

**IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR**

Arb P No.31/2022

Melody Cones

...Petitioner(s).

Through: Mr. R. A. Jan, Sr. Advocate, with
Mr. Mohd. Saleem Bhat, Advocate.

Vs.

United India Insurance Co. Ltd. & Ors.

....Respondent(s)

Through: Mr. N. H. Khuroo, Advocate.

**CORAM:
HON'BLE THE CHIEF JUSTICE**

**ORDER
13.10.2023**

1. Heard Mr. R. A. Jan, Ld. Senior Counsel for the petitioner and Mr. N. H. Khuroo, learned counsel for the respondents.
2. The petitioner by the medium of the present petition filed under Section 11 of the Arbitration and Conciliation Act, 1996 seeks appointment of an arbitrator.
3. The case set-up by the petitioner is that he has set-up a small-scale industrial unit at Shalteng, Srinagar, and is engaged in manufacturing of ice cream cones. The petitioner unit is also stated to be registered with the Department of Industries and Commerce, District Industries Centre, Srinagar. The petitioner in respect of the said unit had secured an insurance cover under insurance policy no.1114021118P101012734 dated 19.04.2018. It is stated that unfortunately during the intervening night of 17/18 June, 2019, a fire incident took place in the petitioner's unit and the insured property of the petitioner got completely destroyed. Accordingly, an intimation was made by the petitioner to the respondent- insurance company and the respondent-insurance company appointed a surveyor to assess the

loss. The loss was assessed at Rs.22,12,768.99/- by the surveyor appointed by the respondent-insurance company vide his report dated 04.03.2019. The petitioner was not satisfied with the said assessment though he received the assessed amount and being aggrieved with the quantum raised a dispute with the Insurance Company by invoking clause-13 of the insurance policy which provides for resolution of any dispute or difference which may arise as regards the quantum to be paid under the policy by way of arbitration mentioned in the said clause.

4. According to the petitioner, the petitioner, accordingly, served a notice upon the Insurance Company on 23rd November, 2021. However, the respondents did not nominate the arbitrator as provided in the aforesaid clause 13 leaving no option to the petitioner except to approach this Court by invoking Section 11 of the Arbitration and Conciliation Act, 1996.

5. The respondents filed their objections to the petition and resisted the petition primarily on the ground that the claim projected is time barred and, as such, the petition merits dismissal. It is submitted by Mr. N. H. Khuroo, learned counsel appearing for the respondents, that the surveyor deputed by the respondents made proper assessment of the losses suffered by the petitioner and, accordingly, on the basis of the said assessment, a sum of Rs. 22,12,768.99/- was paid to the petitioner who accepted the same without any further demand or protest. Subsequently, later on he served the notice dated 23rd November, 2021 invoking the arbitration clause which is not permissible as the same is time barred. Learned counsel for the respondents submits that it is an admitted fact that the fire incident took place during the intervening night of 17/18 June, 2019, therefore, the cause of action would start running from that date only, and the period of limitation of three years as provided under Article 137 of the Limitation Act, would be over by 17th June, 2021 and, as such, the claim being time barred, cannot be entertained.

6. Mr. R. A. Jan, Learned Senior Counsel, for the petitioner on the other hand, submits that the cause of action arose only when a dispute arose between the parties, that is, when the petitioner expressed his dis-satisfaction with regard to the quantum of compensation. In this regard Ld. Senior Counsel has referred to the arbitration clause-13, which specifically mentions that if any dispute or difference shall arise as to the quantum to be paid under this policy, such difference can be referred to the decision of a sole arbitrator. It is further submitted that in the present case before the insurance company made the assessment and made the payment, the question of any dispute or difference happening does not arise and, as such, the limitation period would start running only from the date when the petitioner received the payment i.e., 19th July, 2019.

7. Considered the submissions made by learned counsel for the parties and perused the materials available on record.

8. The existence of insurance policy at the relevant point of time is not in dispute, nor that the said insurance policy contains an arbitration clause. In order to appreciate the controversy in the right perspective, the arbitration clause 13 of the insurance policy may be referred to, which is reproduced as under:

“13. If any dispute or difference shall arise as to the quantum to be paid under this policy (liability being otherwise admitted) such difference shall independently of all other questions be referred to the decision of a sole arbitrator to be appointed in writing by the parties to or if they cannot agree upon a single arbitrator within 30 days of any party invoking arbitration, the same shall be referred to a panel of three arbitrators comprising of two arbitrators, one to be appointed by each of the parties to the dispute/ difference and the third arbitrator to be appointed by such two arbitrators and arbitration shall be conducted under

and in accordance with the provisions of the Arbitration and Conciliation Act, 1996.

It is clearly agreed and understood that no difference or dispute shall be referable to arbitration as hereinbefore provided, if the Company has disputed or not accepted liability under or in respect of this policy.

It is hereby expressly stipulated and declared that it shall be a condition precedent to any right of action or suit upon this policy that the award by such arbitrator/ arbitrators of the amount of the loss or damage shall be first obtained.”

9. Perusal of the aforesaid arbitration clause makes it very clear that as and when any dispute or difference arises between the parties as to the quantum to be paid under the policy, the same shall be subjected to the decision of a sole arbitrator to be appointed. It appears that as far as the cause of action in the present case is concerned, it will accrue only when a difference with regard to the quantum under the policy arises between the parties, and that no other dispute or difference with regard to the subject policy is otherwise arbitrable. The fire incident occurred during the intervening night of 17/18 June, 2018 and till assessment is made by the respondent-insurance company, the petitioner would have no idea as to whether he has any difference of opinion with regard to the assessment made by the Insurance Company. The surveyor in the present case has submitted his report on 04.03.2019 quantifying the loss at Rs. 22,12,768.99/-. Thus, if the petitioner was not agreeable to the said assessment, the period of limitation would start from the date when the report was submitted on 04.03.2019 and not from the date of loss as contended by the respondents. The petitioner notified the arbitrator by serving a notice on 23.11.2021 which is admittedly within three years of the limitation period as contemplated under Article 137 of the Limitation Act.

10. The plea raised by the respondents that the petitioner received the assessed amount without raising any protest at the time of payment does not mean that he is satisfied with the assessment made and that he has waived his right to seek reference of the dispute to an arbitrator. The petitioner was well within his rights to seek reference of the dispute to an arbitrator if he is not satisfied with the quantum of the assessment.

11. In view of the aforesaid reasons, this Court is satisfied that dispute which is referable to an arbitrator under Clause 13 is not time barred and since the respondents have failed to respond to the notice dated 23.11.2021, this court proceeds to appoint Mr. Sheikh Altaf Ahmad, Retired District and Sessions Judge, R/o Naseem Bagh, Kanli Bagh, Baramulla, (Cell No.9419457555) to act as an Arbitrator and to resolve the dispute which has arisen between the parties. The arbitrator shall, accordingly, proceed in the matter in accordance with law after charging the prescribed fee along with incidental expenses to be shared by the parties.

12. The petition is, accordingly, disposed of and the learned arbitrator be informed accordingly.

(N. KOTISWAR SINGH)
CHIEF JUSTICE

Srinagar

13.10.2023

Abdul Qayoom, Secy.