reasonable time and permits another person to continue effecting trades, the client cannot later take a *volte face* and seek to distance herself/himself from the trades effected on her/his behalf. This principle is of vital importance in a case like present one. The silence by the client in respect of trades despite acquiring knowledge thereof can also be out of hope of squaring off the losses by trading more on the platform. It often happens that initial trades can entail losses, but an investor uses the skills to recover the same by trading more. Therefore, silence by client after receipt of contract notes and text messages will have to be necessarily understood in the context of what exactly

the client was doing. Is she/he a mere passive investor, who is duped by the stockbroker or is she/he an active speculator hoping to earn fortunes in the stock market is the key.

28) As held in ***Erach Khavar*** the principle of not holding the broker responsible would not apply to blatantly unauthorised trades, where a stockbroker sells shares of client without his consent. This would be a case of plain theft, to which the principle of acquiescence would not apply. Therefore, mere silence for some time in such a case by a passive investor, who is incapable of understanding the consequences of contract notes or text messages, in raising grievance about unauthorised transactions in his account, would not estop him from claiming return of stolen shares or claiming value thereof. However, in a case like present one, where Respondents were trying their luck in the stock market and trusted Siddhi to trade on their behalf, cannot be permitted to use SEBI Circular dated 22 March 2018 as a handle for escaping the liabilities arising out of trades they permitted Siddhi to execute. 'Profits are mine, but losses are yours' is the mantra, which Respondents attempt to propagate, which cannot be countenanced.

29) The ratio of the judgments in ***Erach Khavar*** and ***Ulhas Dandekar*** is followed by another learned Single Judge of this Court (Manish Pitale J.) in ***Peerless Securities Ltd.*** (supra) in which it is held in para-27 as under :-

> 27. Apart from this, the findings of the arbitral tribunal show that Regulation 3.4.1 of the said Regulations has been held to be mandatory and hence, the petitioner is held responsible to make good the losses of the respondent. There is substance in the contention raised on behalf of the petitioner that the judgements of the learned Single Judge of this Court in the case of Ulhas Dandekar Vs. Sushil Financial Services Private Limited (supra)

and the Division Bench of this Court in the case of Erach Khavar Vs. Nirmal Bang Securities Private Limited (supra) lay down the law that Regulation 3.4.1 of the said Regulations is, at best, directory and not mandatory. Thus, it can be said that the impugned arbitral award is in conflict with the said established position of law and hence it is in conflict with public policy of India under Section 34(2)(b)(ii) of the Arbitration Act.

30) In fact, the judgment in ***Peerless Securities Ltd*** walks a step further and deprecates the methodology of awarding claim of 50% losses by relying on judgment in ***Dhwaja Shares and Securities Private Limited Versus. Sunita A. Khatod***[9] This Court has held in para-29 as under :-

29. There is also substance in the contention raised on behalf of the petitioner that even if the arbitral award found losses suffered by the respondent, the extent of liability of the petitioner ought to have been determined on proper and cogent evidence. **This Court in the case of Dhwaja Shares and Securities Private Limited Vs. Sunita A. Khatod (supra) held that simply halving the amount claimed by the aggrieved party and awarding it, amounts to an irrational and unreasoned approach. In fact, it was deprecated as being akin to a panchayati approach in such matters.** Such an approach also shows that the learned arbitrator proceeded on the basis of no evidence to reach such a conclusion. This clearly takes it into the arena of Section 34(2-A) of the Arbitration Act, pertaining to patent illegality. It also goes into the zone of perversity as recognized by the Supreme Court in its judgement in the case of Associate Builders Vs. Delhi Development Authority (supra). Hence, this Court finds substance in the contention raised on behalf of the petitioner on the said count also. **In this regard, the learned counsel for the respondent placed much emphasis on the fact that it was not the sole arbitrator, who had simply halved the amount claimed but he had simply confirmed the order of the IGRP. Such contention cannot come to the aid of the respondent as the learned arbitrator could have insisted on empirical evidence for ascertaining the extent of loss, if any, caused to the respondent on account of the actions or inaction on the part of the petitioner.** Having failed to do so, the arbitral award is clearly hit by Section 34(2A) of the Arbitration Act. The orders of the IGRP in the other complaints made on identical facts show that diametrically opposite findings were rendered. These were completely ignored by the learned arbitrator, although they

[9] Arb. Petition No. 1424 of 2019 decided on 22 July 2025.

could be said to be relevant while considering the rival contentions in the arbitral proceedings.

*(emphasis added)*

**31)** I am in respectful agreement with and rather bound by the ratio of the judgment in ***Ulhas Dandekar , Erach Khavar*** and ***Pearless Securities Ltd,*** wherein it is held that mere non-observance of regulatory directives cannot be a pretext available for an investor to hold stockbroker responsible for losses resulting out of the trades. Failure to adhere to the regulatory directives by SEBI or NSE may entail necessary disciplinary measures against the Stock Broker. However, the same would not necessarily create a liability on the stockbroker to compensate the client/investor in respect of the losses suffered in the trade transactions. In a case like the present one, where clients have authorized or have let another person to effect trades on their behalf, relied on her skills and took the risks in the volatility of the stock market, cannot later turn around and disown the trade transactions by taking a specious plea that the stockbroker did not maintain written/recorded pre-trade confirmations. The maintenance of written/recorded trade confirmations would have some significance in a case where it is proved that the client/investor had actually not given any instruction for effecting a particular trade and somebody in the office of stockbroker has unauthorisedly effected a trade. In that case, the client/investor cannot be held responsible for losses arising out of such blatantly unauthorised trades and the stockbroker would be made responsible for consequences arising out of such trades. However, in a case where client/investor specifically admits that he/she authorised another person to effect trades on his/her behalf, the trades effected by that person cannot be disowned by the

client/investor. In case before the Division Bench in ***Erach Khavar*** also, the appellant therein had authorised another person to effect trades in his account and the appellant has received all the contract notes and text messages. He later sought to wriggle out of consequences of such trades by disowning the same by relying on NSE Regulation 3.4.1. In the present case also, Respondent specifically admitted that they had trusted Siddhi and had allowed her to effect trades on their behalf. This is not a case where Siddhi is an unknown person to Respondents, who has effected trades in their accounts in a blatantly unauthorised manner. In my view therefore Respondents cannot take shelter behind regulatory directives of SEBI Circular dated 22 March 2018 and hold Petitioner responsible for recovering the losses suffered by them.

**32)** Mr. Katariya has also questioned the wisdom of the IGRC, the learned sole Arbitrator and the Appellate Arbitral Tribunal in deciding Respondent's entitlement in respect of 50% losses. As observed above, this Court in ***Peerless Securities Ltd.*** has adversely commented upon the methodology of dividing the liability at 50-50 between the parties. The Arbitral Tribunal is required to adjudicate the claims based on the principle of award of damages for losses suffered by the parties applying the principles under Section 73 and 74 of the Indian Contract Act, 1872. It is well settled principle that award of damages or compensation cannot be without proof of loss suffered. In ***Unibros Ltd. vs. All India Radio***[10] the Apex Court has held thus:

> 15. Considering the aforesaid reasons, even though little else remains to be decided, we would like to briefly address the appel-

[10] 2023 SCC Online SC 1366

lant's claim of loss of profit. **In Bharat Cooking Coal(supra), this Court reaffirmed the principle that a claim for such loss of profit will only be considered when supported by adequate evidence**. It was observed:

> "24. ... It is not unusual for the contractors to claim loss of profit arising out of diminution in turnover on account of delay in the matter of completion of the work. What he should establish in such a situation is that had he received the amount due under the contract, he could have utilised the same for some other business in which he could have earned profit. Unless such a plea is raised and established, claim for loss of profits could not have been granted. In this case, no such material is available on record. In the absence of any evidence, the arbitrator could not have awarded the same."
>
> *(emphasis added)*

**33)** Therefore, the methodology adopted by the Arbitral Tribunals in not conducting any enquiry into the losses suffered by Respondents due to the alleged negligent act of the Petitioner and straightaway awarding 50% of loss suffered in the trades executed in F & O Segment is required to be deprecated. Such an approach actually is in conflict with the fundamental policy of India under Section 32(2)(b)(ii) of the Arbitration Act.

**34)** Reliance by Mr. Dave on judgment of the Apex Court in ***M/s. Construction and Design Services*** (supra), Division Bench of Delhi High Court in ***Cobra Instalaciones Y. Servicios*** (supra) and of this Court in ***Board of Control for Cricket in India*** (supra) is inapposite. The principles discussed in the said judgments can be applied only to a case where it is impossible to determine the precise amount of loss. In such circumstances, the court can proceed on guesswork and decide the compensation to be allowed in the given

circumstances by adopting rough and ready formula. This principle would not apply where no attempt is made to prove sufferance of loss. Here, award of sum is not out of any contractual obligations between the parties. It is towards damages suffered due to alleged negligent conduct of Petitioner in not maintaining the pre-trade conformations. This principle therefore would not be attracted to the present case as Respondents have made no attempt to lead evidence of loss and simply claimed the entire amount of loss suffered in trades executed on their behalf.

35) Considering the overall conspectus of the case, I am of the view that the impugned Awards are clearly unsustainable and liable to be set aside.

36) The Petitions are accordingly **allowed.** The Order of IGRC, Award dated 14 November 2022 passed by the learned sole Arbitrator and Award dated 2 June 2023 passed by Appellate Arbitral Tribunal are set aside. Considering the facts and circumstances, there shall be no order as to costs. With disposal of the Petitions nothing would survive in the Interim Applications and the same are disposed of.

**[SANDEEP V. MARNE, J.]**