IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ARBITRATION APPEAL NO. 128 OF 2025
WITH
CIVIL APPLICATION NO.14050 OF 2025

. IIFL CAPITAL SERVICES LIMITED
(Formerly IIFL Securities Limited)
A company incorporated under the
Companies Act, 1956,
having its registered office at:
7th Floor, Ackruti Centre Point,
Marol MIDC, Andheri (E), Mumbai – 400 093
Through its Authorised Officer,
Mr. Kiran Lokare .. **Appellant / Original Applicant**

Versus

. SUKHADEO GORAKHA BHIL,
Adult, Occupation: Business,
R/o. Village Boris,
Tal. & Dist. Dhle – 424 307 .. **Respondent / Original Respondent**

...

Advocate for Appellant :
Mr. Kunal Katariya a/w. Mr. Shubham Dhamnaskar, Mr. Paramjeetsingh Parmar h/f. Mr. Karan Sarosiya

Advocate for Respondent :
Mr. Vikas Gupta a/w. Ms. Akshara Sharad Madake

...

CORAM : ARUN R. PEDNEKER, J.
DATE : 21.04.2026

JUDGMENT:

1. By the present Appeal under Section 37 of the Arbitration and Conciliation Act, 1996 *(for brevity* ***"Arbitration Act"****)* the Appellant challenges the Judgment and Order dated

10.10.2025, passed by the learned Principal District and Sessions Judge, Dhule dismissing the application under Section 34 of the Arbitration Act filed by the Appellant and, also, challenges the Arbitral Award dated 10.03.2025, passed by the sole Arbitrator directing the Appellant to compensate the Respondent for a sum of Rs.14,37,200/- for unauthorized trades executed by the Appellant's Agent thereby causing financial losses to the Respondent.

2. Appellant has placed on record relevant documents filed in the proceedings before the Arbitrator. With consent of the parties heard finally.

FACTS IN BRIEF:

3. Brief facts leading to the filing of the present Arbitration Appeal are that, the Appellant is trading and clearing member of recognized stock exchanges such as the National Stock Exchange (NSE), Bombay Stock Exchange (BSE), Multi Commodity Exchange of India (MCX) and National Commodity and Derivatives Exchange Limited (NCDEX) bearing SEBI registration No. INZ000164132. The Respondent / Client approached the Appellant to carry out trading activities on the aforementioned exchanges through the Appellant's platform and to avail the broking services provided by the Appellant. The Appellant's sub-broker / Alliance Partner Manvendra Pratap Singh through whom the Respondent

had approached the Appellant. The Respondent accordingly opened a trading and demat account with the Appellant on 15.07.2024 and was subsequently allotted a unique client code (UCC): 40354157 by the Appellant. The Respondent was also provided with an SMS alert facility on his registered mobile number, so also, e-mail facility, whereby system generated alerts were regularly sent to the Respondent regarding trade confirmations, pay-in and pay-outs, debit intimation, margin requirement etc. In addition to this, as per the applicable norms of the NSE, the BSE and the Central Depository Services Limited (CDSL), the Respondent also received details of daily transactions executed through the Appellant through Electronic Contract Notes, which is sent to the registered e-mail ID of the Respondent. The trading period involved in the present case is between 29.07.2024 to 23.09.2024. During this period various transactions occurred in the account of the Respondent, wherein the Respondent has suffered losses due to the alleged unauthorized trades by the Agents of the Appellant. Accordingly, various grievances were raised leading to invocation of arbitration clause.

4. The case before the Arbitral Tribunal set out by the Respondent is that the unauthorized trades were executed in his account without his consent leading to financial losses. He asserted

before the Arbitrator that he has no knowledge of these trades and that the Appellant has failed to adhere to regulatory guidelines and did not exercise due diligence in safeguarding his trading account. It was stated before the Arbitrator that the Appellant was an experienced trader, actively participating in derivatives and asserts that all trades were executed through the Respondent's valid login credentials and authenticated via the standard security procedures. The Respondent alleged that the Appellant's representative Vishnu engaged in misleading and deceptive practices that these actions violated regulatory standards, causing significant financial loss. The deceptive practice included (a) assuring guaranteed profit recovery if the Respondent opened a new demat account and deposited funds with the Appellant, (b) conducting unauthorized trades without the Appellant's knowledge or explicit consent, (c) excessive brokerage charges to maximize brokerage fees rather than serve the Respondent's interest, (d) applying undue pressure to force the Respondent into making additional deposits.

5. The Respondent contended that the Appellant failed to honour it's contractual obligations as a Trading member, leading to severe financial damage. The Respondent contended that these unauthorized trades led to substantial losses, worsening his

financial position. The Respondent incurred total brokerage charge of Rs.9,48,302/- during the trading period. He contended that the brokerage was unreasonably high, considering his actual trading activity. The excess charges indicate brokerage churning, a practice where brokers execute unnecessary trades to generate higher brokerage commission. On 19.09.2024, the Respondent recorded a total loss of Rs.13,26,956/- including direct trading losses from unauthorized transactions and brokerage and other charges. The Respondent had contended that these losses were entirely preventable and resulted from the Respondent's conduct and, thus, the Respondent asserted that the Appellant's agents intentionally disregarded SEBI regulations, specifically Chapter IV, Section 18, which prohibits: (i) misleading advertisements or assurances regarding stock market returns, (ii) promises of guaranteed profits in trading, (ii) unethical brokerage practices.

6. Thus, the Respondent claimed full refund of trading losses and brokerage fees of Rs.14,40,000/-, which included Rs.9,89,701/- as brokerage fees taken from the Respondent.

7. The Appellant defended the claim of the Respondent client. It was stated by the Appellant that Manvendra Pratap Singh was a registered sub-broker (Alliance Partner) of IIFL Securities Ltd. The sub-broker was responsible for procuring clients and

offering financial products. The Appellant stated that the Appellant and the sub-broker signed an agreement on 16.05.2022 binding the sub-broker to SEBI / Exchange rules. The Appellant denied liability for any alleged misconduct by the sub-broker if it violated regulatory norms or the agreement. The Appellant contended that the brokerage is charged as per the exchange rules and agreed terms. The Respondent had agreed to pay brokerage fees while opening the account. It is stated that the Alliance Partner had executed the transaction as per the clients instructions. It is stated that the Respondent was made fully aware of the terms and conditions during the account opening process. The Respondent executed multiple transactions via online mode. Trade confirmations were sent to the registered mobile number and email address. The Respondent's Ledger Statement was consistently updated, ensuring full transparency. The Respondent made various pay-in and pay-out transactions, demonstrating a clear awareness of their financial position. A detailed Ledger Statement indicates regular transactions, with credits (pay-ins) totalling INR 15,20,000/- and debits (pay-outs) totalling INR 82,800/- confirming the Respondent's engagement with the account. The Respondent had not made Vishnu or the Alliance Partner / Sub-broker a party to this dispute and thus the Respondent cannot independently agitate against the Appellant. The Appellant further

stated that it had no knowledge of the deposit of Rs.14,40,000/- between 29.07.2024 and 19.09.2024 and of any private agreement between the Respondent and Vishnu.

8. It was further contended by the Appellant that Vishnu, Vishal and Manvendra Pratap Singh are not parties to the dispute and, as such, no vicarious claim can be foisted upon the Appellant without making them parties to the dispute. The Appellant further contended that the brokerage charges were pre-agreed. The Respondent had signed a tariff sheet while opening the account, agreeing to the brokerage structure. The brokerage is within SEBI limits. The fees charged were legal and permissible under SEBI regulations.

9. The Tribunal on considering the rival claims formulated following issues:

> *i) Did the Respondent's representatives misrepresent past trading successes to induce the Applicant into trading on the Respondent's platform ?*
>
> *(ii) Did the Respondent engage in excessive trading for generating brokerage commission ?*
>
> *(iii) Does the non-joinder of the Alliance Partner / Sub-broker, Manvendra Pratap Singh and his*

employees Vishal and Vishnu, render the claim defective ?

(iv) Were the trades executed in the Applicant's account without explicit authorization ?

(v) Did the Respondent's representatives use pressure tactics to force the Applicant into trading ?

(vi) Was there any conflict of interest where the Respondent prioritized brokerage earnings over the client's financial well-being ?

(vii) Do the WhatsApp chats and audio recordings where the Respondent's representatives allegedly admitted misconduct hold legal weight ?
(viii) Whether the Trading Member is responsible for the acts done by the Authorised Person and his employees ?

10. The Arbitral Tribunal found that (1) on 18.09.2024 within 66 seconds there was a credit balance of Rs.9,50,128.05/- which reduced to Rs.36,187.59/- by executing a staggering volume of trades, (2) the Appellant had failed to produce any record demonstrating that they had obtained the Respondent's consent before executing such an extraordinary volume of trades within a single trading session and that the Respondent did not have such an expertise, (3) that Vishnu had persuaded calling the

Respondent to invest and later on Vishal who was Vishnu's boss also joined in promising Respondent fabulous returns on the investments. So also, Manvendra Singh was introduced as the Alliance Partner of the Appellant. Supporting evidence from WhatsApp messages and audio recordings further corroborates the Respondent's statement, (4) when examining the entire sequence of events, it becomes apparent that the unauthorized trading, excessive transactions, and manipulative marketing efforts orchestrated by Manvendra Singh and his team directly benefited the Appellant by generating abnormal brokerage commission and this fact would establish that the Appellant is the ultimate beneficiary of the misconduct perpetrated by its Alliance Partner and his associates. The Respondent deposited Rs.15.20 Lakh during the two months from 29.07.2024 to 23.09.2024. Out of this amount, Rs.82,800/- was paid back to him. The Respondent has lost the balance amount of Rs.14,37,200/- with the last date of his Ledger Account on 28.10.2024. This was a systematic erosion of the funds of the Respondent within a period of two months, (5) The Arbitrator has noted that the Code of Conduct for Stock Brokers (Schedule II of the SEBI (Stock Brokers) Regulations, 1992), a stockbroker is required to uphold high standards of integrity, promptness, and fairness in all business dealings and to exercise due skill, care and diligence in conducting operations, (6) the

Appellant had failed to adhere to this mandatory Code of Conduct, (7) upon reviewing the audio recording and WhatsApp messages exchanged between the Respondent and the Appellants representatives, the tribunal finds that the Appellants representatives actively misled the Respondent by presenting a distorted and overly optimistic portrayal of trading operations. They promised exorbitant returns, claiming that the Respondent could earn 25% to 40% in the current month and 60% to 80% or even 100% in the next month, (8) the Respondent was also enticed to invest additional capital by promises of large return, (9) it was found that high pressure sales tactics were adopted coupled with unrealistic assurances of success.

11. As regards issue of the non-joinder of the Alliance Partner / Sub-broker, Manvendra Pratap Singh, and his employees Vishal and Vishnu, the Tribunal found that the responsibility for the actions of a Sub-broker and his employees ultimately rests with the Trading Member under whom they operate. Regulatory frameworks governing stockbroking operations impose an obligation on the Trading Member to oversee and control the conduct of its Alliance Partners and Sub-brokers. The Alliance Partner / Sub-broker, Manvendra Pratap Singh and his employees Vishal and Vishnu acted as representatives of the Appellant in

opening Respondent's trading account and in the execution of trades. Their actions were within the scope of their duties under the Trading Member's umbrella and ultimately the Trading Member was the beneficiary of their marketing efforts and trading operations. The Respondent had an agreement directly with the Appellant stock broker and has no contractual relationship with the various persons or their employees and, thus, they are not required to be made parties.

12. The Tribunal also found that the trades were executed in the Respondent's account without explicit authorization, the Tribunal found that the trading records reveal a series of transactions executed without the Respondent's explicit approval. There is no evidence or prior consent for these trades and no recording was produced by the Appellant to confirm that the Respondent authorized them. Unauthorized trading is a grave violation of investor protection regulations. Every broker has a legal duty to obtain explicit instructions from the clients before executing trades from their accounts.

13. The Tribunal found that the Respondent was subjected to persistent and aggressive persuasion techniques designed to induce trading decisions that were not in his best interest.

14. The Tribunal found that the Appellant prioritized brokerage earnings over this fiduciary duties. The trading pattern in the Respondent's account reveals that the Appellant structured transactions to maximize it's brokerage commissions rather than to align with the Respondents financial objectives. Instead of acting in a fiduciary capacity, the Appellant's representatives deliberately engaged in excessive trading to generate brokerage revenue, disregarding the Respondent's interest. The broker's primary duty is to serve the best interests of their client, ensuring that trades are executed with due care and prudence. However, in this case, financial gain for earning brokerage was prioritized over the Respondent's financial well-being.

15. The Award of the Tribunal was challenged before the District Court in an Application under Section 34 of the Arbitration Act, which was also rejected and, thereafter, the present Arbitration Appeal is filed.

CONTENTIONS OF THE APPELLANT:

16. **Mr. Kunal Katariya** along with **Mr. Shubham Dhamnaskar, Mr. Paramjeetsingh Parmar** holding for **Mr. Karan Sarosiya**, learned Counsel for the Appellant submits that the Respondent has not raised any contemporaneous objection to the trades during or after the disputed period. The allegation of

unauthorized trading was raised belatedly only after the Respondent initiated arbitration in January / February 2025 and is plainly an afterthought. It is further submitted that the District Court failed to interfere in the Arbitral Award by holding that the Arbitral Award runs into 24 pages and, therefore, no reasonable ground for interference existed, reflects a clear non-application of mind. The mere length of an Arbitral Award cannot be a substitute for judicial scrutiny under Section 34 of the Arbitration Act.

17. The Appellant submits that the power of this court under Section 37 of the Arbitration Act is co-extensive with power under Section 34 of the Arbitration Act and, as such, this court should examine the Award and set it aside on the grounds mentioned in Section 34 of the Arbitration Act.

18. The Appellant further submitted that this court in the case of **Ulhas Dandekar Vs. Sushil Financial Services Pvt. Ltd.** &, **Jagadeesa G. Chary Vs. Nirmal Bang Securities Pvt. Ltd., CARB Petition No-1175 of 2019, decided on 27 March 2025**, has clearly lay down that once there is conscious and knowing participation in trading, a party cannot subsequently avoid losses, and that absence of pre-trade authorization is not conclusive proof of unauthorized trading.

19. The Appellant further submitted that the District Court returns a finding on the aspect of the Arbitral Award not being contrary to public policy, it fails to return a finding on patent illegality. There is specific defence raised before the Tribunal showcasing the Respondent's knowledge of the trades executed during the disputed period through documents such as ledger statements, email log with electronic contract notes, SMS alerts and order logs. The Arbitral Tribunal, in complete disregard of the material evidence before it, has rendered an Arbitral Award that is vitiated by perversity and patent illegality, which the learned Principal District Judge ought to have interfered with.

20. It is further submitted that the Award is impossible in it's making i.e. by ignoring vital evidence or being based on no evidence or in it's result it has rendered a finding that is not possible and is thus, vitiated by perversity as a subset of patent illegality under Section 34(2A) of the Arbitration Act. The District Court was bound to examine if the Arbitral Award was vitiated by perversity and patent illegality under Section 34(2A) of the Arbitration Act.

21. The Appellant further submitted that the District Court has erroneously observed that the Appellant had an indirect

relationship with Vishnu and Vishal through it's Alliance Partner Manvendra Singh, it was vicariously liable for their acts.

22. The Appellant further submitted that an agent's unauthorized acts cannot bind the principal when such acts fall outside the scope of the agent's express or apparent authority and that the wrongful acts of Manvendra Singh ought not to bind the Appellant where such acts fall outside the agent's scope of authority. Since, Vishnu and Vishal were not the Appellant's agents, the Appellant cannot be held liable for any private arrangement including sharing of account credentials between Vishnu and the Respondent.

23. The Appellant further submitted that this court in the case of **Sharekhan Ltd. Vs. Monita Kisan Khade**, **Arbitration Petition No.532 of 2024, dated 24.12.2025** has held that in a case where the client / investor specifically admit that they authorized another person to effect trades on their behalf, such trades cannot be disowned by the client / investor.

24. It is further submitted that the receipt of ECNs, SMS, Ledger Statements and order logs shows that the Respondent had active participation and knowledge of the trades. The contemporaneous conduct of the Respondent, including making

pay-ins and accepting pay-outs during and after the disputed period, is wholly inconsistent with the allegation that the trades were unauthorized.

25. The Appellant further submitted that this court in the case of **Erach Khavar Vs. Nirmal Bang Securities Pvt. Ltd., Arbitration Appeal No.12 of 2025, decided on 25 August 2025**, had held that disputes to transactions must be raised within a reasonable time. It as further held that absence of pre-trade authorizations does not amout to unauthorized trades and such an absence at the highest entails disciplinary measures for the stock broker.

26. The learned counsel for the Appellant submitted that this court may accordingly set aside the Arbitral Award, so also, the Order passed by the Principal District Court.

SUBMISSIONS OF THE RESPONDENT:

27. Per contra, **Mr. Vikas Gupta** along with **Ms. Akshara Sharad Madake**, learned Counsel appearing for the Respondent submitted that the Appellant is a direct beneficiary of the actions of his Alliance Partner and their employees. He further submitted that the Appellant has failed to restrain his agents in inducing the Appellant in unfair manner compromising their returns and is

acted in the manner prejudicial to the interest of the Respondent and only in the interest of the Appellant. The learned counsel submits that the Alliance Partner has engaged in the trade prejudicial to the interest of his client and has traded only for the benefit of the Alliance Partner and the appellant. The Alliance Partner had made large scale transactions aimed at securing huge brokerage for Alliance Partner and the stock broker. He submits that the power of interference in a well reasoned Arbitral Award is very minimum under Section 34 and once the Arbitral Award is upheld by the court under Section 34, this court has power of interference under Section 37, although coextensive with Section 34, is still lessor than the court under Section 34 of the Arbitration Act. He submitted that the Arbitration Appeal may accordingly be dismissed.

POINTS FOR CONSIDERATION:

28. Having considered the rival submissions, the question that arises for consideration is,

> {A} In absence of prior written or recorded instructions for every transactions effected by an Alliance Partner or his employees through a stock broker without any objection from the client within reasonable time, whether the client would be permitted to wriggle out of losses resulting out of trade transactions ?

{B} In the facts of this case, whether the Alliance Partner and his employees has conducted transactions without pre-trade authorization in a manner prejudicial to the interest of the client and only in the interest of Alliance Partner and the stock broker and, if so, whether the stock broker is liable for the same ?

CONSIDERATIONS:

29. As regards the first question, whether the Respondent can wriggle out of the transactions which had taken place between the July to September 2024 without any objections being raised within reasonably short time and the objections being raised only after resultant losses in the transactions, the law in this aspect is quite clear.

30. The law on the subject is crystalized by the Single Judge of this Court at the Principal Seat in the case of **Ulhas Dandekar Versus. Sushil Financial Services Pvt. Ltd., CARB Petition No-1175 of 2019, decided on 27 March 2025**, 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.*

31. The case before the learned Single Judge in case of **Ulhas Dandekar** *(supra)* was that the Petitioner therein had attempted to wriggle out of losses suffered from trade transactions accusing the stockbroker of carrying out unauthorised trades. 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 and reliance was placed on NSE Regulations and SEBI Circular mandating maintenance of record.

32. This Court in the case of **Ulhas Dandekar** *(supra)* has summarised the conclusion at Paragraph No.40 as under:

> *"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."*

33. Subsequently, the Division Bench of this Court at Principal Seat in the case of **Erach Khavar Vs. Nirmal Bang Securities Pvt. Ltd., Erach Khavar, Arbitration Appeal No.12 of 2025, decided on 25 August 2025**, has examined similar position and has observed at Paragraph No.19, as under:

> *"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."

34. The Division Bench of this Court in the case of **Erach Khavar** *(surpa)* has observed that violation of NSE Regulations requiring pretrade authorisations can at the highest be a ground for penalising of a stock-broker and the same 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. However, the court observed that blatant unauthorized trade may not fall within this category.

35. In view of the Judgment of **Ulhas Dandekar** *(supra)* and **Erach Khavar** *(supra),* consistent position of law is that, if the client has not objected within a reasonable time to the trades conducted in absence of pre-trade authorization, the client cannot wriggle out of the consequences of the trade and cannot be permitted to wriggle out of loss resulting out of trade transactions.

36. Coming to the next question of misuse of authorization given by the client to the Alliance Partner, in the instant case, the

Login ID of the client was given by the client to the employees of the Alliance Partner. The client failed to raise necessary objection although he had received the trade confirmations on SMSs and e-mails. The client had not raised objections to the trade within a reasonable period of 2-3 days.

37. However, on perusal of the order of the Arbitral Award, this Court finds that the Arbitrator has recorded a finding that the transactions were conducted in the manner so as to make profits in the nature of brokerage commission only to the Alliance Partner and the Stock Broker – the Appellant herein. The Respondent having failed to raise objections within the reasonable time would not absolve the Appellant from taking responsibility of illegal trade. The Arbitrator on the basis of evidence before it had come to the conclusion that the client made investment of Rs.14,40,000/- and that the transactions were manipulated in such a manner that the broker's fees alone stood at Rs.9,98,701/-. The transactions were initiated in such a manner so as to benefit the broker and the Alliance Partner and not the client. The Arbitrator has rendered a finding of civil fraud. This finding of the Arbitrator is based on evidence and, thus, takes away the case in a different dimension. The present case would fall within the exception carved out in the case of **Erach Khavar** *(supra)*, at Paragraph No.19, as quoted

above. The Division Bench of this court at Principal Seat in **Erach Khavar** (supra) has observed that, the blatant unauthorized trade may not cover within the principle of wriggling out of consequences of a trade transactions. The instant case relates to F & O trading and in the award it is stated that large trades were transacted so as only to benefit the broker and the Alliance Partner. This finding of fact cannot be re-examined before this court in Appeal under Section 37 of the Arbitration Act. Neither the Appellant has placed before this court any details as to how this particular finding is perverse or could have never been given on the basis of evidence before the Arbitrator. There is no patent illegality as regards the finding rendered and the same is based on record of WhatsApp recordings and transactions produced before the Arbitrator. The Arbitrator has also taken into consideration various SMSs and audio records between Alliance Partner and the Respondent client and has rendered a finding that the client was persuaded by promising very high returns and continuous pressure was maintained. Accordingly, transactions were carried out in the manner prejudicial to the interest of the Respondent client. The same finding is being based on the evidence cannot be interfered by this court.

38. In **Monita Khade** (supra), this court has observed that the principle of not holding broker responsible if the client does not object to the transactions within a reasonable time and permit another person to continue effecting trades, the client cannot later on seek to distance himself / herself from the trades effected on her / his behalf. Further, the court has observed that the principle of not holding 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.

39. Thus, the facts of this case, fails within the exceptions carved out in the case of **Erach Khavar** and **Monita Khade** (supra).

40. The question thus, arises is that, whether the Appellant would be vicariously liable for the transactions. The Appellant has relied upon the Judgment of the Hon'ble Supreme Court in the case of **Harshad J. Shah and another Vs. L.I.C. of India and others, (1997) 5 SCC 64**, at Paragraph No.18, to contend that the appellant

cannot be held liable for the wrongful acts of the Alliance Partner.

Paragraph No.18 of **Harshad Shah** (supra) is noted below:

> *"18. The only question is whether the LIC can be held liable on the basis of the doctrine of apparent authority. Shri Mathur has invoked the said doctrine and has relied upon Section 237 of the Indian Contract Act. He has urged that, by its conduct in receiving the premium through its agents, the LIC had induced the policyholders to believe that acts of the agents in receiving the premium form the policyholders were within the scope of the agents' authority. Shri Mathur has laid stress on the fact that respondent No. 3 was permitted to deposit the amount of Rs. 2,730 towards premiums with the LIC on August 10, 1987 on behalf of the insured. We, however, find that in the complaint that was filed on behalf of the appellants before the State Commission no such case was set up by the appellants that the LIC, by its conduct, had induced the policyholders, including the insured, to believe that the agents (including respondent No. 3) were authorised to receive the premium on behalf of the LIC. Nor is there any material on record which may lend support to the submission urged on behalf of the appellants that by its conduct the LIC had induced the policyholders, including the insured, to believe that agents were authorised to receive premium on behalf of the LIC. The only circumstance relied upon by the learned Counsel for the appellants is the receipt of the amount of Rs. 2,730 by the LIC on August 10, 1987. In this regard, the submission of Shri Salve is that issuance of the receipt for the said amount of 2, 730 by the LIC in the name of the insured does not indicate that the amount was received through respondent No. 3 and that on the basis of the said receipt it cannot be said that the LIC had induced the insured to believe that respondent No. 3 was authorised to receive the amount of premium on behalf of the LIC. We find considerable merit in this submission. From the mere fact that respondent No. 3 had obtained bearer cheque for Rs. 2, 730 from the insured on June 4, 1987 and after encashing the same from the Bank on June 5 1987, had deposited the said amount with the LIC on August 10, 1987, it cannot be said that the LIC induced the insured to believe that respondent No. 3 had been authorised by the LIC to*

> *receive premium on behalf of the LIC. We are, therefore, unable to hold that the doctrine of apparent authority underlying Section 237 of the Indian Contract Act can be invoked in the facts of this case especially when the LIC has been careful in making an express provision in the Regulations/Rules, which are statutory in nature, indicating that the agents are not authorised to collect any moneys or accept any risk on behalf of the LIC and they can collect so only if they are expressly authorised to do so."*

41. Perusal of the above paragraph in the case of **Harshad Shah** *(supra)*, it would be seen that the Hon'ble Supreme Court has observed that, the LIC had made express provision in the Regulations / Rules, which are statutory in nature, indicating that the agents are not authorised to collect any monies or accept any risk on behalf of the LIC and they can collect so only if they are expressly authorised to do so.

The Hon'ble Supreme Court has further observed that no case was set up by the Appellant that the LIC by it's conduct, had induced the policyholders, including the insured, to believe that the agents were authorised to receive the premium on behalf of the LIC. Nor there was any material on record which may lend support to the submission urged on behalf of the appellants that by its conduct the LIC had induced the policyholders, including the insured, to believe that agents were authorised to receive premium on behalf of the LIC. Thus, in the fact situation the Hon'ble

Supreme Court in the case of **Harshad Shah** cited supra held that the LIC was not liable for the actions of the agent.

42. The vicarious liability of the employer for the losses caused to third person through the misdemeanour or neglignece of an employee is discussed in the case of **State Bank of India (Successor To The Imperial Bank of India) Vs. Shyama Devi, (1978) 3 SCC 399**, at Paragraphs No.24 to 28, as under:

> *"24. The first of these principles is that the employer is not liable for the act of the servant if the cause of the loss or damages arose without his actual fault or privity and without the fault or neglect of his agents of servants in the course of their employment. This principle is best illustrated by the decision of the House of Lords in Leesh River Tea Co., Ltd. and Ors. v. British India Steam Navigation Co., Ltd. (supra). The facts of that case were that during her voyage a ship called at an intermediate port to discharge part of her original cargo and load some fresh cargo. The shipowners engaged a stevedore company to discharge and load. A servant of the stevedore company stole a brass plate, which was a cover that could be removed to give access to a storm valve. Its removal rendered the ship unseaworthy as sea water could enter when the ship rolled. The resulting hole in the ship was concealed by part of the fresh cargo loaded. On her voyage after leaving the port the ship encountered heavy weather. Water entered through the hole and damaged part of the original cargo. In an action for damages by the owners of the damaged cargo, the shipowners contended that they were excepted from liability by Article IV. Rule 2(q) of the Hague Rules, because the cause of the damage arose without their actual fault or privity and "without the fault or neglect of the agents or servants" of the shipowners.*
>
> *25. Dealing with this argument, Danckwerts, L.J. observed (at page 597) :*

> *It seems to me that the vital point in the case is whether the theft of the brass plate was made by the stevedore, at Port Sudan, in the course of his employment by the shipowners. He was to be regarded as the agent of the shipowners for the purpose of unloading and loading cargo. There is no doubt that this gave him the opportunity to effect the theft of the plate; but the stevedore was concerned with cargo and not with the ship or parts of the ship. When he deliberately stole the plate he was acting in a way which was completely outside the scope of his employment on behalf of the shipowners. The theft could not have been prevented by any reasonable diligence of the shipowners through the officers and crew of the ship.*

26. Salmon, L.J., speaking in a similar strain (at page 599) emphasised that the fact that the thief's employment on board presented him with the opportunity to steal does not suffice to make the shipowners liable. The conclusion drawn was :

> *For an employee to be liable, however, it is not enough that the employment merely afforded the servant or agent an opportunity of committing the crime.*

It must be shown that the damage complained of was caused by any wrongful act of his servant or agent done within the scope or course of the servant's or agent's employment, even if the wrongful act amounted to a crime. For this proposition, Salmon, L.J. referred to Lloyd v. Grace, Smith & Co. [1912] AC. 716.

27. In United Africa Company Ltd. v. Baka Owoadei [1955] A.C. 130 the Privy Council laid down that a master is liable for his servant's fraud perpetrated in the course of master's business, whether the fraud was for the master's benefit or not, if it was committed by the servant in the course of his employment. There is no difference in the liability of a master for wrongs whether for fraud or any other wrong committed by a servant in the course of his employment, and it is a

question of fact in each case whether it was committed in the course of the employment.

28. In that case, the appellant-company, general merchants, had expressly committed to servants of the respondent, a transport contractor, at his request, goods for carriage by road, and the servants stole the goods, and the evidence established that that conversion took place in the course of their employment. The respondent was held liable to the appellants for the value of the goods. The rule in Lloyd v. Grace, Smith & Co. (supra) was applied."

43. Similarly, this court in the case of **Messrs. Vurdhman Bros. Vs. Messrs. Radhakishan Jai Kishan, AIR 1924 NAGPUR 79**, has also dealt with the aspect of liability of the Principal towards third person for the misfeasances of his agents within the scope of the authority in the course of his agency as under:

"Sherjan Khan v. Alimuddi ((1916) 43 Cal. 511 = 20 C.W.N. 268 + 34 I.C. 598 = 23 C.L.J. 225) in which it is held that the principal is liable to third persons in a civil suit for the frauds and other malfeasances of his agent in the course of his employment although the principal did not authorise or justify or participate in, or, indeed, know of such misconduct or even if he forbade the acts or disapproved of them. The principal is not liable for the torts or negligences of his agent in any matters beyond the scope of the agency unless he has expressly authorised them to be done, or he has subsequently adopted them for his own use and benefit/ and the case in 36 Calcutta is mentioned as one of those recognising the doctrine that acts of fraud by the agent, committed in the course and scope of his employment, form no exception to the rule whereby the principal is held liable for the torts of his agent, even though 'he did not in fact authorise the commission of the fraudulent act, and some of the dicta in the 36 Calcutta case ae stated to be based on a misapprehension of the expression" for the master's benefit." This case is based on the decision of th eHouse

> *of Lords in Lloyd Vs. Grace ((1912) A.C. 716 = 107 L. T. 531 = 28 T.L.R. 547) which lays down that the principal is liable for the fraud of his agent acting within the scope of his authority, whether fraud is committed for the benefit of the principal or for the benefit of the agent."*

44. In the instant case, this Court finds that the Respondent / Client had opened trading account with the appellant / broker. The broker has appointed Alliance Partner to transact on his behalf. As the Respondent / Client had trading account with the broker, he can pursue the broker individually without making the Alliance Partner as party to the arbitration proceedings. Considering the Judgment of the Hon'ble Supreme Court in the case of **Shyama Devi** *(supra)* and the Judgment of this court in the case of **Messrs. Vurdhman Bros.** *(supra)*, I hold that the fraudulent actions of the agent of the Appellant, i.e. Alliance Partner, in conducting the fraudulent transactions makes the Appellant / Broker liable for the losses incurred to the client. The Appellant, stock broker along with the Alliance Partner is the beneficiary of the illegal transactions and the transactions have taken place in the course of action within agents authority. The stock broker is also required, in terms of the regulations, to appoint Alliance Partner of high integrity. Thus, the stock broker cannot wriggle out of the Alliance Partners actions, which are in the course of his agency, although the Broker / Appellant may have not permitted

the Alliance Partner to indulge into fraudulent trades. The actions of the Alliance Partner has resulted in the profits to Stock Broker and the Broker is liable for the act of Alliance Partner and his servants. The fact situation in the present case would be covered under Section 238 of the Indian Contract Act, where the misrepresentation made or fraud committed by agents acting in the course of their business for their principal, have the same effect as committed by the principal and the principal is liable for the same. A principal is liable for the fraud committed by his agents acting within the scope of his authority irrespective whether the fraud is committed for the benefit of the principal or the agent.

This court, thus, finds no reason to interfere with the Arbitral Award and the impugned order passed by the District Court.

ORDER:

45. Accordingly, the Arbitration Appeal stands dismissed.

46. In view of dismissal of the Arbitration Appeal, consequently, the pending Civil Application is also disposed of.

[ARUN R. PEDNEKER, J.]

marathe