

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **OMP No. 320/2003**

12th March, 2010

RAJESH PAPER MILLS LTD.

...Petitioner

Through: Mr. Raman Kapoor and Mr. Honey
Taneja, Advocates.

VERSUS

ORIENTAL INSURANCE CO. LTD.

....Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

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JUDGMENT (ORAL)

VALMIKI J.MEHTA, J

1. This objection petition under Section 34 of the Arbitration and Conciliation Act, 1996 challenges the Award dated 19.05.2003 of an Arbitration Tribunal comprising of three retired Judges of this court. The petitioner is the insured and the respondent is the Insurance Company.

2. The brief facts of the case are that the petitioner had taken a Fire Insurance Policy from the respondent after paying the necessary premium and whereby the stock of the petitioner in its factory was insured for Rs.10,00,000/-. On 14.06.1994 at about 2:30 p.m, a fire broke out in the

stockyard of the petitioner's factory, whereby, its stock was destroyed. On intimation being received by the respondent, it appointed M/s Associated Surveyors for survey and who gave to the Insurance Co the Preliminary Survey Report on 18.06.1994. The Final Survey Report was given on 27.09.1994. The petitioner appointed a licenced surveyor Sh. B.C. Mittal who also gave a Survey Report on 01.10.1994. It appears that the respondent appointed a third surveyor in view of the earlier conflicting reports and, who visited the site on 29.04.1995 and thereafter submitted their report. The Insurance Company as a result offered the petitioner only a sum of Rs.4,99,107/-.

3. The dispute between the parties first came up before the State Commission Delhi on a complaint filed by the respondent, but, since there was an Arbitration Clause, the matter was referred to Arbitration. The Arbitrators have passed the impugned Award. The operative portion of the Award reads as under:

“We make and render our AWARD as under:-

- I) Principal amount on account of loss at Rs.8,00,000/- (Rupees Eight Lacs).
- II) Interest on this amount of Rs.8.00 lacs by way of compensation @12% p.a, which comes to Rs.3,87,950/- (Three Lacs Eightly Seven Thousand Nine Hundred and Fifty), from 5.5.1999 to 19.5.2003 i.e. the date of the Award.
- iii) Future interest from the date of Award till payment/realization @9% p.a. on the principal amount of Rs.8.00 lacs (Rupees Eight Lacs).
- iv) Rs.50,000.00 (Rupees Fifty Thousands) as costs.”

4. The counsel for the petitioner strongly urges two points before this court. The first point was that the arbitrators have erred in awarding only Rs.8,00,000/- when the claim of the petitioner was for Rs.9,54,143.50. In my opinion, the contention of the counsel for the petitioner cannot succeed because the arbitrators have given valid reasons for awarding a lesser figure on the ground that the petitioner had failed to prove the actual stock which was burnt in the fire. The relevant paragraphs in the Award, read as under:-

“Regarding the extent of damage alleged to have been suffered by the Claimant and the amount the Claimant is entitled to recover from the Respondent Insurance Co.; in para 46 of the Claim Statement a sum of Rs.9,54,143.50 has been claimed as net amount of loss. This amount has been claimed on the basis of the Survey Report Ex.CW-3/2 of Shri B.C. Mittal, Surveyor appointed by the Claimant on its own.

His report is based only on the stock register, which was not completed in his presence. He had merely presumed that the figures of loss shown in the stock register were duly signed by the Excise Inspector as well as by the Surveyor appointed by the Insurance Co. Admittedly, the figures of loss shown in the stock register were never signed by the Surveyor deputed by the Insurance Co. No weighment was made in the presence of the Surveyor. He did not give any notice to the Insurance Co., or the Surveyor deputed by the Insurance Co., before surveying the loss and giving the Report Ex-CW-3/2.

In para 14 of the Affidavit Ex-CW-2/1 of Shri Rajesh Tikmani, Director of the Claimant Co., it has been mentioned that the factory of the Claimant works continuously for 24 hours and therefore, the raw material consumed from 8.00 a.m of the previous day to 8.00 a.m of the following day is entered in the Coal and Excise Register on the following day. In para 31 of the Affidavit, it has been further mentioned that on 15.6.1994 as every body was busy in extinguishing the fire, the stock consumed till 8.00 a.m on 15.6.1994 could not be entered in to the Stock Register and this entry was made in the Register only after weighment by the Excise Inspector by which time the register had already been signed by Shri Aurn Gupta, Surveyor.”

5. A court can interfere with the Award only if the reasoning of the Arbitration Tribunal is perverse or against the law of land or violative of the contractual provisions. The aforesaid facts show that the arbitrators after

duly considering the evidence have given proper reasons for awarding an amount of Rs.8,00,000/- only. I have already stated that the findings of the Arbitration Tribunal are justified because the actual stock which was lost in the fire was not proved. Even if two views possible, I find that the Arbitration Tribunal has taken one plausible view and, therefore, I do not think it fit to interfere with the Award in exercise of my jurisdiction under Section 34.

6. The second point which has been pressed on behalf of the petitioner is that whereas the loss took place on 14.06.1994 when the fire broke out, the arbitrators without any reasons, much less valid reasons have given interest only w.e.f. 05.05.1999 i.e. almost five years after the insured event. I find force in this contention of the learned counsel for the petitioner an Insurance Company, can take only a reasonable time to assess the loss and pay the same. In the present case an amount was offered to the petitioner of Rs.4,99,107/-, however the counsel for the petitioner submits that the Insurance Company/respondent wanted to offer this amount in full and final settlement, and, therefore, the petitioner was entitled to refuse the same. The counsel for the petitioner contended that it is not that the full amount of Rs.4,99,107/- was sent to the petitioner and the petitioner refused to encash the cheque. Therefore, in law, after taking a reasonable period of time, in my opinion, the interest became payable on the amount awarded of Rs.8,00,000/-. Taking this reasonable period at one year, I find that the

Arbitrators ought to have awarded interest from 15.06.1995. After all, the petitioner is a commercial undertaking, and in its business, on taking a loan, it would be paying commercial rates of interest and that the petitioner was in fact a commercial undertaking which had taken loan from its bank becomes clear from the Award which has directed the awarded amount to be directly paid to Punjab National Bank, Shikohabad, District Ferozabad (UP) with whom the stock was hypothecated. In the facts and circumstances of the case, therefore, I modify the Award, in that, interest which is payable shall be paid at the same rate as awarded by the Arbitrators i.e. @12% p.a. simple, however, interest will run in favour of the petitioner and against the respondent not from 05.05.1999 but from 15.06.1995. I am doing so because I find that no reasoning, much less any convincing reasoning, has been given by the Arbitration Tribunal for denying interest from the date of loss i.e. 15.06.1994 to 05.05.1999-the date from which it was granted.

7. With the aforesaid observations, the petition is disposed of by dismissing the objections except to the extent of changing interest which shall be payable from 15.06.1995 instead from 05.05.1999 as per the Award. Since the respondent is not represented, parties are left to bear their own costs.

VALMIKI J.MEHTA, J

March 12, 2010
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