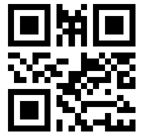

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO. 1057 OF 2014
WITH
INTERIM APPLICATION (L) NO. 9261 OF 2025
WITH
NOTICE OF MOTION NO. 2163 OF 2016
IN
ARBITRATION PETITION NO. 1057 OF 2014

Kantilal Chhaganlal Securities Pvt. Ltd. ...Petitioner

Versus

Viveka Kumari & Anr ...Respondents

Mr. Pesi Modi, Senior Advocate, *a/w Ms. Kalpana Desai, Mr. Pranav Nair, Mr. Abhineet Sharma & Ms. Riya Gokalgandhi, i/b Chambers of Abhineet, for the Petitioner.*

Ms. Shreya Gupta, *a/w Ms. Swagata Ghosh, i/b Shardul Amarchand Mangaldas & Co. for the Respondent No.1.*

CORAM: SOMASEKHAR SUNDARESAN, J.
RESERVED ON: February 27, 2026
PRONOUNCED ON: April 2, 2026

JUDGEMENT:

Context and Factual Background:

1. This is a Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 ("***the Act***"), challenging an arbitral award dated April 8, 2014, which is an appellate award ("***Appellate Award***") that

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ASHWINI JANARDAN VALLAKATI

refused to interfere with an earlier arbitral award dated October 23, 2013 ("***First Award***"), thereby holding the Petitioner, Kantilal Chhaganlal Securities Private Limited ("***Kantilal***") jointly and severally liable along with Respondent No.2, Akshay Standard Insurance Services Private Limited ("***Akshay***") to refund a sum of Rs. 2 crores that had been paid over by Respondent No.1, Viveka Kumari ("***Viveka***") on October 9, 2009 to Kantilal. Viveka opened an account with Kantilal, a stock broker on the National Stock Exchange ("***NSE***") for trading in the securities market through Akshay, a sub-broker of Kantilal.

2. The First Award had directed interest to be paid at 12% per annum from October 10, 2009 i.e. the very day when Viveka was given credit for the amount deposited with Kantilal. The Appellate Award upheld the First Award, and merely changed the date from which interest was to be computed to March 19, 2012.

3. The factual matrix relevant for purposes of adjudication of this Petition is set out below:-

A) Viveka opened her trading account with Kantilal through Akshay in coordination with one Mr. Jignesh Barasara, ("***Jignesh***"), who is the husband of one Ms. Mansi Barasara, a close confidante, friend and fellow entrepreneur, with whom

Viveka ran some garment ventures. These parties have fallen out, with Viveka accusing Jignesh of cheating and fraud;

B) Jignesh is said to have been well known to Akshay, and Viveka opened the trading account with Kantilal, with Jignesh handling the entire process. The member-client agreement and connected account-opening documentation with Kantilal are said to have been physically executed by Viveka in blank form, signing on the dotted line, since Viveka had full faith and trust in Jignesh, who was meant to fill the rest of the forms after her signatures were taken in blank;

C) Jignesh did not fill up the rest of the particulars but Akshay and Kantilal opened the trading account with blanks as they were. Viveka also wrote a cheque for Rs. 2 crores in Kantilal's favour, which was credited on October 10, 2009;

D) Viveka has complained that Jignesh led her to believe that the investment activity was doing well and the portfolio had become worth Rs. 3.76 crores. A range of trades in the derivatives segment of the NSE have been effected in Viveka's account after it was opened in October 2009. The last trade was executed on July

13, 2010. However, as it would transpire, the trading account actually had a debit balance of Rs. ~5 lakhs by July 13, 2010;

E) The disputes over the trades would take place nearly two years later in March 2012. Based on a request dated July 14, 2010 from Viveka, Kantilal provided to her designated Chartered Accountant, a full extract of her account from the ledger and an accounts statement on July 16, 2010;

F) In March 2012, a meeting was held between Viveka, Akshay, Kantilal and Jignesh, at which, Viveka accused Jignesh of having falsely informed her that profits had been made from the trading in her securities account, whereas the ledger that had been received in July 2010 had shown losses;

G) Relations between Viveka and Jignesh soured, and on April 11, 2012, through her lawyers, Viveka filed a complaint with the Economic Offences Wing, Mumbai Police ("***EOW***") contending that Jignesh had defrauded her by giving her the impression that profits had been made through her trades, although there had been losses;

H) Viveka contended to the EOW that "*she was a beleaguered woman beseeching justice at the doorsteps of the police as protectors of life, liberty and property, being a premier investigating agency for economic offences*". She complained that she had been systematically duped of her *entire life savings* at the hands of a dearest friend and her husband (Jignesh) and that she was a distressed victim of a highly manipulative securities scam, which had *left her vagrant and beleaguered in the most critical phase of her life*;

I) Viveka and Mansi used to design garment collections. Viveka alleged that they engaged in a company called "Taru" floated by Mansi, and thereafter even entered into a partnership and jointly started a company by the name "Barkat" in 2007-08. In the course of this relationship, she claims to have been introduced to Jignesh, and strong family bonds grew, which led to Viveka entrusting proceeds of sale of property effected in 2009 to him. Jignesh was accused of luring Viveka into believing that he should handle her financial portfolio with his expertise as a fund manager at Deutsche Bank, a multinational bank;

J) Viveka's complaint to the EOW contended that Jignesh assured her that he was also handling the investment portfolios of Mansi's uncles, in-laws and other relatives and that he was dependable and trustworthy for smart fund management. The EOW complaint admits to opening the stock-broking account with Kantilal and making a payment towards trading in securities. She would contend that Jignesh obtained Viveka's signatures on several blank documents and blank forms to enable him to trade in her absence (Viveka's husband is a British diplomat who was then working in Egypt);

K) The EOW complaint contends that Jignesh provided his own mobile number in her forms, for purposes of transacting in her name, and she found that Jignesh and Mansi, who were in complete control of her financial portfolio had taken her for a ride. She would allude to multiple emails between her Chartered Accountant and Jignesh or Mansi and would contend that she had asked Jignesh to liquidate the investments towards the end of 2011 and send her the proceeds, since she intended to purchase a home in Central London;

L) Viveka would complain that Jignesh indicated that she had made a handsome profit and that her account statement reflected a total of Rs.3.76 crores worth of investments and that Jignesh asked her not to liquidate the investments since it would be a foolish step. However, being desperately in need of funds, Viveka insisted that the portfolio be liquidated and proceeds be sent to her;

M) Viveka contended that it was then represented to her by Jignesh that her entire investment value of Rs.3.76 crores had been converted to cash and safely parked with some builder and that the same would be made available in two weeks. This was not to be;

N) Viveka would also complain that a close look at the accounts would indicate that not only had money been lost, but also that she was actually saddled with a debit balance of about Rs. ~5 lakhs. She complained that the trades had been done from a remote place in Nashik and that the losses shown in her account were unbelievable;

O) Thereafter, Viveka would also personally depose and record a statement before the EOW pursuant to her lawyer's

complaint, which would substantially reiterate the aforesaid contentions, and also allude to arbitration having been commenced in June 2012 by Akshay against her, demanding a sum of Rs. ~5 lakhs, which was the debit balance in her account;

P) In the arbitral proceedings initiated by Akshay to recover the debit balance, Viveka filed a counterclaim seeking a refund of the entire amount deposited with Kantilal in 2009 on the premise that all the trades had been unauthorised;

Q) The First Award squarely held in favour of Viveka. As stated above, the entire amount of Rs. 2 crores was directed to be refunded with interest running from October 10, 2009, i.e. from the very first date of deposit of the amount. The Appellate Award upheld the First Award, with the only change being the reset of the date from which interest would have to be computed.

<u>Core Issue:</u>

4. The short question that has arisen for consideration is whether the two Arbitral Tribunals could be said to have rendered perverse findings by ignoring vital evidence that lies at the heart of the issues that fell for adjudication. I have heard Mr. Pesi Modi, Learned

Senior Advocate on behalf of Kantilal and Ms. Shreya Gupta, Learned Advocate on behalf of Viveka. With their assistance, I have examined the record and applied my mind to the challenge mounted to the arbitral awards.

5. On Kantilal's behalf two facets of challenge are presented, both based on the footing that vital evidence had been ignored when adjudicating the matter.

6. *First*, the arbitral tribunals have found that the EOW Complaint and the deposition by Viveka on the very same facts, were totally irrelevant to the question of whether trades by Jignesh had not been authorised by Viveka. The First Award does not deal with the issue at all and simply holds that the absence of prior authorisation by Viveka would mean every trade was unauthorised. Dealing with the grievance that the EOW Complaint points to Viveka herself having confirmed that she had authorised Jignesh to trade on her behalf, the Appellate Award holds that the EOW Complaint and its contents are totally irrelevant because such complaint had been made subsequent to the trades and could not throw light on whether Viveka was aware of the transactions carried out in her account.

7. *Second*, the First Award held that it would not be appropriate to call upon Viveka to produce the income-tax returns filed by her after obtaining the ledger from Kantilal in July 2010. Such tax returns would have been filed before the disputes erupted in 2012 and according to Kantilal, the tax returns would indicate that after July 2010 Viveka had accepted the trades and would have even shown the losses with appropriate tax treatment for it, in her tax returns well before raising a dispute in 2012. The Appellate Award held that the income-tax returns were not on record at all. In the same breath, it also held that the First Award had rightly rejected the request for producing the tax returns since they constituted "*private papers*".

Analysis and Findings:

8. Against this backdrop, it must be stated at the threshold that Arbitral Tribunals are indeed the best judges of the quality and quantity of evidence in their role as masters of the evidence. It is only if *vital evidence* has been ignored, and that is of a nature that shocks the conscience of the Court, that the decision not to have regard to a certain element of the evidence would lend itself to being considered arbitrary. For arbitral findings to be vulnerable, the evidence ignored should be vital evidence that would cut to the root of the matter.

9. The quintessential understanding of arbitrariness – taking into account irrelevant facts, and ignoring relevant facts – has to be appreciated in this light, also bearing in mind that the Arbitral Tribunal has a wide range of play in the joints for consideration of what is the quantity and quality of evidence necessary for adjudication.

10. Equally, when a Section 34 Court exercises its review of the arbitral decision under challenge, it is not sitting in appeal and cannot substitute the decision of the Arbitral Tribunal with its own decision. What the Section 34 Court has to do, is examine within the parameters of challenge under Section 34, whether the Arbitral Tribunal has conducted the arbitral proceedings in a reasonable manner to return plausible findings. If the findings are plausible, there would be no interference.

11. It is not often that a Section 34 Court would have occasion to quash and set aside an outcome that has come through two concurrent rounds of arbitration. Therefore, it is important to cut through the clutter and specifically hold to light the infirmity in the approach to the two arbitral awards.

12. The core issue in this matter is whether Viveka had authorised the trades effected by Jignesh through Kantilal, purportedly

on behalf of Viveka. The findings of the two rounds of arbitration are that the trades were unauthorised in the absence of prior authorisation by Viveka to Kantilal. In doing so, whether the two forums considered vital evidence or shut out vital evidence has to be examined.

13. The Section 34 Court is not an appellate court and must not return a finding as to whether or not the trades were authorised. What the Section 34 Court must do is examine if the manner of consideration of issues by the arbitrators was arbitrary and perverse in a manner that cuts to the root of the matter.

14. What cuts to the root of the matter is that Viveka has taken a firm position in connection with the same set of events that she had authorised Jignesh to trade on her behalf in her absence and that she trusted Jignesh, who betrayed her trust. She has taken the position that she believed the trades had resulted in her portfolio being of a value of Rs. 3.76 crores while in reality there was a debit balance of Rs. ~5 lakhs. When the point in issue is whether the trades had been authorised, and not whether the trades were meant to translate into profits, the least that the Arbitral Tribunals should have done was to let the evidence of Viveka's own position be examined. Viveka in fact, conscious of the problematic nature of the factual matrix filed an application for leading

evidence. This was refused as is seen in the First Award. Kantilal sought to rely on the EOW Complaint, which too was refused. Instead, the First Award takes a simplistic position that each trade ought to have been authorised prior to the transaction, and that being absent, even Viveka's own case that she had authorised Jignesh to trade was not considered necessary for examination.

15. There are indeed firm assertions in the EOW Complaint and in the deposition before the EOW pursuant to the EOW Complaint. These cut to the root of the matter. The Arbitral Tribunal ought to have considered whether Jignesh was a person who had been authorised but betrayed the trust reposed by the authorisation, or whether Jignesh had never been authorised to trade. By simply shutting out this vital element of consideration, the Arbitral Tribunal's findings are undermined and vitiated.

16. The Appellate Award goes a step further to contend that the EOW Complaint was subsequent in time and therefore was totally irrelevant. The EOW Complaint presents a picture of Viveka being a beleaguered housewife whose lifetime savings have been squandered by Jignesh by how he traded and misled her into believing that the trades had led to a profit. The EOW Complaint points to Jignesh indeed

having been authorised to trade. It was Viveka who opened the securities trading account, and it was she who issued the cheque of Rs. 2 crores for such trading. According to her, Jignesh executed the trades and ran losses. Had the portfolio indeed delivered Rs. 3.76 crores, her stance was not that the trades were unauthorised. This is something that ought to have been considered and adjudicated. The Arbitral Tribunals simply refused to do so.

17. That the EOW Complaint was subsequent in time is an incoherent reason to uphold its irrelevance. The issue is not whether the complaint was made subsequently but whether the complaint contained Viveka's own narration of the very same events and what drove the events comprising the factual matrix. To hold that the core elements of the EOW Complaint were totally irrelevant has resulted in vital evidence being shut out and being ignored.

18. Contextually too, whether a piece of evidence is vital would need to be reasonably and logically examined. Viveka is not some ordinary "housewife" – a phrase akin to phrases such as "senior citizen" and "pensioner", used by advocates often to conjure imagery of the vulnerable. She is herself a well-educated person, an entrepreneur who ran a business herself with Jignesh's wife, and the spouse of a British

diplomat intending to invest in a property in London. That she is also evidently minor royalty with resources to be advised even about things she need not herself know, is writ large on the face of the record. The disputes with Jignesh have been well brought out and reported in the media – not something that would be seen in the case of an ordinary housewife who loses Rs. 2 crores on the stock market.

19. Viveka has access to excellent well-heeled law firms that moved the EOW to present an abject picture of a beleaguered housewife who has been left vagrant owing to her lifetime savings being lost, and indeed a premium law firm to represent her in these proceedings too. The short point is that the term "housewife" and loss of “lifetime savings” may conjure imagery of vulnerability, but that is not consistent with the nuance necessary for appreciation of the factual matrix in hand. Viveka was aware that Jignesh worked in a multinational bank and had restrictions on trading on his own. They appear to have pooled their resources to make investments and have had a falling out. This analysis is made not to indicate that a well-educated person who is socially and financially powerful is fair game for being cheated in the securities market. The analysis is to indicate what the dispute in hand was, and how the need to adjudicate the implications of the contents of Viveka’s position and potential conflicts in them would lead to determining the

issue of whether or not the trades effected by Jignesh had been with Viveka's blessings.

20. Viveka personally signed all the account opening documentation of Kantilal in blank form which obviously points to the intention to trade on the market. It is also her own case that she was aware that the trades would be executed by Jignesh in her absence, which she enabled, pointing to her potentially giving him authority to transact on her behalf. This would point to potentially being an authorisation of the trading. It is her case that it was at Jignesh's request and under coordination with him that she signed the account opening documentation with Kantilal so that her monies could be deployed for trades on the stock market.

21. Viveka has also stated that since Jignesh was working with Deutsche Bank he would put the trades on her behalf through Kantilal. Employees of financial sector institutions have strict rules governing trades being personally effected by them, since such trades can be motivated by subversive intent such as insider trading and front running (taking benefit of access to unpublished insider information accessed at the work place, either about the companies whose securities were traded in or about trades by clients of such institutions or by the

institutions themselves, which information could be profited from), or worse, for corruption (trades put through to accommodate giving business to specific brokers).

22. Viveka has also deposed before the EOW that she had expectations of making profits from such trades and not of losing all the money as eventually transpired. Rather than making her money, Jignesh's trades on her behalf eventually led to the sub-broker claiming a refund of the debit balance of Rs. ~ 5 lakhs. What this points to is that Viveka would have had no quarrel with the trades if the trades made money for her.

23. However, when they did not make money, she has quarrelled the authorisation of the trades despite admitting that she did open an account with Kantilal for Jignesh to trade on her behalf and she did issue a cheque for Rs. 2 crores for trading pursuant to such account opening. This makes the consideration of the EOW Complaint and the subsequent deposition vital, since that could have led the Arbitral Tribunal to determine if the preponderance of probability pointed to Viveka being in the know of the trades and the disputes having arisen over the outcome of the trading rather than about the very nature of the trading. This has been shut out by the steadfast refusal to consider the

EOW Complaint and the subsequent deposition – worse, when Viveka herself had sought to lead evidence in this regard.

24. Kantilal's non-compliance with regulatory requirements does present a shabby picture of Kantilal's own conduct. That has regulatory consequences for a stock broker. However, when the constituent of the broker has herself presented a firm picture about the very same trading before the EOW, the determination of the truth and who is speaking the truth to what extent, for determining whether the books of account present a true and fair view of the trading by the parties, is necessary. The Arbitral Tribunal was not charged with the jurisdiction of the Securities and Exchange Board of India i.e. to determine regulatory non-compliance and punish for it. The regulatory consequence of non-compliance is one facet of the matter. Another facet of the matter is whether such non-compliance must visit civil consequences upon one of the multiple parties that jointly indulge in trades in respect of which there has been non-compliance.

25. If Viveka was some innocent financially-illiterate person who was induced into signing some blank forms and got taken for a ride, it would have been an alleged fraud of a nature where the purported victim was clueless. However, if Viveka is a resourceful, business-

literate minor royalty with wherewithal to appreciate what she had authorised Jignesh to do, and claims to have been defrauded by conduct pursuant to such authorisation, the context would be totally different. The issue before the Arbitral Tribunals was whether there had been no authorisation at all by Viveka. The EOW Complaint indicates that there was authorisation of Jignesh by her, and such authorisation was for trading through Kantilal. This makes the EOW Complaint and Viveka's deposition before the EOW, relevant material that ought to have been thrown into the mix of the adjudication. The summary conduct of the proceedings without reference to these vital elements of what was in play, is what has led to material evidence being shut out.

26. The issue involved was whether there had been unauthorised trading by Kantilal on Jignesh's instructions on behalf of Viveka in a manner that every single transaction could be denied. That every single transaction has been held as unauthorised is evident from the First Award and the Appellate Award directing a full refund of Rs. 2 crores – the entire amount Viveka herself wrote a cheque for in favour of Kantilal and that too for trading in the account whose opening forms she herself executed in blank, authorising Jignesh to fill them up.

27. For that, the EOW Complaint, which points to Viveka's own stance of having authorised Jignesh to trade, and having been defrauded by trades effected by him pursuant to such authorisation, does become an important and vital piece of evidence. Without such a stance, potentially the Arbitral Tribunals would not have had much to think about and could have written the awards as they did, but when the material sought to be presented cuts to the root of the matter in this manner, there was a need for reflection on whether such evidence was vital.

28. The ground of dismissal of the evidence, namely, that the EOW Complaint was filed subsequent to the trades, is meaningless inasmuch as even the arbitration much like the criminal complaint would necessarily be after the trades, and what is being determined is the truth about the trades and that too based on the firm stance of the very party involved in the proceedings.

29. The First Award has hastily dismissed Viveka's own request to lead evidence in support of her case, even giving two names of witnesses to examine. The First Award holds this to be unnecessary, on the premise that the documents speak for themselves since Viveka met Kantilal for the first time ever in March 2012. I am afraid this is

irrational and unreasonable and has resulted in due process of adjudication of the matter having been missed.

30. The Arbitral Tribunal held that she got to know about the unauthorised trades in October 2010 and it is on this basis that the Arbitral Tribunal rejected the request for oral evidence, stating that the material on record would be adequate to prove whether or not the trades were authorized. Viveka herself was not shying away from leading evidence too. This would have been vital to reconcile the evidently problematic nature of the contents of the EOW Complaint. The hasty rejection in the First Award by not letting the facts flow fully and the summary upholding of that approach in the Appellate Award, have indeed led to vital evidence to reconcile Viveka's position in her counterclaim before the Arbitral Tribunal and her position in the EOW Complaint, being completely missed.

31. Even in the proceedings before this Court there is a generic mild suggestion that Viveka had intended to authorise Jignesh to trade only in blue chip stocks and not in the derivatives segment of the market. This would indicate that there had been authorisation to trade but in blue chip stocks. This too would not lend itself to the summary adjudication indulged in by the two forums below. This is a contention

that had to be tried and adjudicated. That has not been done by reason of the summary approach of the Arbitral Tribunal, with the two forums being satisfied that regulatory non-compliance would lead to otherwise inviolable trades effected on the market, which have had price discovery implications for the rest of the market, being considered as *non est*, simply directing a full refund of the entire amount given for securities trading, and that too with interest.

32. This brings one to the next issue – of shutting out tax returns of a personal individual claimant on the premise that her returns were "private papers" that are not relevant to the adjudication. It is writ large on the face of the record that the state of the account was known to Viveka in July 2010 when her Chartered Accountant was presented with the papers. Viveka's stance of all the trading being unauthorised, transpired in a counterclaim she would file in response to Akshay's claim for Rs. ~5 lakh, for the first time in 2012. Viveka's deposition to the EOW alludes to the arbitration having been instituted. It was on that subject matter that she had made firm statements and assertions that got shut out. Another facet of the adjudication would be what Viveka's own contemporaneous stance had been about the trades. Towards this end, Kantilal's second objection needs consideration – the refusal to call

for the tax returns and the treatment given by Viveka herself in her returns about the very same trades.

33. An application by Kantilal asking for production of the income tax returns to indicate the stance of Viveka towards the trades and the losses was also rejected specifically on the ground that the tax returns are "personal papers" and would be irrelevant for leading evidence in the matter. Paragraph 18 of the Appellate Award reads thus:-

> *"18. In this regard, **it was submitted on behalf of the broker that it was surprising that Constituent had placed a huge sum of Rs.2 crores and kept silent for a period of more than three years**. Admittedly, the Constituent had filed a **complaint with Economic Offences Wing against Mr. Jighnesh Barasara and in that complaint it was specifically mentioned by the Constituent that she had authorised Mr. Jighnesh Barasara to undertake trades on her behalf with the sub-broker / broker but Mr. Jighnesh Barasara has committed fraud**. It was submitted on behalf of the sub-broker and the broker that this has an effect of admitting the fact that the Constituent had authorised Mr. Jighnesh Barasara to undertake trade on her behalf. **In the first place, filing a complaint with Economic Offences Wing of the Mumbai Police is subsequent and altogether different aspect; that is totally irrelevant so far as arbitration proceeding is concerned. The request for leading oral evidence made by the sub-broker/broker in this regard was rightly rejected by the original Panel of Arbitrators**. This was so because there had to be written authority from the Constituent to Mr. Jighnesh Barasara and that too to the knowledge of the sub-broker / broker and in this regard no evidence, as such,*

*was produced. **It was further vehemently submitted on behalf of the broker and the sub-broker that the Constituent, in fact, had shown the losses suffered by her on account of trades done on the NSE in F & O segment in her income tax returns filed in India, which had an effect of admitting and accepting the trades undertaken on her behalf. In this regard, however, the income tax returns are not on record at all**. They were, in fact, **private papers and the request for production made on behalf of the sub-broker and the broker was rightly rejected by the Original Panel of Arbitrators. At any rate, it was necessary for the sub-broker and the broker to have with them clear and written authority given by the Constituent to Mr. Jignesh Barasara authorizing the latter to undertake trades on her behalf to the knowledge of sub-broker/broker. In this regard, there is absolutely no evidence**. In fact, **the dispute with regard to transactions arose only after the Constituent came to India in March, 2012 and had contacted the Directors of the sub-broker, who informed her that she had earned profits and her investment had gone upto from Rs. 3.50 crores and the funds are parked with some builder**. When the Constituent probed further and there was admittedly, a meeting with the sub-broker and the broker, it came light to the Constituent that, in fact, her funds were completely wiped off. **In the meantime, Constituent's Chartered Accountant Mr. Patel had requested the sub-broker to give the details of the Constituent's account and that was somewhere in the year 2012, and thereafter the details were given. Under these circumstances, even this contention is of no avail to the broker or the sub-broker**."*

[Emphasis Supplied]

34. Regrettably, the finding that the accounts had been sought only in 2012 is incorrect and is erroneous on the face of the record.

Viveka's Chartered Accountant was indeed presented with the data in July 2010. Thereafter, no trades were executed. Tax returns for at least the financial year 2009-10 would have been filed. Contemporaneously, there was no quarrel or shock or surprise. Equally, a constituent may indeed raise a dispute within the three-year period of limitation, which Viveka has. The task of the Arbitral Tribunal was to adjudicate who was speaking the truth to what extent and how to determine if any award was to be made.

35. Ordinarily, the Arbitral Tribunal being the best judge of the quality and quantity of evidence would not be faulted for refusing to be drawn into the constituent's own position in the tax returns. Yet, in a case like this where the contention of authorisation to trade having been admittedly given, and the claim is that trades pursuant to such authorisation were fraudulent, how the parties behaved *ante-litem motam* (before the litigation started) would be a strong pointer to the real understanding of the parties as opposed to conduct *post-litem motam* (after the litigation started). Even the trading account of an individual client of a broker constitutes "private papers". The disputes relate to contents of such private papers and therefore the stance adopted in the tax returns by the same party before the litigation began could not have been brushed aside as "private papers".

36. Indeed, the tax returns would have contained other information not germane to the stock market trades. Such information could have been redacted to protect the privacy. Indeed, the tax returns would also point to the ability to test the credibility of a party claiming to be a beleaguered housewife reduced to vagrancy (essentially meaning being rendered destitute) owing to lifetime savings being lost to the fraud by Jignesh.

37. It is indeed arguable that the relevance of tax returns and their relevance could perhaps be reasonably discounted as not being necessary, considering that the Arbitral Tribunal is the best judge of the quality and quantity of evidence. The ground adopted by the two forums – simply that tax returns are “private papers” is what necessitated the comments above. Be that as it may, tax would have to be paid or saved on the basis of the outcome – that by itself need not lead to relevance for adjudication as to whether or not the trades were authorised. Therefore, ignoring the reasons for which the Arbitral Tribunal refused to call for the tax returns, one could still take a view that the outcome of the decision of the Arbitral Tribunals could not be faulted.

38. What the Arbitral Tribunal has summarily come back to is that the trades could be totally discounted as being entirely unauthorised, in the teeth of Viveka's own submission that she had authorised Jignesh to trade, opened an account with Kantilal, paid the broker the amount, and consciously participated in the contrivance since Jignesh could not have taken the money himself to trade on account of being employed with a financial institution.

39. This element of adjudication has been left out. It is an obvious and potentially inconvenient facet of the adjudication that is a harder way to adjudicate, instead of the summary means of adjudication adopted by the two forums. Arbitration is privatised justice delivery and parties to the dispute are entitled to have their foundational propositions tried within a reasonable framework. The contents of the EOW Complaint and the related assertions and indeed Viveka's own deposition to the EOW do constitute vital elements of evidence, adjudication of which has been simply skipped. The grounds of their being held to be irrelevant cut to the root of the matter and renders the findings perverse.

40. The Learned Arbitral Tribunal has squarely held that there ought to have been clear written authority given by Viveka to Jignesh for

each trade on her behalf and towards this end, the Learned Arbitral Tribunal has stated that there is “absolutely no evidence”.

41. There is nothing on record to indicate that Viveka signed a blank cheque and the name of Kantilal was entered in the cheque by Jignesh. Viveka indeed signed Kantilal’s account opening documentation. In the EOW complaint, Viveka has explicitly stated that she trusted Jignesh and authorise*d* him to trade on her behalf and expected to earn handsome profits and was, in fact, even led to believe that the account indeed had profits to the tune of Rs.3.76 crores – a reasonable expectation, she would contend, of making good profits from trading by Jignesh, an executive of Deutsche Bank. This would also indicate that through the period of the trading – October 2009 to July 2010, Viveka did not protest any trade so long as she believed that the trades yielded her a profit. These are facets that ought to have been adjudicated and do not permit a simplistic and summary finding that there was no authorised trading at all on her behalf.

42. For the aforesaid reasons, I am constrained to interfere with the Appellate Award and the First Award, which ought to be quashed and set aside. Needless to say, this Court cannot hold that the trades were authorised or that they were unauthorised. The finding in this

judgement is that vital evidence has indeed been missed because the two forums chose to adopt a summary process without regard to the nuance involved in the matter – such nuance arising out of Viveka's own firm position before the EOW, on the very same trades and the very same facts underlying the arbitral proceedings. Confusing regulatory non-compliance as a corollary for not having to adjudicate core facts is the error that the two Arbitral Tribunals concurrently fell into, necessitating the quashing and setting aside of the two awards.

43. In ***Ssangyong***[1], the Supreme Court held thus:

> *"41. What is important to note is that a decision which is perverse, as understood in paras 31 and 32 of Associate Builders [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] , while no longer being a ground for challenge under "public policy of India", would certainly amount to a patent illegality appearing on the face of the award.* ***Thus, a finding based on no evidence at all or an award which ignores vital evidence in arriving at its decision would be perverse and liable to be set aside on the ground of patent illegality****. Additionally, a finding based on documents taken behind the back of the parties by the arbitrator would also qualify as a decision based on no evidence inasmuch as such decision is not based on evidence led by the parties, and therefore, would also have to be characterised as perverse.*
>
> ***[Emphasis Supplied]***

[1] *Ssangyong Engg. & Construction Co. Ltd. v. NHAI, (2019) 15 SCC 131*

44. In the interest of brevity, I have restricted the analysis to the core issue that emerged for consideration in the matter. Ms. Gupta has presented an excellent and valiant attempt at defending the concurrent findings as being a plausible reading of the evidence, but when evidence that is vital to the adjudication has been ignored, it is no solace to state that the evidence otherwise considered has been reasonably considered to return a plausible outcome. That vital evidence that cuts to the root of the matter is ignored, would lead to patent illegality of an extent that warrants interference. Merely because there are two concurrent findings in the two-tier arbitration that has been conducted, the check and balance under the Section 34 jurisdiction would be no less a check and balance.

45. As an operational matter, it is common ground that the awarded amount has been earmarked from Kantilal's funds available with the NSE and stands secured subject to the outcome of these proceedings. Therefore, although on an earlier occasion, it was indicated that the amounts may be brought into this Court, by consent of the parties, the Petition was taken up for final hearing considering that the amount had been secured by the earmarking of funds effected by the NSE.

46. Now that the arbitral awards are quashed and set aside, the parties would be at liberty to seek adjudication of their disputes afresh, which are still arbitrable and the statutory arbitration agreement subsists for adjudication of the issues involved.

47. With the aforesaid observations, the Section 34 Petition is ***allowed***, and the Arbitral Award and the First Award are ***quashed and set aside***.

48. All actions required to be taken pursuant to this order shall be taken upon receipt of a downloaded copy as available on this Court's website.

[SOMASEKHAR SUNDARESAN, J.]