

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

+ **RFA No. 644/2017**

% **24th July, 2017**

M/s M.C.G.D. ZINES PVT. LTD. Appellant

Through: Mr. Ashok Mahipal, Advocate.

versus

UNITED INDIA INSURANCE CO. LTD. Respondent

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

C.M. Appl. No. 25779/2017 (for exemption)

Exemption allowed, subject to all just exceptions.

The application stands disposed of.

RFA No. 644/2017

1. This Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908 (CPC) is filed by the appellant/plaintiff against the impugned judgment dated 28.2.2017 by which the suit filed by the appellant/plaintiff for recovery of Rs.31,98,511/- along with interest has been dismissed. Suit was filed against the

respondent/insurance company/defendant claiming the underpaid amount of loss under the insurance policy. Loss amount is claimed on account of loss in the fire in the night of 2nd and 3rd May at the premises of the appellant/plaintiff at D-137, Okhla Industrial Area, Phase-I, New Delhi-110020.

2. There are three aspects which arise for decision in the present appeal. One is the claim of the appellant/plaintiff with respect to the value of burnt stocks which is pleaded to be of a sum of Rs.4,88,153/- and which amount has been rejected by the respondent/insurance company. The second aspect is with regard to lesser depreciated value granted of the insured machines and which got burnt in the fire in the midnight of 2nd and 3rd May, 2006. Appellant/plaintiff claims that the depreciation taken by the surveyor of the respondent/defendant at 70% is wrong and it should only be calculated at 25%. The third aspect is that whether the appellant/plaintiff had taken an amount of Rs.17,47,723/- from the respondent/insurance company after signing a full and final settlement receipt, and if so its effect?

3.(i) So far as the aspect of claim of value of stocks of Rs.4,88,153/- is concerned it is conceded before this Court during the course of arguments that no evidence whatsoever was led on behalf of the appellant/plaintiff with respect to the value of stocks existing in the premises D-137, Okhla Industrial Area, Phase-I, New Delhi-110020, on the date of fire being the intervening night of 2nd and 3rd May, 2006.

(ii) Learned counsel for the appellant/plaintiff argued that the record was burnt in the fire and therefore no evidence could be led, and which argument, in my opinion, though might have some substance, however, this Court cannot accept the argument for the reason that if the argument urged on behalf of the appellant/plaintiff is accepted then there is no reason why insurance claim of crores of rupees can be claimed and allowed although on evidence whatsoever is led as to the value of stocks which are said to be burnt in the fire. In my opinion, therefore, the Court below has committed no illegality in rejecting the value of the stocks of Rs.4,88,153/- as claimed by the appellant/plaintiff.

4.(i) The second argument urged on behalf of the appellant/plaintiff is with respect to percentage of depreciation as per the surveyors report of the respondent/insurance company. This surveyor report is dated 23.1.2007. Learned counsel for the appellant/plaintiff argues that as per the Companies Act, 2013 there are two methods of depreciation being the straight line method and written down value method, and the surveyor has adopted the straight line method, and which is not justified. It is argued that the appellant/plaintiff had filed in the court below the certificate of the manufacturer of the machinery dated 6.12.2006 that the machinery had a shelf life of 25 years. It is argued that machineries in question were purchased in the years 1999 and 2000, and therefore the written down value should not have been taken at 70% as in May 2006.

(ii) In my opinion, the surveyor when he makes a survey report with respect to the value of the machinery, has to adopt a particular method for valuing effectively the market price of the machinery on the date of the fire/loss. Value of the machinery on the date of loss depends on various aspects such as maintenance of the same, damages to the same, normal shelf life of the machinery and so on. Once the surveyor has taken one particular method, and that method is one of

the methods possible in law, unless and until grave reasons are found to dispute the surveyors report, courts normally do not interfere with the valuation fixed. The court below held that the courts do not interfere with surveyors report unless it is found to be completely illegal or illogical by referring to various judgments including of the Supreme Court, and which observations of the trial court read as under:-

“Now I come to the aspect of surveyor’s report which has been vehemently opposed by the plaintiff. The surveyors report is a cogent piece of evidence and cannot be ignored lightly without any evidence contrary to it. Hon’ble Supreme Court in SRI VENKATESWARA SYNDICATE versus ORIENTAL INSURANCE COMPANY LTD & ANR, II (2010) CPJ 1 (SC) has held as under:-

“There is no disputing the fact that the Surveyor/Surveyors are appointed by the insurance company under the provisions of Insurance Act and their reports are to be given due importance and one should have sufficient grounds not to agree with the assessment made by them. We also add, than, under this Section the insurance company cannot go on appointing Surveyors one after another so as to get a tailor made report to the satisfaction of the concerned officer of the insurance company, if for any reason, the report of the Surveyors is not acceptable, the insurer has to give valid reasons for not accepting the report. Scheme of Section 64-UM particularly, of Sub-sections (2), (3) and (4) would show that the insurer cannot appoint a second surveyor just as a matter of course. If for any valid reason the report of the Surveyor is not acceptable to the insurer may be for the reason if there are inherent defects, if it is found to be arbitrary, excessive, exaggerated, etc., it must specify cogent reasons, without which it is not free to appoint second Surveyor or Surveyors till it gets a report which would satisfy its interest. Alternatively, it can be stated that there must be sufficient ground to disagree with the findings of Surveyor/Surveyors. There is no prohibition in the Insurance Act for appointment of second Surveyor by the Insurance Company, but while doing so, the insurance company has to give satisfactory reasons for not accepting the report of the first Surveyor and the need to appoint second Surveyor.”

In D.N. BADONI versus ORIENTAL INSURANCE CO. LIMITED. 1(2012) CPJ 272 (NC), Honble National Commission has observed that

“It is well settled law that a Surveyors report has significant evidentiary value unless it is proved otherwise...”

NEW INDIA ROAD CARRIER (REGD.) versus NATIONAL INSURANCE COMPANY LTD. & ORS. I (2013) CPJ 243 (NC), Honble National Commission held as under:-

“Initial burden to prove that loss was due to cyclone or rainfall was on the appellant which the appellant failed to discharge by leading any cogent and trustworthy evidence. In the absence of any evidence to the contrary the report of the surveyor could not be discarded. The appellant did not produce any evidence worth the name to show that the damage to the building was caused due to cyclone or the rainfall. It also failed to produce any evidence to prove the estimated loss. The report of the surveyor is an important piece of evidence and has to be given due weight. We agree with the sacrosanct but there has to be some trustworthy evidence to displace or discard the same. The appellant has not been able to counter the findings recorded by the surveyor by leading any independent and cogent evidence. In the absence of evidence to the contrary the report of the surveyor has to be accepted.”

16. In New Horizon Sugar Mills Ltd. v. United India Insurance Co. Ltd. & Ors., 2003 (3) CPR 136 (NC), the Honble National Commission has observed that report of Surveyor appointed under the provisions of Insurance Act has to be given greater importance.

In the instant case no cogent and convincing evidence has been produced on behalf of the plaintiff to ignore the report of the surveyor whereby the loss of the complainant was assessed.

Having considered the facts and circumstances of the case and the evidence available on the record, the ISSUE No. 1 – {Whether the Surveyor’s report dated 23.01.2007 correctly assesses the damaged suffered by the plaintiff including taking into account the appropriate depreciation rate in the fire that took place on 2nd/3rd May, 2006 in the premises of the plaintiff? (OPP)} is decided against the plaintiff and in favour of the defendant.”

5. In my opinion, no fault can be found in the aforesaid reasoning of the trial court and thus in the surveyor’s report dated 23.1.2007. Therefore, the argument with respect to the appellant/plaintiff not having been correctly granted the value of the machinery lost is rejected.

6. The last argument, and which really is an argument which will be a determining aspect in spite of the merits of the case, is as to whether the appellant/plaintiff took the amount of Rs.17,47,723/- in full and final settlement by executing a receipt dated 26.11.2007. The court below in this regard notices that the witness of the appellant/plaintiff in his cross-examination has categorically admitted that the receipt executed was in full and final settlement. This is found in the last line of internal page 12 of the impugned judgment. The court below has thereafter held that there cannot be held to be any coercion upon the appellant/plaintiff in view of the fact that the amount was taken in full and final settlement on 26.11.2007 and the first letter objecting to the settlement amount is written much later on 17.3.2008. In this regard, the court below has therefore held that no doubt in all cases it is not necessary that the full and final settlement voucher should be taken as a full and final settlement, and it depends on the facts of each case, but it is so in the facts of the present case in view of the considerable length of time between receiving of the amount on 26.11.2007 and the first letter objecting by pleading coercion being only on 17.3.2008. Accordingly trial court has rightly

held that there was a full and final settlement between the parties. The relevant observations of the court below in this regard read as under:-

“... It is correct that the plaintiff company has also received the amount assessed by the Surveyor. I do not remember when this amount was received.”

“... I do not remember whether amount was received in November-December 2007. I do not remember whether plaintiff wrote any letter till 17.03.2008 that the amount was received under protest. The amount was received through cheque. I do not remember whether the plaintiff signed any discharge voucher for full and final settlement of the amount. The plaintiff company had received only the cheque and was not intimated whether this amount is for full final settlement of the claim.”

“... It is correct that the amount was paid to the plaintiff by the defendant in full and final settlement of claim.”

The deposition of PW-1 reveals that there is nothing on record to suggest that any letter was written prior to 17.03.2008. The defendant has been able to show that the series of letters alleging ‘coercive tactics’ on part of the insurance company were written much after the claim was settled by the insurance company. In fact the insurance company had advised the plaintiff to follow the procedure under the RTI Act.

The Hon’ble Supreme Court has held in a catena of judgment that once the claimant-insured had executed the discharge voucher and accepted the amount in full and final settlement of the claim, the petitioner is stopped from claiming any further amount. The only exception carved out by the Supreme Court to the said rule is that the acceptance of the insurance claim would not bar the insured from making further claim from the insurer, in case the discharge voucher has been obtained in circumstances, which could be termed fraudulent or by exercise of undue influence or misrepresentation or the like. (see (i) National Insurance Company Limited Vs. Boghara Polyfab Private Limited (2009) 1 SCC 267; (ii) Nathani Steels Limited Vs. Associated Constructions 1995 Supp (3) SCC 324; (iii) State of Maharashtra Vs. Nav Bharat Builders 1994 Supp (3) SCC 83; (iv) Messrs P.K. Ramaiah and Company vs. Chairman and Managing Director, National Thermal Power Corporation 1994 Supp (3) SCC 126; (v) M/S Bhagwati Prasad Pawam Kumar Vs. Union of India 2006 (2) IAC 434 (SC); and (vi) Union of India and Others Vs. Master Construction Company (2011) 12 SCC 349).

The ISSUE No. 2 {Whether the receipt of Rs.17,47,723/- by the plaintiff on 26.11.2007 from the defendant was voluntary? If so, its effect? (OPP)} is decided against the plaintiff and in favour of the defendant.”

7. In view of the aforesaid discussion, I do not find any merit in the appeal and the same is hereby dismissed.

JULY 24, 2017

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VALMIKI J. MEHTA, J

