HONOURABLE SRI JUSTICE SURESH KUMAR KAIT
&
HONOURABLE SRI JUSTICE ABHINAND KUMAR SHAVILI

C.M.A. No.693 OF 2008

ORAL JUDGMENT: (per Hon'ble Sri Justice Suresh Kumar Kait)

1. Vide the present appeal, the appellant- Insurance Company has challenged the order dated 1.10.2007 passed in O.P.No.930 of 2004, whereby the O.P. filed by the appellant has been dismissed.

2. The learned Counsel appearing on behalf of the appellant submits that the Arbitrator has passed award for an amount of Rs.24,47,306/-, and by deducting an amount of Rs.10,17,700/-, which was already paid by the appellant, from the total awarded amount, the Arbitrator directed the appellant to pay an amount of Rs.14,00,000/- with interest at the rate of 9% p.a., from the date of award till realization.

3. The learned Counsel for the appellant further submits that since respondent No.1-claimant has filed affidavit-Ex.A25 dated 12.7.2001 as full and final settlement, the Arbitrator ought not to have passed the award which is impugned.

4. The learned Counsel for the appellant further submits that even after filing of the affidavit-Ex.A25, the claimant filed Ex.A26 notarized affidavit stating that an amount of Rs.10,17,700/- is full and final settlement, and thereafter, the 1st respondent-claimant

filed letter dated 22.9.2001, which was addressed to the appellant to reopen the settlement, and the appellant rejected the same, and being aggrieved by the same, the 1st respondent-claimant filed AAO No.76 of 2001 and the said case was disposed of vide order dated 26.2.2002 appointing Arbitrator to settle the claim made by the 1st respondent-claimant.

5. Further, the learned Counsel for the appellant submits that since the 1st respondent-claimant received total settlement amount of Rs.10,17,700/-, the award impugned is not legal and the same is liable to be set aside.

6. To strengthen his arguments, the learned Counsel for the appellant has relied upon judgment rendered by the Hon'ble Supreme Court in ***Union India Insurance Vs. Ajmer Singh Cotton and General Mills and others***[1] , wherein the Hon'ble Supreme Court held as under:

> *"In the instant cases the discharge vouchers were admittedly executed voluntarily and the complainants had not alleged their execution under fraud, undue influence, mis-representation or the like. In the absence of pleadings and evidence the State Commission was justified in dismissing their complaints. The National Commission however granted relief solely on the ground of delay in the settlement of claim under the policies. The mere delay of a couple of months would not have authorized the National Commission to grant relief particularly when the insurer had not complained of such a delay at the time of acceptance of the insurance amount under the policy. We are not satisfied with the reasoning of the National Commission and are of the view that the State Commission was justified in dismissing the complaints though on different reasoning. The observations of the State Commission in Jivajeerao Cotton Mills Ltd. Vs. New India*

[1] (1999) 6 SCC 400

> *Assurance Co. Ltd. (Original Petition No. 52 of 1991 decided on November 28, 1991) shall always be construed in the light of our findings in this judgment and the mere receipt of the amount without any protest would not always debar the claimant from filing the complaint."*

Thus, the learned Counsel for the appellant submits that the present appeal deserves to be allowed and the Arbitrator's award dated 3.12.2003 and the impugned order dated 1.10.2007 passed in O.P.No.930 of 2004 are liable to be set aside.

7. The 1st respondent-M/s Andhra Semi Conductors (P) Limited is a company incorporated under the Companies Act carrying on business of Distribution and Supply of the components manufactured by M/s. Bharath Electronics Limited as their distributors. The appellant herein carried on business in the Insurance field. The 1st respondent-claimant availed loan facility for its business from M/s. Deena Bank. The Bank obtained an insurance policy for the stocks with the 1st respondent-claimant from the appellant. The value of the policy was enhanced from time to time according to the value of the stock available. The policy was initially obtained for Rs.40,00,000/-under Ex.A1 from the appellant on 30.8.1999 and was enhanced to Rs.50,00,000/- vide Ex.A2 by taking another policy for Rs.10,00,000/- on 16.9.1999. The policy covers the property described in the schedule therein, in case of destruction/damage against various incidents including the fire accident. The policy incorporates an arbitration

clause for resolution of disputes or differences arising out of the terms and conditions of the policy under Clause-II.

8. While so, the fire accident occurred in the premises of the 1st respondent-claimant on 14.10.1999 at about 3.30 a.m., due to short circuit in the electrical installations resulting in the stocks of the electrical components in the premises being burnt in the fire. The 1st respondent-claimant immediately informed the bank and requested the bank to make a claim on behalf of the 1st respondent-claimant. But the Banking staff without making the claim handed over the policy to the 1st respondent-claimant and consequently, the 1st respondent-claimant was forced to make a claim with the appellant. The 1st respondent-claimant gave a complaint to the police and on the same date lodged a claim for Rs.50,00,000/- under Ex.A4. The police registered FIR vide Ex.A3.

9. The appellant appointed M/s. J.B. Boda Surveyors Private Limited to assess the damage and settle the claim. The said Surveyor sought certain clarifications from the 1st respondent-claimant and as well some documents on the fire accident to assess the damage and settle the claim. The Fire Department opined under Ex.A6 that the accident was as a result of short circuit. But in fact, the supposed cause of fire was only mentioned as electric origin and not short circuit.

10. Thereafter, the Surveyor is said to have been changed abruptly. According to the appellant, the required information was not furnished to him and he could not report. Therefore, M/s Moinuddin Mohammad and Company was appointed to assess the damage. Then, the said Surveyor sought for some more information and clarification under Ex.A11. The 1st respondent-claimant sent the required information to the said Surveyor under Ex.A13. Then, the Surveyor basing on the stock position, recommended for payment of Rs.12,00,000/- towards compensation subject to the discrepancy of the door number, and submitted his report on 22.5.2000. However, the said report was not placed on record.

11. It is pertinent to mention that after some correspondence between the 1st respondent-claimant and the appellant through letters dated 20.11.2000-Ex.A18, the appellant rejected the claim of the 1st respondent-claimant on the ground that the door number of the policy is different from the door number of the place where the accident took place, as mentioned by the Surveyor. The 1st respondent-claimant contended that the Surveyor did not consider the clarification given by it under Ex.A11. Thereafter, the 1st respondent-claimant got issued a notice on 5.1.2001 to the appellant and the Surveyor refuting the allegations demanded for settlement of the claim on the basis of the books of accounts and

the 1st respondent-claimant's banker also requested the appellant to settle the claim. The head office of the appellant directed the appellant to reopen the claim and settle the same amicably in relation to the statements of accounts and other documentary evidence submitted to the 1st respondent-claimant. Then, the claim was reopened and M/s. Deshpande Associates were appointed to go into the discrepancy in respect of the door number and they have settled the claim for Rs.10,17,700/- on 22.3.2001. The said amount was directly paid to the banker.

12. Further, the allegation of the 1st respondent-claimant is that the bank and the appellant are said to have forcibly made the 1st respondent-claimant to accept the claim, and that the bank and the appellant stated that if the 1st respondent-claimant does not accept, the bank would proceed against the 1st respondent-claimant by settling the claim, and under this threat, the 1st respondent-claimant was forced to sign the papers. These circumstances have forced the 1st respondent-claimant to invoke the Arbitration clause.

13. It is further important to note that the 1st respondent-claimant requested the appellant to recall the money of Rs.10,17,700/- sent to the banker and appoint an Arbitrator under Clause II of the policy to decide upon the quantum of payment.

14. Further, it is pertinent to mention here that if we believe the case of the appellant herein that an amount of Rs.10,17,700/- was settled as full and final settlement, then why the appellant has not challenged the appointment of the Arbitrator. They participated in the arbitration proceedings, where an amount of Rs.24,47,306/- with interest at the rate of 9% p.a., from the date of award till realization was awarded, and thereafter only, the appellant challenged the same by filing O.P. before the trial Court.

15. In addition to the above, we have perused Ex.A25 affidavit filed by 1st respondent-claimant as full and final settlement and Ex.A26 notarized affidavit on a stamp paper.

16. It is the case of the 1st respondent-claimant that old stamp paper was used and his signature was obtained on the same stamp paper, and under compulsion made by the Bank, 1st respondent-claimant signed the said affidavit. On perusal of the same, on the said stamp paper, there is no mention on which date the stamp was purchased and for what purpose and in whose name, it was purchased. Therefore, it can be believed that the 1st respondent-claimant put his signature on the final and settlement under pressure and threat. In such a situation, the 1st respondent-claimant has legal right to challenge the same by invoking arbitration clause, which was the subject matter of the policy.

17. It is not the case of the appellant that there was no arbitration clause in the policy, and the Arbitrator, who passed the award, was appointed in contravention of the policy. It is pertinent to mention here that the appellant has not challenged the findings of the Arbitrator. However, the appellant stated that since the settlement amount of Rs.10,17,700/-has already been paid, the 1st respondent-claimant should not have invoked the arbitration proceedings.

18. In view of the facts recorded above, we find no illegality and perversity in the order passed by the trial Court in O.P.No.930 of 2004 and the award passed by the Arbitrator.

19. Finding no merit, the C.M.A is dismissed. The appellant is directed to pay the total balance amount with interest thereon in favour of the 1st respondent-claimant, within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently, miscellaneous petitions pending, if any, shall stand closed.

JUSTICE SURESH KUMAR KAIT

JUSTICE ABHINAND KUMAR SHAVILI

Dated: 02.08.2018
Nn.

HONOURABLE SRI JUSTICE SURESH KUMAR KAIT
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(Judgment delivered by SKK,J)

02/08/2018

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