THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 15-11-2018

CORAM

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH

AND

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

O.S.A.No.63 OF 2015

The New India Assurance Co.Ltd.,
Ragina Mansion, I Floor,
45, Moore Street,
Chennai-600 001. .... Appellant/ Petitioner

-vs-

1.Gemini Enterprises
Old No.36(New No.59)
Police commisioner office road,
Egmore , Chennai. 8.
2.N.C.Vijayaraghavan ... Respondents/ RespondentS

Appeal against the order, dated 25.09.2008, passed in O.P.No.24 of 2004 on the file of this Court as against the award, dated 12.08.2002.

Prayer in O.P.No.24/2004:
Petition filed Under Section 34 of the Arbitrication and conciliation Act,1996 to set aside the award passed by the second Respondent dated 12.08.2002.

For appellant : Mr.P.S.Ganesan
For respondent 1 : Mr.V.Ramesh
for M/s.Sampath Kumar & Associates

JUDGMENT

(Judgment of the Court was delivered by Krishnan Ramasamy, J.

This appeal is filed against the order, dated 25.09.2008, passed in O.P.No.24 of 2004, by a learned single Judge of this Court.

2. According to the appellant, first respondent took a burglary insurance policy for business premises for a sum of

Rs.20,00,000/- for a period of one year from 19.08.1996 to 18.08.1997. During the existence of the said policy, there was an incident of burglary at the premises of first respondent. Therefore, they lodged a claim before the appellant-insurer. However, the same was rejected, on the ground of non-admissibility of claim. The matter was referred to the arbitrator, who awarded a compensation of Rs.19,00,479/-and the same was confirmed by the learned single Judge of this Court vide the impugned order, dated 25.09.2008.

3. Under the circumstances, the present appeal is filed, stating that the policy was taken only for stock of finished and semi-finished leather garments and accessories for leather garments. It is the specific case of the appellant that both the arbitrator and the learned single Judge have not considered the fact that the policy was issued only for stock of finished and semi-finished product leather garments and not for finished and semi-finished goods. According to the appellant, the present dispute is also non-arbitrable in terms of arbitration clause 11 of Burglary and House Breaking Policy, wherein, he referred sub-clause ((ii) of Class 11, which reads as under :

> "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"

Therefore, it is the case of the appellant that the said aspect has not been considered by both the arbitrator and the learned single Judge.

4. On the other hand, the case of first respondent is that as per the award, the entire claim has been settled by the appellant; the policy was taken only for burglary and house breaking, wherein there were certain exclusions and the present claim of the appellant as to non-coverage of the items was not falling under any of the following exclusions;

> "The Company shall not be liable in respect of:
>
> I. Gold or Silver articles, watches or jewellery or precious stones or models or coins or curios sculptures, manuscripts, rare books, plans, medals, moulds, designs, deeds, bonds, bills of exchange, bank, treasury or promissory notes, cheques, money, securities, stamps, collection of stamps, business books or papers, unless specifically insured.
>
> II. Loss or damage where any inmate or member of the insured's household or of his business staff or any other person lawfully in the premises in the business is concerned in the actual theft or damage to any of the articles or premises or where such loss or damage has been expedited or in any way assisted or brought about by any such person

or persons.

III. Loss or damage which is recoverable under Five or Plate Glass Insurance Policy or any other policy.

IV a) Loss or damage directly or indirectly, proximately or remotely occasioned by or which arises out of or in connection with Riot and Strike, Civil Commotion, Terrorist activities, earth quake, flood, storm, volcanic eruption Typhoon, Hurricane, Tornado, cyclone or other convulsions on nature or atmospheric disturbances.

b) Loss or damage whether directly or indirectly arising from war, war like operations and of foreign enemy hostilities (whether war be declared or not) civil war, revolution, insurrection, civil commotion millitary or usurped power, seizure, capture, confiscation, arrests, restrained and detainment by Order of any government or any other authority.

In any action, suit or other proceedings where the Company alleges that by reason of the above provisions any loss or damage is not covered by this insurance, the burden of providing that such loss or damage is covered shall be upon the insured.

V a) Any loss or damage to any property whatsoever or any loss expense whatsoever resulting or arising therefrom or any Consequential loss or any legal liability of whatsoever nature-directly or indirectly caused by or contributed to or arising from ionising radiation or contamination by radioactivity from any source whatsoever.

b. Any accident, loss, destruction, damage or legal liability directly or indirectly caused by or contributed to by or arising from Nuclear weapon material.

VI. Consequential loss or legal liability of any kind.

VII. Loss of money and or other property abstracted from the safe following the use of the key to the said safe or any duplicate thereof belonging to the insured unless such key has been obtained by assault or violence or any threats there at.

This Policy shall cease to attach:

VIII.a) If the premises shall have been left uninhabited by day and night for seven or more consecutive days and nights while the premises are left uninhabited.

b) If the insured shall cause or suffer any material alteration to be made in the premises or anything to be done whereby the risk is increased.

c) To any property the interest of the insured in which shall pass from the insured otherwise than by will or Operation of Law.

Unless in every case the consent of the Company to the continuance of the Insurance thereon is obtained and signified on the policy".

5. If the said claim was not falling under any of the exclusions, then, all other items would be covered as per the policy, which aspect has been considered both by the arbitrator and the learned single Judge.

6. With regard to the other point raised by the appellant as to non-applicability of arbitration in terms of arbitration clause, the respondent would submit that the said aspect can be decided only by the arbitrator, which is, accordingly, decided by the arbitrator; the appellant having accepted the claim and appointed the Madras Surveyors Bureau as Surveyor and the said surveyor also quantified the loss of Rs.13,40,335/-, in such circumstances, the dispute is only on the quantum and it is not on the liability of the appellant. The learned single Judge also concurred with the said finding of the arbitrator and, therefore, at the appellate stage, it is not correct to state that it is improbable to state that the said dispute cannot be referred to the arbitrator.

7. We have heard the learned counsel for the appellant and also the learned counsel for first respondent. We have also gone through the order passed by the learned single Judge coupled with the award passed by the arbitrator. That apart, we have also perused the insurance policy.

8. On perusal of the insurance policy, what comes to be known is that insurance coverage was provided to all the items, except certain items mentioned in the policy, with specific exclusion. The insurance policy and also the loss of goods would clearly establish that the goods lost due to burglary would be covered under insurance and, therefore, in our viewpoint, both the arbitrator and the learned single Judge have rightly held that first respondent is entitled for the total value of the loss of stock of finished leather, finished garments and zippers, due to the burglary that took place during the night of 22-23/6/1997, and the appellant is liable to pay the same. It is pertinent to mention here that the award amount has already been settled by the appellant to first respondent.

9. In the given situation, we do not find any merit in this appeal and it is dismissed. No costs.

Sd/-
Assistant Registrar(Co)

//True Copy//

Sub Assistant Registrar

dixit
copy to
The Sub Asst.Registrar,
O.S Section,
High court,Madras

+1cc to M/s.Sampath Kumar & Associates , Advocate SR.No. 78667
+1cc to Mr.P.S.Ganesan , Advocate SR.No. 77935

O.S.A.No.63 OF 2015

ASK(09/01/2019)