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

\+   **<u>RFA No. 291/2017</u>**

%   **12th September, 2018**

JASCH INDUSTRIES LIMITED ..... Appellant

Through: Mr. Sunil Kumar Agarwal and Ms. Neelam Aparna, Advocates (Mobile No. 9811268891).

versus

NEW INDIA ASSURANCE CO. LTD. ..... Respondent

Through: Mr. P.K. Seth, Advocate (Mobile No.9811055345).

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. 35534/2017 (for exemption)

1. Exemption allowed, subject to all just exceptions.

C.M. stands disposed of.

2. This Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908 (CPC) is filed by the plaintiff in the suit impugning the Judgment of the Trial Court dated 24.11.2016 by which the trial court has dismissed the suit for recovery of Rs.70,00,000/-, being the claim under various insurance policies of building, plant and machinery, stock, furniture and fixture, etc., and which were destroyed by a fire in the concerned premises of the appellant/plaintiff.

3. The facts of the case are that the appellant/plaintiff obtained various insurance policies from the respondent/defendant company under various heads, essentially for the period which will cover the date of the incident of fire, in the intervening night of 23.11.2001 and 24.11.2001. The details of the policies have been given by the trial court in para 1.4 of its impugned Judgment and this para reads as under:-

> "1.4 It has been further stated that during the period in between 2000 and 2001, the plaintiff was holding various insurance policies from the defendant such as Policy No. 11/971/979 (Building) for the period from 28.02.2001 to 27.02.2002 of sum insured Rs. 50,00,000/-, Policy No. 0207243 (Building) for the period from 15.06.2001 to 14.06.2002 of sum insured Rs. 3,00,000/-, Policy No. 353901/11/01/02428 (Building) for the period from 30.10.2001 to 29.10.2002 of sum insured Rs. 89,45,134/-,

Policy No. 11/969/979 (Plant and Machinery) for the period from 28.02.2001 to 27.02.2002 of sum insured Rs. 2,00,00,000/-, Policy No. 11/970/979 (Plant & Machinery) for the period from 28.02.2001 to 27.02.2002 of sum insured Rs. 6,50,00,000/-, Policy No. 353901/11/01/02428 (Plant & Machinery) for the period from 30.10.2001 to 29.10.2002 of sum insured Rs. 4,00,00,000/-, Policy No. 11/758/979 (Stock) for the period from 27.12.2000 to 26.12.2001 of sum insured Rs. 50,00,000/-, Policy No. 11/968/979 (Stock) for the period from 27.12.2000 to 26.12.2001 of sum insured Rs. 50,00,000/-, Policy No. 11/968/979 (Stock) for the period from 28.02.2001 to 27.02.2002 of sum insured Rs. 1,50,00,000/-, Policy No. 11/1191/979 (Stock) for the period from 27.02.2001 to 26.04.2002 of sum insured Rs. 1,00,00,000/-, Policy No. 11/1192/979 (Stock) for the period from 27.04.2001 to 26.04.2002 of sum insured Rs. 50,00,000/-, Policy No. 11/01/01986 (Stock) for the period from 26.06.2001 to 25.06.2002 of sum insured Rs. 1,00,00,000/-, Policy No. 0207449 (Cover note) (Stock) for the period from 30.08.2001 to 29.08.2002 of sum insured Rs. 50,00,000/-, Policy No. 11/01/02427 (Stock) for the period from 30.10.2001 to 29.10.2002 of sum insured Rs. 1,50,00,000/- and Policy No. 02077243 (Cover Note) (AC, Computer, Furniture, Fixtures etc.) for the period from 15.06.2001 to 14.06.2002 of sum insured Rs. 7,00,000/-."

4. It is not in dispute that a fire broke out in the factory of the appellant/plaintiff in the intervening night of 23.11.2001 and 24.11.2001 resulting in damage to the building, plant and machinery, stock, furniture and fixture, etc. of the appellant/plaintiff and which was duly informed to the respondent/defendant/insurance company. The insurance company appointed surveyors and the final surveyor who was appointed was M/s Kaypsens. The appellant/plaintiff had assessed its claim for a sum of Rs. 2,69,51,139/- but the surveyor, Sh. K.P. Sen of M/s Kaypsens, assessed the loss at Rs. 89,45,134/-. The

appellant/plaintiff pleaded that since its financial condition required immediate induction of finance, therefore the appellant/plaintiff thus gave its consent vide Letter dated 25.09.2002 under coercion and pressure agreeing to the assessment of loss at Rs. 89,45,134/-. The appellant/plaintiff also pleads that even the said amount of loss assessed was not paid to the appellant/plaintiff despite writing various letters from October, 2002 till January, 2003 and ultimately in September, 2003, the loss of the appellant/plaintiff was quantified and paid at a sum of Rs. 86,03,622/-. The appellant/plaintiff pleads that once again, acting under coercion and force, the appellant/plaintiff signed the full and final satisfaction discharge voucher and received the total amount of Rs. 86,03,622/- by two cheques for the amounts of Rs. 29,56,274/- and Rs. 56,47,388/-. The subject suit was therefore filed, pleading that though the total claim of the appellant/plaintiff, yet to be paid, was a sum of Rs. 1,83,47,476/- plus interest at 12 % amounting to Rs. 46,27,300/-, the suit claim was restricted only to a sum of Rs. 70,00,000/-.

5. The respondent/defendant/insurance company did not file a written statement and hence led no evidence. The appellant/plaintiff

claims that it proved its case by proving various documents. These documents are mentioned extensively by the trial court in paragraph 3.1 of the impugned judgment and this para reads as under:-

> "3.1 The plaintiff has examined Sh. S.K. Verma, its General Secretary as PW1 and this witness, in his evidence by way of affidavit, has reiterated and reaffirmed the stand as taken by the plaintiff in the plaint. He has filed on record the original Insurance Policy No. 11/971/979 as Ex. PW1/1, original Insurance Policy No. 11/969/979 as Ex. PW1/2, original Insurance Policy No. 11/970/979 as Ex. PW1/3, original Insurance Policy No. 353901/11/01/02428 as Ex. PW1/4, original Insurance Policy No. 11/758/979 as Ex. PW1/5, original Insurance Policy No. 11/968/979 as Ex. PW1/6, original Insurance Policy No. 11/1191/979 as Ex. PW1/7, original Insurance Policy No. 11/1192/979 as Ex. PW1/8, original Cover Note no. 0207376 as Ex. PW1/9, original Cover Note no. 0207449 as Ex. PW1/10, original Insurance Policy No. 353901/11/01/02427 as Ex. PW1/11, photocopy of the Cover Note No. 0207243 as Ex. PW1/12, original newspaper cutting dated 25.11.2001 from Sonipat Bhaskar as Ex. PW1/13, original Fire Attendance Report from Fire Services as Ex. PW1/14, original bills for fire services paid to the Municipal Bodies Rohtak and Sonipat as Ex. PW1/15, original letter from the Delhi Fire Services dated 06.06.2002 as Ex. PW1/16, original Daily Diary Entry no. 12 dated 24.11.2001 from Sonipat as Ex. PW1/17, report dated 27.06.2002 filed by the PS Rai, Distt. Sonipat as Ex. PW1/18, copy of the claim form filed by the plaintiff with the defendant as Ex. PW1/19, office copy of the details of occurrence filed by the plaintiff with the defendant as Ex. PW1/20, office copy of the details of manufacturing process as Ex. PW1/21, office copy of the letter dated 24.11.2001 from the plaintiff to the defendant as Ex. PW1/22, copy of the letter dated 28.11.2001 as Ex. PW1/23, letter dated 29.11.2001 from the defendant to the plaintiff as Ex. PW1/24, letter dated 15.12.2001 from Mr. Vinay Mittal, Surveyor to the plaintiff as Ex. PW1/25, letter dated 28.12.2001 from Mr. Vinay Mittal, Surveyor to the plaintiff as Ex. PW1/26, letter dated 11.01.2002 from the plaintiff to the defendant as Ex. PW1/27, letter dated 06.02.2002 from M/s Kaypsens to the plaintiff as Ex. PW1/28, letter dated 13.03.2002 from the plaintiff to Mr. K.P. Sen, Surveyor as Ex. PW1/29, letter dated 13.03.2002 addressed by the plaintiff to Mr. K.P. Sen, Surveyor as Ex. PW1/30, letter dated 27.03.2002 from the defendant to the plaintiff as Ex. PW1/31, letter dated 08.04.2002 from the plaintiff to the defendant as Ex. PW1/32, letter dated 10.04.2002 from the plaintiff to

Mr. K.P. Sen, the surveyor as Ex. PW1/33, letter dated 17.04.2002 from the plaintiff to the defendant as Ex. PW1/34, letter dated 20.04.2002 from M/s Kaypsens, Surveyor to the plaintiff as Ex. PW1/35, letter dated 02.05.2002 addressed by the plaintiff to Mr. K.P. Sen, Surveyor as Ex. PW1/36, letter dated 22.05.2002 from the defendant to the plaintiff as Ex. PW1/37, letter dated 28.05.2002 from M/s Kaypsens, surveyor to the plaintiff as Ex. PW1/38, letter dated 29.05.2002 from the plaintiff to the Surveyor as Ex. PW1/39, letter dated 01.06.2002 addressed by the plaintiff to M/s Kaypsens, Surveyor as Ex. PW1/40, letter dated 20.06.2002 from the plaintiff to Delhi Fire Service as Ex. PW1/41, letter dated 20.06.2002 from the plaintiff to Sh. K.P. Sen as Ex. PW1/42, interim survey report dated 25.06.2002 received by the plaintiff from M/s Kaypsens, Surveyor as Ex. PW1/43, letter dated 27.06.2002 from the plaintiff to M/s Kaypsens as Ex. PW1/44, letter dated 04.07.2002 from the plaintiff to Sh. K.P. Sen, Surveyor as Ex. PW1/45, letter dated 11.07.2002 from the plaintiff to Sh. K.P. Sen as Ex. PW1/46, letter dated 25.07.2002 from the plaintiff to Sh. K.P. Sen, Surveyor as Ex. PW1/47, letter dated 27.07.2002 from M/s Kaypsens, Surveyor to the plaintiff as Ex. PW1/48, letter dated 05.08.2002 from the plaintiff to Sh. S.P. Sen, Surveyor as Ex. PW1/49, letter dated 10.09.2002 from the plaintiff to M/s Kaypsens as Ex. PW1/50, list of requirements sent by M/s Kaypsens, Surveyor as Ex. PW1/51, letter dated nil from the plaintiff to M/s Kaypsens, Surveyor as Ex. PW1/52, letter dated 23.10.2002 from the plaintiff to the defendant as Ex. PW1/53, letter dated 30.10.2002 from the plaintiff to the defendant as Ex. PW1/54, letter dated 22.11.2002 from the plaintiff to the defendant as Ex. PW1/55, letter dated 22.11.2002 from the plaintiff to the defendant as Ex. PW1/56, letter dated 22.11.2002 from the plaintiff to the defendant as Ex. PW1/57, letter dated 02.12.2002 from the plaintiff to the defendant as Ex. PW1/58, letter dated 02.12.2002 from the plaintiff to the defendant as Ex. PW1/59, letter dated 02.12.2002 from the plaintiff to the defendant as Ex. PW1/60, letter dated 09.12.2002 from the plaintiff to the defendant as Ex. PW1/61, letter dated 24.01.2003 from the plaintiff to the defendant as Ex. PW1/62, letter dated 08.02.2003 from the plaintiff to the defendant as Ex. PW1/63, letter dated 03.03.2003 from the plaintiff to the defendant as Ex. PW1/64, letter dated 14.04.2003 from the plaintiff to the defendant as Ex. PW1/65, letter dated 17.04.2003 from the defendant to the plaintiff as Ex. PW1/66, letter dated 06.05.2003 from the plaintiff to the defendant as Ex. PW1/67, letter dated 12.05.2003 from the defendant as Ex. PW1/68, letter dated 29.09.2003 from the defendant to the plaintiff as Ex. PW1/69, legal notice dated 17.11.2003 sent by the counsel on behalf of the plaintiff to the defendant as Ex. PW1/70 and the copy of the reply of the legal notice as Ex. PW1/71."

6. The trial court has however dismissed the suit by holding that there was no undue influence and coercion as alleged by the appellant/plaintiff because appellant/plaintiff itself gave its Consent Letter dated 25.09.2002 to the surveyor M/s Kaypsens agreeing to accept a sum of Rs. 89,45,134/-. The trial court has held that this Consent Letter dated 25.09.2002 cannot be said to have been given under coercion and pressure because in the entire chain of correspondence i.e. Ex.PW1/22 to PW1/60, not even in a single letter, has the appellant/plaintiff alleged that the letter dated 25.09.2002 was given under coercion and pressure. Further, the trial court notes that in fact even after receiving the amount, by duly signing the full and final settlement voucher, for a period of two months, the appellant/plaintiff did not allege any pressure or coercion, and the issue of alleged pressure was raised for the first time, after one and a half months of receiving the amount. Thereafter, a Legal Notice dated 17.11.2003 Ex.PW1/70 was sent to the respondent/defendant/insurance company alleging pressure and coercion for the first time. The trial court has also held that Mr. K.P. Sen appeared in the witness box as a witness of the appellant/plaintiff

and proved his report Ex.PW2/A, but not a single question was asked to the surveyor, Mr. K.P. Sen, that his report was not correct or that he, acting as a surveyor, was biased in favour of the respondent/defendant/ insurance company. Trial court has also held that the appellant/plaintiff, even assuming that the value of loss had to be given, such value of loss was not proved by the appellant/plaintiff because only a self serving statement, without any documents backing the same, was made by the Company Secretary of the appellant/plaintiff. Accordingly, in my opinion, the trial court has rightly dismissed the suit by giving the following reasoning, discussion and conclusion in paras 15 to 24 of the impugned judgment, and which paras reads as under:-

> "15. It has to be seen that in para no. 21 of the plaint, the plaintiff has alleged that the consent to the report of the Surveyor was given under compulsion, undue influence and misrepresentation. In para no. 32 of the plaint, the plaintiff has categorically stated that the discharge vouchers Ex. PW1/69 on record were signed by the plaintiff again under compulsion and coercion. It has been alleged by the plaintiff that the assessment of the loss by the Surveyor in his survey report is wrong and based on non-application of the mind. The question is as to whether the plaintiff has been able to prove the abovesaid allegations or not.
>
> 16. <u>It has to be seen that Mr. K.P. Sen, the Surveyor, who has placed on record his survey report as Ex. PW2/A, was examined</u>

by none other, but, by the plaintiff itself as PW2. In his examination-in-chief, he has categorically stated that he made 4 – 5 visits to the factory of the plaintiff, surveyed the entire premises and assessed the loss. He has further stated he charged his professional fees from the defendant and submitted his report to the defendant, which is the Insurance Company.

17. Despite the allegation of bias and despite various other allegations against the Surveyor, not even a single suggestion has been given to the abovesaid Surveyor to the effect that the report submitted by the Surveyor was not correct. No suggestion has been given to the aforesaid Surveyor to the effect that he was biased.

18. It has been vehemently argued by the plaintiff that the assessment of the loss has not been done properly and the method of calculation, which has been adopted by the Surveyor in his report is wrong, but, again, not even a single suggestion has been given to the aforesaid Surveyor on the aspect of the abovesaid matters.

19. To my mind, the testimony of PW2 i.e. of the Surveyor remains uncontroverted and unchallenged. I am of the opinion that the testimony of PW2 goes against the case of the plaintiff itself. To my mind, it was obligatory and incumbent upon the plaintiff to prove his case by way of cogent and reliable evidence to show that the report of the Surveyor was biased or that the wrong and incorrect methods of calculation were adopted by the Surveyor, but, the plaintiff has failed to do so.

20. It has to be further seen that the plaintiff company has examined its Company Secretary in the form of PW1. No other independent witness has been examined to show that the actual amount of the loss suffered by the plaintiff was more than the amount, which was paid by the defendant to the plaintiff in pursuance to the report of the surveyor.

21. Furthermore, it has to be seen that as per the own case of the plaintiff, various letters in the form of Ex. PW1/22 to Ex.

PW1/60 were written by the plaintiff to the defendant. In none of the letters, it has been stated by the plaintiff that the undue influence or coercion was being exercised either by the Surveyor or by the defendant upon the plaintiff. There is not even an iota of evidence to prove on record that the defendant exercised undue influence or coercion in giving the consent to the survey report by the plaintiff or that in signing the discharge vouchers by the plaintiff.

22. This Court cannot loose sight of the fact that on 29.09.2003, the claim of the plaintiff was settled by the defendant, but, the legal notice Ex. PW1/70 was written by the plaintiff only on 17.11.2003 i.e. approximately, after a period of one and a half month. Nothing has been placed on record by the plaintiff to show that the consent to the report of the Surveyor or the discharge vouchers was given by the plaintiff under protest.

23. Ld. Counsel for the plaintiff has further argued that the plaintiff is entitled for the interest on the delayed payment. It has to be seen that in the plaint itself, in para no. 14 thereof, it has been stated that Mr. K.P. Sen, the Surveyor appointed by the defendant visited the premises of the plaintiff in the month of February, 2002. In para no. 15 of the plaint, it has been stated that the plaintiff has provided to Mr. K.P. Sen, the Surveyor, all the information as required by him by June, 2002.

24. As such, the plaintiff took a period of approximately 4 months in providing the information to the aforesaid Surveyor Mr. K.P. Sen. To my mind, in the chronology of the entire events, it cannot be said that there was an inordinate delay on the part of the defendant in settling the claim of the plaintiff. As such, I am of the opinion that the submission of the plaintiff to the effect that it is entitled for the interest on account of the delay in settling the account of the plaintiff, is also not sustainable."

(underlining added)

7(i). Learned counsel for the appellant/plaintiff argued that the policies in question were admittedly 'Reinstatement Value Policies' and therefore the trial court has erred, and also the surveyor has committed a fundamental error in assessing the loss after reducing the amount towards depreciation etc.

(ii). Learned counsel for the appellant/plaintiff has placed reliance upon the first paragraph at internal page 2 of the Survey Report dated 25.09.2002 and which states that appellant/plaintiff is entitled to reinstatement value and market value with respect to the loss caused to the appellant/plaintiff. Accordingly, it is argued that the appellant/plaintiff was entitled to succeed in the suit.

8(i). In my opinion, the appeal is completely misconceived and the trial court has rightly dismissed the suit.

(ii). Firstly, no arguments were urged on behalf of the appellant/plaintiff as to how the Consent Letter dated 25.09.2002 of the appellant/plaintiff was given to the surveyor, and can be alleged to have been obtained from the appellant/plaintiff under any coercion or pressure. As discussed by the trial court, right from the period starting September, 2002 till the appellant/plaintiff received the amount in

March 2003 as per the terms of the surveyor report, in over about two dozen letters the appellant/plaintiff never alleged that it gave its consent by the Letter dated 25.09.2002 on account of coercion or undue influence. Also the trial court has rightly held that even the full and final satisfaction discharge voucher having been given, the appellant/plaintiff could not after a gap of two months, based on convenience suddenly argue as an after-thought that there was coercion and pressure upon the appellant/plaintiff and thus he is entitled to succeed in its suit claim of Rs.70,00,000/-.

(iii) I also cannot agree with the arguments urged on behalf of the appellant/plaintiff that the surveyor report of Sh. K.P. Sen Ex.PW2/A is incorrect and has to be set aside on account of the surveyor wrongly allowing depreciation etc. It is pertinent to note that reinstatement value or market value is not equal to giving a brand new item to the appellant/plaintiff/insured for the loss suffered by him. Reinstatement value or Market Value means the value of a lost item which is insured as per the market value of that item as on the date of loss. It is nowhere pointed out to this Court as to how the appellant/plaintiff arrived at a conclusion that the reinstatement value or market value means a brand new item and not the value of the item as on the date of occurrence of loss on account of the fire. I therefore reject the argument urged on behalf of the appellant/plaintiff that it was entitled to the value of new plant and machinery or building etc. as on the date of incidence of the fire.

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

SEPTEMBER 12, 2018 **VALMIKI J. MEHTA, J**

AK