IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMMERCIAL ARBITRATION PETITION NO. 788 OF 2024
WITH
INTERIM APPLICATION (LODG.) NO. 35173 OF 2023

Kotak Securities Limited ...PETITIONER

: VERSUS :

Gajanan Ramdas Rajguru ....RESPONDENT

Mr. Pesi N. Modi, Senior Advocate with Mr. Kunal Kataria, Mr. Shailesh Prajapati & Mr. Ankit Singhal i/b Dua Associates, for the Petitioner
Mr. Nitesh V. Bhutekar with Mr. Aaditya Mahamiya, for the Respondent.

CORAM : SANDEEP V. MARNE, J.
Judg.Reserved On : 25 NOVEMBER 2025.
Judg. Pronounced On : 03 DECEMBER 2025.

JUDGMENT

1) The Petition involves an interesting conundrum. Whether profits earned by a person out of an undue trade opportunity can be retained by such person or he must hand over the same to the opportunity giver is the issue which this Court is tasked upon to decide in the Petition. Petitioner erroneously made available to the Respondent, margin for execution of trades in the stock market. Respondent made use of such undue opportunity, took risk, used his skills and earned profits. Petitioner now claims that the profits made by Respondent out of such undue margin belongs to it.

2) The Petition filed by the Petitioner under Section 34 of the Arbitration and Conciliation Act,1996 **(Arbitration Act)** takes exception to the final Award dated 25 October 2023 passed by the Appellate Tribunal of

Arbitrators constituted under the Bye-laws of the National Stock Exchange of India Ltd. **(NSE).** By the impugned Award, the Appellate Arbitral Tribunal has set aside the order passed by the Grievance Redressal Committee (**GRC**) as well as the Award made by the lower Arbitral Tribunal. The Appellate Arbitral Tribunal has directed the Petitioner to pay to the Respondent sum of Rs.1,75,01,672.92/- along with interest at the rate of 12% p.a. from 26 July 2022 till realization. The GRC constituted under the bye-laws of NSE had rejected the claim of the Respondent and the order of the GRC was upheld by the lower Arbitral Tribunal. The Appellate Arbitral Tribunal has reversed the orders passed by the GRC and the lower Arbitral Tribunal and has awarded the claim in favour of the Respondent.

3) Brief facts leading to filing of the Petition are stated thus :

Petitioner is a registered trading member with NSE and Bombay Stock Exchange for cash and derivative segments and is also a Depository Participant **(DP)** with both the CDSL and NSDL. Respondent is the client of the Petitioner who had opened Trading Account with the Petitioner in October 2021 and had opted to trade in the markets using online trading facility. On 26 July 2022, Respondent had margin of only Rs.3175.69/-. Due to technical glitch in the system of the Petitioner, Respondent received undue credit in his margin. Taking advantage of receipt of such credit in his margin, Respondent executed trades of approximately Rs.94.81 crores in future and options (**F&O**) contracts within 20 minutes window by which time, Petitioner rectified the glitch. Such trade would have required margin of about Rs.40 crores as against the actual margin available with the Respondent of Rs.3175.69/-. It appears that the Respondent made profit of Rs.1.75 crores on the basis of such trades executed using erroneous credit of margin. A contract note dated 26 July 2022 was issued to the Respondent for the trades executed in his account and his account was credited with the amount of Rs.1,83,51,383.43/-. However, Petitioner reversed the amount of Rs.1,75,01,672.92/- from the

account of the Respondent after adjusting the statutory charges on the ground that the trades were executed on erroneous margin.

4) The Respondent complained to the Petitioner regarding debit of the amount from his account. The officials of the Petitioner visited the Respondent for a possible amicable resolution of the issue. However, there was no resolution. Respondent filed complaint with the Investors Services Cell of NSE, which was registered on 15 September 2022. Petitioner responded to the complaint filed by the Respondent, *inter-alia*, stating that it had attempted to resolve the issue, but it could not be resolved. The GRC of NSE heard the complaint of Respondent and passed order dated 19 October 2022 rejecting the claim. The order of the GRC was challenged by the Respondent before the Arbitral Tribunal by filing Arbitration Application dated 25 November 2022. Petitioner filed reply opposing Arbitration Application. The Arbitral Tribunal passed Award dated 1 June 2023 rejecting the claim of the Respondent.

5) Respondent filed Appeal before the NSE Appellate Forum challenging the Award of the Arbitral Tribunal. Petitioner filed reply to the Appeal. The Appellate Arbitral Tribunal has passed impugned Award on 25 October 2023 allowing the claim of the Respondent in the sum of Rs.1,75,01,672.92/- along with interest at the rate of 12% p.a. from 26 July 2022. In view of the Award dated 25 October 2023, NSE debited amount of Rs.2,01,31,239.34/- from the exchange dues account of the Petitioner.

6) Aggrieved by the Award of the Appellate Arbitral Tribunal dated 25 October 2023, Petitioner has filed the present Petition Under Section 34 of the Arbitration Act. By order dated 22 December 2023, this Court directed NSE to transmit amount of Rs.2,01,31,239.34/- to this Court which has been directed to be invested. The execution of the final Award dated 25 October 2023 has been stayed by this Court.

7) Mr. Modi, the learned Senior Advocate appearing for the Petitioner would submit that the impugned Award of the Appellate Arbitral Tribunal is perverse and in violation of the fundamental principles of Indian Law. That the issue involved in the Petition is clearly covered by the provisions of Section 71 read with Section 163 of the Indian Contract Act, 1872 **(Contract Act)**. That since the Respondent has earned profit of Rs.1.75 crores by misusing the margin of the Petitioner, the said profit must be returned to the Petitioner as per the provisions of Sections 71 and 163 of the Contract Act. He would submit that under the provisions of NSE (F&O) Regulation-3.10, a client is mandatorily required to deposit margin before any trade order is entered. Admittedly, the Respondent traded way beyond his margin of only Rs.3175/- and hurriedly executed trades worth Rs.94.81 crores by taking advantage of the technical glitch. He would submit that the findings recorded by the Appellate Arbitral Tribunal in the impugned Award that the Respondent had 'discretion' to decide whether to take advantage of the technical glitch and trade beyond the margin provided by him is contrary to clear the requirements of the bye-laws. That such finding damages the entire Risk Management System of the market. That the Award is therefore contrary to law. Respondent cannot be allowed to take advantage of his own wrong and profit from his violations on a specious plea that he should have been caught of when he was violating the Rules.

8) Mr. Modi further submits that the impugned Award confuses between mandatory initial/upfront margin prior to the trade and subsequent obligation to top-up margin each day. That based on such confusion, the Appellate Arbitral Tribunal erroneously concluded that there was no unjust enrichment because it was a technical glitch. He would further submit that the impugned Award erroneously finds fault with the Petitioner for not shutting down Respondent's trading before 1.30 p.m. ignoring the position that the Petitioner was entitled to assume bona fides of its clients that they would trade only within the margin provided.

9) Mr. Modi would further submit that the Appellate Arbitral Tribunal has erroneously used negotiation talks for settlement against the Petitioner in ignorance of provisions of Section 81 of the Arbitration Act making the terms discussed during settlement inadmissible in evidence. That the efforts for amicable resolution were made by the Petitioner only at the suggestion made by GRC and lower Arbitral Tribunal and mere offering settlement by the Petitioner out of deference to suggestions made by GRC and lower Arbitral Tribunal cannot be construed to mean admission of liability by the Petitioner. That the Appellate Arbitral Tribunal ignored the position that even it had suggested parties to settle the disputes. That under Section 23 of the Indian Evidence Act,1872 such without-prejudice-discussions are inadmissible in evidence.

10) Lastly, Mr. Modi would submit that the Award needs to be set aside for the purpose of ensuring sanctity of the system. He would submit that the integrity of Risk Management System would be thrown to chaos if the interpretation of Appellate Arbitral Tribunal is permitted to subsist. That the Arbitral Award would pave way for clients indulging in illegal trades not covered by required margin and then claiming profits arising out of such illegal trades. In support of his contention that a party cannot be permitted to take benefit of his own wrong and that Court cannot be a party to perpetuation of illegality, Mr. Modi would rely upon judgment of the Apex Court in ***Machhindranath s/o Kundlik Tarade (deceased) Versus. Ramchandra Gangadhar Dhamne and others***[1]. On above broad submissions. Mr. Modi would pray for setting aside the impugned Award.

11) Mr. Bhutekar the learned counsel appearing for the Respondent would oppose the Petition submitting that no interference is warranted in the well-considered Award of the Appellate Arbitral Tribunal. Highlighting the limited scope of powers Under Section 34 of the Arbitration Act, he would submit that no ground is made out for invalidating the Award of the Appellate Arbitral Tribunal. He would rely upon judgment of the Apex Court in ***Punjab State Civil Supplies***

1 (2023) 7 SCC 456

Corporation Limited and another Versus Sanman Rice Mills and others[2] in support of his contention of limited scope of interference by Courts in arbitral matters. Mr. Bhutekar would then take me through the exact chronology of events which occurred on 26 July 2022. He disputes that the alleged technical glitch was only for 20 minutes. That the Respondent had full trading access from 11.46 a.m till 1.30 p.m. That Petitioner did not take the necessary mitigating measures by suspending or restricting the terminal nor did it invoke any risk control protocols. That the Respondent relied upon the exposure displayed by the Petitioner's systems and legitimately executed trades. Taking me through the text RMS pop-up messages, he would submit that none of them prohibited trading or suspended the terminal or warned that the trades would be reversed or indicated that the profits would be forfeited. He would submit that the Respondent took legitimate risk and earned gross profit of Rs.1,83,51,383.43/-. That Petitioner deducted Rs.8,49,710.37/- towards GST, STT, exchange fees and other statutory dues and net profit of Rs.1,75,01,673/- was credited to Respondent's ledger. That the fact that the Petitioner collected fees and charges would indicate that the trades were legal. Additionally, Petitioner was also charged interest of Rs.8,624.86/- for 'excess exposed used'. The factum of charging of interest would indicate that the Petitioner profiteered from erroneous use of the margin and is now estopped from contending that the trades were illegal.

12) Mr. Bhutekar would further submit that prior to initiation of proceedings, Petitioner made offer of settling the matter for Rs.50,00,000/. That the settlement offer was given without intervention by GRC or Arbitral Tribunal. That such proposal indicates conscious awareness of the Petitioner that reversal was illegal and improper. That there is no provision of law under which the Petitioner-trading member was authorized to withhold or withheld respondents credit balance. That the act of withholding and reversal of Respondent's credit balance constituted an unauthorized and unlawful usurpation of client's funds.

2 2024 SCC Online SC 2632

That the alleged software malfunction was an internal issue of the Petitioner. Having failed to block the fresh trades or invoke risk protocols and having allowed Respondent trading for more than 1 and ½ hours, Petitioner is now estopped from claiming profits earned out of the trades. Lastly, Mr. Bhutekar would submit that all the trades are legitimately earned and executed. That there is no unjust enrichment by the Respondent, who has made profits with his skill and volatility. If the trades were to incur losses, the same would have been borne by the Respondent. That since Petitioner accepted brokerage paid statutory levies, issued contract notes, treated trades as valid and charged interest for excess exposure, it is estopped from claiming that the trades are illegal. If there is any unjust enrichment, the same is on the part of the Petitioner. He would submit that Sections 71 and 163 of the Contract Act have no application to the facts of the present case as the said provisions deal with goods, which does not include money as per definition of the term 'goods' as per Sale of Goods Act, 1930. Mr. Bhutekar would accordingly pray for dismissal of the Petition.

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

14) The short but interesting issue that arises for consideration is whether Petitioner can pocket profits earned by Respondent through trades executed by him using his own skill and risk, but by making use of margin erroneously reflected in his trading account on account of glitch in Petitioner's system.

15) Petitioner had initially credited the profit earned by Respondent in his ledger account but later withdrew the same. Upon complaint by the Respondent, GRC and lower Arbitral Tribunal had rejected his claim on the ground that permitting Respondent to retain profits earned out of illegal use of margin would amount to unjust enrichment. The Appellate Arbitral Tribunal has however debunked the theory of unjust enrichment by holding that Respondent cannot be held

responsible for deficiency in service and for system error of the Petitioner. The Appellate Arbitral Tribunal has accordingly allowed the claim of the Respondent in the sum of Rs.1,75,01,672.92/- by setting aside the order passed by the GRC and the Award passed by the lower Arbitral Tribunal. It has upheld the claim of the Respondent that he is entitled to retain the profits earned out of trades executed by him by using margin money erroneously made available to him by the Petitioner due to technical glitch in the system.

16) Respondent is a client of the Petitioner, who used to execute trades inter-alia in F&O contracts. SEBI has prescribed certain risk management tools, which are required to be adopted by exchanges as well as by brokers so that credit risk emerging from the trading activities is taken care of and integrity of system is not put to risk. SEBI has accordingly prescribed maintenance of 'margins', under which a client has to deposit collateral which may be in the form of cash or fixed-deposits or bank guarantees or even securities or mix of all of them. Margin money is like an initial deposit required to open a leveraged trading position. SEBI and the exchanges have also prescribed that at the time of enrollment as a constituent trading member, each client must be made aware of risk disclosure documents. As per SEBI circular dated 20 July 2020, a broker has to collect the prescribed/applicable margin upfront. Thus, upfront margins are required to be collected from the clients in advance. For trade in the derivative markets the amount of margin is small relating to the value of derivative contracts. It appears that for F&O contracts, the margin money requirement is 40% of the proposed trades to be executed.

17) There is no dispute to the position that the total margin deposit available with the Respondent as on 26 July 2022 was only Rs.3175/-. There is also no dispute to the position that Petitioner's system had developed a glitch at about 11.46 am and reflected wrong amount being available for margin for the purpose of trading by the Respondent. Though Petitioner claims that the error was rectified by it by 11.46 a.m.,

there is no dispute to the position that the Respondent was allowed to place orders upto 1.30 p.m. possibly to square off his open positions. It appears that the Respondent initially suffered loss of around Rs.54,00,000/-. But as the trading transactions continued, he finally made gross profit of Rs.1,83,51,383.43/-. It appears that the total booked profit by Respondent was Rs. 2.38 crores and after netting his earlier loss of Rs.54 lakhs, his gross profit was Rs.1,83,51,383.43/- There is also no dispute to the position that the Petitioner initially did not object to the said trades as its system deducted amount of Rs. 8,49,710.37/- towards GST, STT, exchange fees and other statutory levies and the net profit of Rs.1,75,01,673/- was credited to Respondent's ledger. However, later Petitioner reversed the said amount.

18) In the present case, Respondent has utilized the opportunity made available to him in the form of increased margin for the purpose of executing trades in F & O contracts and in the process, was lucky in earning profits (gross profit of Rs.1,83,51,383.43/- and net profit of Rs.1,75,01,673/-). Since the trades executed by the Respondent are on the basis of Petitioner's margin erroneously made available to the Respondent, Petitioner claims that the profits made by the Respondent are the property of the Petitioner. The issue before the GRC, first Arbitral Tribunal and Appellate Arbitral Tribunal was whether profits earned by Respondent using his skills by making use of opportunity made available to him on account of technical glitch in the system of the Petitioner would enure to the benefit of the Respondent or the same is entitlement of the Petitioner. As observed above, GRC and first Arbitral Tribunal ruled in favour of the Petitioner and rejected the claim of the Respondent essentially invoking the theory of unjust enrichment. The Appellate Arbitral Tribunal however has held that the action of the Petitioner in holding on to the monies earned by the Respondent was not supported by provisions of any rules and regulations of the exchange. The Appellate Arbitral Tribunal took into consideration the terms and conditions of margin trading facility on the website of the Petitioner and held that the

approach of the Petitioner lacked *bonafides* as it did not show due diligence and intentionally and deliberately ignored its own Rules and Regulations and failed to even call up the Respondent and expected the Respondent to convey to it about erroneous margin.

19) Petitioner claims that since the resultant profits emanat out of margin money of the Petitioner, such profits become the property of the Petitioner. Reliance is placed on provisions of Sections 71 and 163 of the Contract Act. Section 71 deals with the responsibility of finder of goods and provides thus :-

> **71.Responsibility of finder of goods.**—
>
> A person who finds goods belonging to another, and takes them into his custody, is subject to the same responsibility as a bailee

20) Section 163 of the Contract Act provides for bailor's entitlement to profit from goods bailed. Section 163 provides thus:-

> **163. Bailor entitled to increase or profit from goods bailed.**—
>
> In the absence of any contract to the contrary, the bailee is bound to deliver to the bailor, or according to his directions, any increase or profit which may have accrued from the goods bailed.
>
> **Illustration** A leaves a cow in the custody of B to be taken care of. The cow has a calf. B is bound to deliver the calf as well as the cow to A. 164

21) The illustration below Section 163 explains the concept of bailor's entitlement to profit in a more simplified terms. If an owner leaves a cow in the custody of another person and the cow has a calf, the person with whom cow is left must return not just the cow but also the calf to the owner. Since the present case does not involve Petitioner voluntarily providing or making available the margin to the Respondent, the provisions of Section 71 of the Contract Act are also pressed into service. Under Section 71, even a finder of goods belonging to another person and

taking the goods into his custody is made subject to some responsibility as a bailee.

22) Thus, Petitioner has sought to apply combined effect of provisions of Section 71 (finder of goods) and Section 163 (bailee's duty to return profits) for the purpose of cliaming profits earned by Respondent by using margin money of the Petitioner.

23) However, the issue is whether margin made available by Petitioner to Respondent can be treated as 'goods' for application of provisions of Sections 71 and 163 of the Contract Act. Indian Contract Act does not separately define the term 'goods'. Section 2(7) of the Sale of Goods Act, 1930 defines the term 'goods' as under:

> (7) "**goods**" means every kind of moveable property other than actionable claims and money; and includes stock and shares, growing crops, grass, and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale;

24) Thus, under the definition of the term 'goods', every form of movable property other than actionable claims and money is included. The term 'goods' also include stock and shares. Since definition of the term 'goods' does not include money, the margin money provided by Petitioner or made available to the Respondent would not strictly fall into the definition of the term 'goods'. Making available margin means essentially making available money for effecting trades on the platform. The margin money so made available to a client/investor becomes usable as consideration for trades executed in the stock market. The margin is required to be maintained in the form of cash, fixed deposit receipts, bank guarantee or even shares. In that sense, making available margin is akin to handing over money for execution of trades. Since the term 'margin' virtually means monetory security, the same would not be covered by definition of the term 'goods'. Therefore, the provisions of Sections 71 and

163 of the Contract Act would not strictly apply to the transactions in question.

25) Also, reflection of undue margin in the account of a trading member is akin to making available mere opportunity to trade. It is like making available money for execution of trades. It can also be treated as loaning money temporarily. This appears to be the reason why Petitioner charged interest on the margin money made available to Respondent. It is another thing that it was advised to reverse the entry of interest subsequently, possibly for staking claim to profits earned by use of the margin. Therefore it becomes difficult to place the transaction of reflection of margin on trading account on the same pedestal as that of finder of goods under Section 71 read with Section 163 of the Contract Act.

26) Even otherwise, I find the claim of the Petitioners to retain profits earned by the Respondent through trades executed by him to be wholly unjustifiable. There is no doubt to the position that making available margin of about Rs.40 crores to the Respondent was a fault/mistake of the Petitioner. What is done by the Respondent is to make use of the undue opportunity erroneously made available to him. Mere exploitation of subject opportunity automatically does not result in any profits for him. The margin reflected in his account merely opened doors for him to trade on the exchange platform. The opportunity came with risk of incurring losses or to earn profit, depending on Respondent's skill. As a matter of fact, Respondent initially incurred losses to the tune of Rs.54,00,000/- but later managed to earn substantial profit of Rs.2.38 crores thereby resulting in actual profit of Rs.1.83 crores. The Respondent thus used his own skills and risks for earning the profits and mere provision of opportunity did not automatically result in profits for him. If Respondent was to suffer losses in the trades by using Petitioner's margin, the Respondent would have been liable to repay the amount of losses to the Petitioner. It cannot be that the Respondent would only be liable to repay the amount of losses but cannot be permitted to retain the profits.

Similarly, there cannot be a win-win situation for the Petitioner, where it would recover losses from the Respondent but retain the whole profit earned by Respondent on a specious plea that the profit was earned by using Petitioner's margin.

27) The theory of unjust enrichment pressed into service by the Petitioner does not appeal to this Court. Earning of profits by Respondent through execution of valid and legal trades cannot be treated as unjust enrichment. If there is unjust enrichment in the present case, it is by the Petitioner. It is the Petitioner who committed the mistake in making available margin for the Respondent. It initially charged interest on such margin money. It has also recovered various levies and fees in respect of trades legitimately executed. It has not suffered any loss on account of erroneous making available of margin to the Respondent. However, it wants to unjustly enrich itself by retaining the profits earned by Respondent through his own skills and risks on a specious plea that earning of profits was through Petitioner's margin. In a converse situation, Petitioner would not have given up the claim for recovery of losses on the ground that losses were suffered due to its error of making available margin to the client. Petitioner thus wants to enrich itself for his own mistake.

28) Thus, the Appellate Arbitral Tribunal has rightly held that Petitioner has acted unreasonably and arbitrarily in the present case. There is no unjust enrichment on the part of the Respondent and therefore the judgment of the Apex Court in ***Machhindranath s/o Kundlik Tarade (deceased)*** (supra) has no application to the facts and circumstances of the present case. The principle of party not being permitted to take benefit of his own wrong, urged on behalf of Petitioner, will apply against the Petitioner. The wrong is committed by the Petitioner in the form of making available margin to the Respondent and after sensing that the Respondent was able to earn profits through the trades, it has conveniently pocketed those profits. Just because Respondent has utilized

the opportunity made available to him, it would not mean that he has committed any wrong. By using such opportunity, the Respondent could have incurred losses, which would be recovered by the Petitioner. In the situation of losses, would Petitioner have raised a plea that since losses resulted out of erroneous use of margin, it would not recover such losses? Answer to the question appears to be in the negative. Thus, in the present case, Petitioner has committed the wrong and is attempting to take benefit of its own wrong by retaining the profits earned by the Respondent. Therefore the judgment in ***Machhindranath s/o Kundlik Tarade (deceased),*** far from assisting the case of the Petitioner, actually militates against it.

29) Petitioner's criticism of impugned Award that it is based on settlement offer made during proceedings before GRC and Arbitral Tribunal is again misplaced. The settlement offer was not made by the Petitioner only after initiation of proceedings before the GRC. The Petitioner itself admits in para-3.7 of the Petition as under:

> 3.7. The Respondent complained to the Petitioner regarding the debit of the amount from his account. The Petitioner's officials visited the Respondent for a possible amicable resolution of the issue, however there was no resolution. The Respondent admitted to the Petitioner that he was aware of the wrong margins uploaded on 26.07.2022 and gains he made would not have been possible has the wrong margins not been uploaded in his account.

30) Thus, the officials of the Petitioner voluntarily approached the Respondent for possible amicable solution of the issue. Therefore, it cannot be said that the offer for settlement was made only after initiation of proceedings by the Respondent. In that view of the matter, provisions of Section 81 of the Arbitration Act or of Section 23 of the Evidence Act would have no application in respect of the settlement offer made by the Petitioner. The fact that such settlement offer was made would indicate an attempt on the part of the Petitioner to retain some part of profits due and payable to the Respondent. The Appellate Arbitral Tribunal has rightly held that Petitioner did not provide any clarification as to why it made

offer of Rs.50 lakhs to the Respondent if it was sure that it had not committed any mistake. However, it is clarified that making of settlement offer by the Petitioner to the Respondent is not the only reason why Respondent's claim is upheld. It is just an additional facet for upholding the award in favour of the Respondent. Even without such settlement offer, Respondent's claim can rightly be upheld.

31) Petitioner's contention that the Award needs to be set aside for maintaining sanctity of risk management system appears to be attractive in the first blush. However the same is misplaced. Petitioner, who is carrying the flag of maintaining the sanctity of risk management system first made voluntary attempts to settle the matter by offering to share part of profits with Respondent. Now what Petitioner desires to do by urging this Court to set aside the Award is to retain the entire profits earned out of the trades, which its own system permitted. If the Award is set aside to ensure the sanctity of the system, Petitioner would retain the profits, which situation this Court is unable to uphold. Apart from its own system failure, Petitioner apparently did not take the adequate and timely measures to mitigate the consequences arising out of malfunctions of the system. There is sufficient material on record to indicate that the Petitioner did not invoke risk control protocols. Far from warning Respondent that it was unauthorisedly trading on erroneous margin, Petitioner issued contract notes upon execution of trades, deducted levies and even charged interest for use of margin. It even credited the net profit in Respondent's ledger. It later took a *volte* face and reversed the entry. Now it raises a specious plea that it must be permitted to retain the profits so that the sanctity of risk management system is maintained. Considering the peculiar circumstances of the case I am unable to accept the contention raised on behalf of Petitioner.

32) Present case depicts a unique conundrum, where Respondent has profiteered on Petitioner's monies. Ordinarily, Courts would not have encouraged the activity of trading on someone else's monies on a stock

exchange. Respondent has gambled on Petitioner's margin money. However, it is not that Respondent has stolen the monies of Petitioner. Admittedly none of the acts of Respondent are responsible for reflection of erroneous margin in his trading account. There is no dispute to the position that Petitioner's system is solely responsible for making available the margin money to the Respondent, who has used his skills to make most of the opportunity and has earned profits. Someone will have to be given those profits. Given that there is system glitch attributable to Petitioner coupled with failure to invoke adequate and timely risk protocols, Petitioner cannot be permitted to retain the profits. On the other hand, Respondent is not responsible in any manner for development of system glitch and has used his own skills and has taken the risk in executing the trades. Therefore if only one out of the two parties can be permitted to retain the profits, it would be Respondent and not Petitioner. Considering the above position, the Appellate Arbitral Tribunal has also held that profits need to be handed over to Respondent. May be that alternate view of handing over profits to Petitioner is also possible. However, mere possibility of different view cannot be a ground for setting aside the Award. It is not that the findings of Respondent's entitlement to profits is something which no fair minded person can ever record in the facts and circumstances of the case. Even otherwise, this Court is unable to accept the position that Petitioner would commit a mistake and though it has not suffered any losses out of that mistake, it would enrich itself by claiming profits out of the trades executed by Respondent. For trades effected by Respondent, Petitioner would still earn brokerage and would benefit to some extent. Therefore this Court is not inclined to take a view different than the one taken by the Appellate Arbitral Tribunal.

33) Considering the overall conspectus of the case, I am of the view that the Appellate Arbitral Tribunal has taken a plausible view by not permitting the Petitioner to retain the profits earned by the Respondent just because such profits are outcome of opportunity made available to him by the Petitioner. In fact, I am of the view that the view taken by the

Appellate Arbitral Tribunal is correct view. There is no perversity in the findings recorded by the Appellate Arbitral Tribunal. The impugned Award cannot be said to be in conflict with public policy of India or in contravention of fundamental policy of Indian law. The Award also does not suffer from any patent illegality. The Award is unexceptionable warranting dismissal of the Petition. Though the Petition is being dismissed, I am not inclined to impose any costs on the Petitioner while dismissing the Arbitration Petition as Appellate Arbitral Tribunal has already directed payment of 12% interest on the awarded sum from 26 July 2022.

34) In my view therefore, no case is made out by the Petitioner for interference in the impugned Award. The Arbitration Petition must fail. It is accordingly **dismissed**. Respondent shall be entitled to withdraw the entire amount deposited in this Court along with accrued interest. With dismissal of Petition nothing would survive in the Interim Application and the same is also disposed of.

[SANDEEP V. MARNE, J.]

35) After the judgment is pronounced, the learned counsel appearing for the Petitioner prays for stay of the directions for withdrawal of the deposited amount by the Respondent for a period of five weeks. The request is opposed by the learned counsel appearing for the Respondent. It is directed that while the Respondent can commence the process for withdrawal of the deposited amount, the Prothonotary & Senior Master shall not actually release the deposited amount in favour of the Respondent for a period of five weeks.

NEETA SHAILESH SAWANT

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[SANDEEP V. MARNE, J.]