

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

+ **RFA No.635/2003**

% **11th January, 2012**

THE UNITED INDIA INSURANCE CO. LTD. Appellant
Through Mr. A.K. De, Advocate.

versus

M/S. MAHAVIR ALUMINIUM LTD. Respondent
Through Mr. Rajesh Banati with Mr. Arpit
Bhargava, Advocates.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not? **Yes**

VALMIKI J. MEHTA, J (ORAL)

1. The challenge by means of this Regular First Appeal (RFA) filed under Section 96 of the Code of Civil Procedure, 1908 (CPC) is to the impugned judgment of the trial court dated 3.3.2003 decreeing the suit of the respondent / plaintiff for ₹2,12,762/- with interest against the appellant-insurance company.

2. The facts of the case are that the respondent / plaintiff obtained a fire insurance cover from the appellant-insurance company on 9.9.1986 for a 12

months' period ending on 9.9.1987. An accidental fire took place in the factory of the respondent / plaintiff on 18.11.1986, i.e. during the currency of the policy, and whereupon the respondent / plaintiff lodged its claim with the appellant / defendant-company. The appellant-company instead of giving the complete claim granted a claim of only ₹3,20,000/-. This amount of ₹3,20,000/- was sent under the covering letter of the appellant-company dated 7.12.1987 stating that the amount of ₹3,20,000/- was towards full and final satisfaction of the claim. Along with letter dated 7.12.1987, a voucher was also sent for signatures, and which also stated that amount was to be received in full and final settlement. The respondent / plaintiff after encashing the cheque of ₹ 3,20,000/-, sent its letter dated 19.12.1987 thanking the appellant-company for making payment of the claim, however, claimed that the balance amount of the claim be also released. The appellant / defendant in response to the letter dated 19.12.1987 wrote its letter dated 5.1.1988 (received by the respondent / plaintiff on 9.1.1988) declining the claim which was made by the respondent / plaintiff in its letter dated 19.12.1987. The subject suit therefore came to be filed by the respondent / plaintiff claiming the balance amount of the claim of ₹2,12,762/- along with

interest totaling to ₹2,47,579/-.

3. There were two main defences raised on behalf of the appellant / defendant-company in the trial court. The first defence was that the claim of the respondent / plaintiff stood extinguished as no suit was filed in a court of law within 12 months of the date of having received the full and final settlement amount of ₹3,20,000/-, and which was communicated to the respondent / plaintiff vide letter dated 7.12.1987, and with respect to which, even a full and final settlement discharge voucher was signed. Reliance for this defence was placed upon Clause 19 of the Policy which reads as under:

“19. In no case whatsoever shall the company be liable for any loss or damage after the expiration of 12 months from the happening of the loss or damage unless the claim is the subject of pending action of arbitration. If being expressly agreed and declared that if the Company shall disclaim liability for any claim hereunder and such claim shall not within 12 calendar months from the date of the disclaimer have been made the subject the matter of a suit in a court of law than the claim shall for all purposes be deemed to have been abandoned and should not thereafter be recoverable hereunder.”

4. The second defence was that the respondent / plaintiff had received the amount in full and final settlement, and therefore, on account of accord and satisfaction there was no cause of action for filing of the suit.

5. The trial court has held that the suit is not barred by limitation i.e. it was not extinguished because the claim was disclaimed by the appellant-company vide its letter dated 5.1.1988, and the suit was filed within one year on 4.1.1989. The trial court also held that it could not be said that the respondent / plaintiff received the amount in full and final settlement because the issue of full and final settlement was not proved by evidence.

6. In my opinion, the learned trial court fell into an error and the appeal deserves to be allowed both on the count that the claim having been extinguished as the same was not made within 12 months of the disclaimer on 7.12.1987, and also because the respondent / plaintiff having received the amount in full and final settlement without any coercion, and therefore, the respondent / plaintiff on account of accord and satisfaction could not have filed the suit.

7. I have already reproduced Clause 19 of the Policy above. It is necessary at this stage therefore to reproduce the letter of the appellant dated 3.12.1987; Ex.DW1/3, the discharge voucher; Ex. DW1/4 signed by the respondent / plaintiff and also the letter of the respondent / plaintiff dated 19.12.1987, Ex.DW1/12. A reference to these documents is necessary

because the same will resolve both the controversies with respect to the claim having been extinguished and also of there being accord and satisfaction. These documents read as under :-

A) “UNITED INDIA INSURANCE COMPANY LIMITED
501-505, VIKRANT TOWER, 5TH FLOOR, 4 RAJENDRA PLACE, PUSA ROAD, NEW DELHI-8

VSC: NS:540:87

3rd Dec. 1987

M/s Mahavir Aluminium Ltd.,
1603, Nirmal Tower,
26, Barakhamba Road,
New Delhi – 110001

Re: Claim No.40400/03/7/0011/86 Police No.40400/03/1
/00198 INSURED: IDBI, IFCI, ICICI, NBOI and BOB
as Mortgages A/c M/s. Mahavir Aluminium Ltd., New
Delhi as Mortgagors.

Dear Sir,

This was reference to your captioned claim. We have to advise you that your claim has been approved for ₹3,20,000/- (Rupees three lacs and twenty thousand only) as full and final settlement.

We enclose herewith a Discharge voucher which may be returned to us fully discharged by you, IDBI, IFCI, ICICI, NBOI, BOB to enable us to release the payment.

Yours faithfully,
Sd/-
(V.S. CHOPRA)
Divisional Manager”

B) "United India Insurance Company Limited
(Regd. & Head Office : 24, WHITES ROAD, MADRAS-600 014)

DISCHARGE / DEBIT VOUCHER

DUPLICATE

Claim No.40400/03/7/011/86

Policy No./Certificate No.40400/03/1/0198

Nature of Claim: Fire

Claimant IDBI, IFCC, NBOI & BOB A/c

Claim amount in figures Rs.3,20,000/-

Date of occurrence/Transit particulars:
Mahavir Aluminium Ltd.

Claim amount in words: Rupees Three Lacs Twenty Thousand Only.

Received from UNITED INDIA INSURANCE CO.
LTD., the aforesaid sum in full and final discharge of all claims
upon them, as per the aforesaid particulars.

Date : 3/12/98

Revenue Stamp to be affixed when necessary

Signature

(Space for use by the Company only)

Payee's Name : M/s. Mahavir Aluminium Ltd.

Pay and Debit : Fire Claims A/c.

Paid by Cheque No. Seal &

Date : 3/12

Signatures

Sd/-/Managing Directors

of Mahavir

Initials of Signatories

Aluminium Ltd.

Signatures of Authorised Official

Signature of Authorised Official

Br. Office.....

Divl. Office: D04

(Code No.)

(Code No.404N)"

C) "MAHAVIR ALUMINIUM LIMITED

1603, NIRMAL TOWER, 26, BARAKHAMBHA ROAD, NEW DELHI-110001

PHONES: 3312058-60, 3312677, 3312971, CABLE: 'MANIUM' TELEX: 31-66902

Ref: SEC/Ins./87/7830

19th December, 1987

The Asstt. General Manager,
United India Insurance Co. Ltd.
Kailash Bldg.,
5th Floor,
Kasturba Gandhi Marg,
New Delhi

Sub: Claim for fire loss on 18.11.1986 with your Divisional
Office No.4, Rajendra Place, New Delhi.

Sir,

With reference to our letter dt.27th November, 1987 we are pleased to say that we have received from your D.O.IV, New Delhi, a cheque for ₹3,20,000/- towards our claim. Please accept our thanks for your favour of having expedited this payment.

We had brought to your kind notice that the contention of the surveyors regarding our claim for four Nos, damaged circuit Processing Cards is not correct. We have not been informed either by your D.O., or by you of the action taken or proposed to be taken by you to resolve this point. We had suggested that the matter may be referred to an Electronic Expert and we do solicit your favour of considering our request for having this matter examined so that we may obtain another alternative insurance policy, if in fact our present policy does not insure such a loss. The loss sustained by us is quite large and hence our request.

The surveyors have satisfied themselves about the damage to the Cards but seems to think that the loss in such circumstances is not recoverable under the policy held by us. The Cards were serviceable before the fire on 18.11.86 but were found to be unserviceable, when the machinery was tested after reinstatement of damages caused by the fire mishap. Evidently

the damage to the Cards was caused by fire, which is the proximate cause.

We hope the matter will be attended to as promptly as was our earlier request for payment granted.

Thanking you,
Yours faithfully,
MAHAVIR ALUMINIUM LTD.,
Sd/-
M.M. GUPTA
COMPANY SECRETARY

cc to : The Divisional Officer
United India Insurance Co. Ltd.,
DO No. IV, Rajendra Place, New Deli, along with a copy
of our letter dt.27.11.1987 addressed to their R.O.

WORKS: SP2/333, BHIWADI INDUSTRIAL ESTATE,
BHIWADI, DISTT. ALWAR, RAJASTHAN PHONES: 68 69, 70”

8. A combined reading of the aforesaid three documents shows that the following conclusions can be arrived at:

- (i) The letter dated 3.12.1987 sent to the respondent / plaintiff specifically stated that the amount of ₹3,20,000/- was sent as a full and final settlement i.e. the balance claim of the respondent / plaintiff was disclaimed. The categorical language of the letter dated 3.12.1987 cannot leave anyone in any doubt that once the expression ‘full and final settlement’ is used in this letter, obviously, the balance

claim is disclaimed.

- (ii) The respondent / plaintiff signed the voucher, Ex.DW1/4 in an unqualified manner i.e. this voucher is not signed as without prejudice or in protest or any other language to show that the amount being received is not in full and final settlement. In fact, the language of the voucher Ex. DW1/4 shows that the amount is paid in full and final discharge by the appellant-company.
- (iii) The letter dated 19.12.1987 of the respondent / plaintiff, Ex.DW1/12, does not show that the encashment was done of the cheque of ₹3,20,000/- sent as full and final settlement, or that the signatures were put on the discharge voucher, Ex.DW1/4, under any coercion of any form whatsoever. On the contrary, the respondent / plaintiff by the letter dated 19.12.1987, Ex.DW1/12 thanks the appellant-company for the amount paid of ₹3,20,000/-.

9. It was always open to the respondent / plaintiff after having encashed the cheque to immediately protest by stating that encashment was done under economic duress or any other duress, however, no such letter was written, and only a fresh demand is made with respect to the balance claim

which was not paid.

10. The Supreme Court in the judgment reported as *National Insurance Co. Ltd. v. Sujir Ganesh Nayak & Co. & Anr., (1997) 4 SCC 366* has held that the clauses such as Clause 19 reproduced above were not in violation of Section 28 of the Contract Act, 1872 as existing prior to its amendment w.e.f. 8.1.1997. Therefore, with respect to vested rights which accrued on the basis of clause such as Clause 19 above, cannot be destroyed by retrospective operation of the amended Section 28 of the Contract Act. Once rights have accrued prior to amending of Section 28 of the Contract Act, such rights were vested rights and were not taken away. In the present case, admittedly, we are dealing with the period from 1986 to 1988 i.e. before 8.1.1997, therefore, amended position of Section 28 of the Contract Act would not apply to the ratio of the judgment in the case of *National Insurance Co. Ltd.* (supra). I therefore hold that Clause 19 was a valid clause and not violative of Section 28 of the Contract Act as then existing, and, the suit which was filed on 4.1.1989 i.e. after a period of 12 months from 7.12.1987, is not maintainable because the claim of the respondent / plaintiff stood extinguished within 12 months from 7.12.1987 by virtue of

Clause 19 of the Policy.

11. In fact, the suit is also barred by the principle of accord and satisfaction inasmuch as the amount of ₹3,20,000/- was received by the respondent / plaintiff in full and final satisfaction which is so mentioned in the letter dated 3.12.1987, Ex.DW1/3 and also the discharge voucher, DW1/4. Also, the respondent / plaintiff at no point of time ever wrote a letter that there was any duress / coercion of any nature whatsoever for encashing of cheque of ₹3,20,000/-. The aspect of duress is not mentioned in the letter dated 19.12.1987, Ex. DW1/12 which was written immediately after the cheque was encashed. The action of the respondent therefore in encashing the cheque of ₹3,20,000/- amounts to accord and satisfaction and is covered by the judgment of the Supreme Court in the case of *National Insurance Co. Ltd. v. M/s. Boghara Polyfab Pvt. Ltd., JT 2008 (10) SC 448*. The facts of the present case fall within sub-para (ii) of para 28, which summarizes the ratio of the judgment, by means of certain illustrations. Para 28 reads as under:-

“28. Some illustrations (not exhaustive) as to when claims are arbitrable and when they are not, when discharge of contract by accord and satisfaction are disputed, to round up the discussion on this subject:

- (i) A claim is referred to a conciliation or a pre-litigation Lok Adalat. The parties negotiate and arrive at a settlement. The terms of settlement are drawn up and signed by both the parties and attested by the Conciliator or the members of the Lok Adalat. After settlement by way of accord and satisfaction, there can be no reference to arbitration.
- (ii) A claimant makes several claims. The admitted or undisputed claims are paid. Thereafter negotiations are held for settlement of the disputed claims resulting in an agreement in writing settling all the pending claims and disputes. On such settlement, the amount agreed is paid and the contractor also issues a discharge voucher/no claim certificate/full and final receipt. After the contract is discharged by such accord and satisfaction, neither the contract nor any dispute survives for consideration. There cannot be any reference of any dispute to arbitration thereafter.
- (iii) A contractor executes the work and claims payment of say Rupees Ten Lakhs as due in terms of the contract. The employer admits the claim only for Rupees six lakhs and informs the contractor either in writing or orally that unless the contractor gives a discharge voucher in the prescribed format acknowledging receipt of Rupees Six Lakhs in full and final satisfaction of the contract, payment of the admitted amount will not be released. The contractor who is hard pressed for funds and keen to get the admitted amount released, signs on the dotted line either in a printed form or otherwise, stating that the amount is received in full and final settlement. In such a case, the discharge is under economic duress on account of coercion employed by the employer. Obviously, the discharge voucher cannot be considered to be voluntary or as having resulted in discharge of the contract by accord and satisfaction. It will not be a bar to arbitration.

- (iv) An insured makes a claim for loss suffered. The claim is neither admitted nor rejected. But the insured is informed during discussions that unless the claimant gives a full and final voucher for a specified amount (far lesser than the amount claimed by the insured), the entire claim will be rejected. Being in financial difficulties, the claimant agrees to the demand and issues an undated discharge voucher in full and final settlement. Only a few days thereafter, the admitted amount mentioned in the voucher is paid. The accord and satisfaction in such a case is not voluntary but under duress, compulsion and coercion. The coercion is subtle, but very much real. The 'accord' is not by free consent. The arbitration agreement can thus be invoked to refer the disputes to arbitration.
- (v) A claimant makes a claim for a huge sum, by way of damages. The respondent disputes the claim. The claimant who is keen to have a settlement and avoid litigation, voluntarily reduces the claim and requests for settlement. The respondent agrees and settles the claim and obtains a full and final discharge voucher. Here even if the claimant might have agreed for settlement due to financial compulsions and commercial pressure or economic duress, the decision was his free choice. There was no threat, coercion or compulsion by the respondent. Therefore, the accord and satisfaction is binding and valid and there cannot be any subsequent claim or reference to arbitration."

12. The position which is stated in sub-paras (ii) and (iv) does not arise in this case because there were no negotiations held for settlement prior to the appellant-company issuing the letter dated 7.12.1987 and nor has any threat of the appellant-company being proved on record that unless the full and

final voucher is signed, the entire claim will be rejected. Also, respondent / plaintiff has not written any letter immediately after encashment of the cheque of ₹3,20,000/- that the encashment was done due to financial difficulties or because of any other duress. I therefore hold that there was accord and satisfaction whereby the respondent / plaintiff was not entitled to file the suit for recovery.

13. In view of the above, appeal is accepted. Impugned judgment and decree dated 3.3.2003 set aside. Suit of the respondent / plaintiff shall stand dismissed. Parties are left to bear their own costs. Trial court record be sent back.

VALMIKI J. MEHTA, J.

JANUARY 11, 2012
dk