

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.07.2019

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THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

O.P.No.120 of 2019

M/s.Chennai Expo Prints Pvt. Ltd.
Rep. by its Director Mr.G.Varagamurthy,
No.9/6, Chakrapani Street,
West Mambalam, Chennai-600 033. .. Petitioner

Vs.

1. New India Assurance Co. Ltd.,
rep. by its Divisional Manager,
Divisional Office No.712300,
I Floor, B Wing, SPS Building,
No.185, Anna Salai,
Chennai-600 008.

2. New India Assurance Co. Ltd.,
rep. by its Manager,
Claims Hub, II Floor, B-Block,
Sundaram Finance Building,
No.21, Patullos Road,
Chennai-600 002.

3. S.P.S.Murali

.. Respondents

* * *

Prayer : Petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996, praying to appoint an Arbitrator on behalf of the respondents 1 and 2 to enable constitution of the Arbitral Tribunal along with the appointed arbitrator namely, third respondent to adjudicate the dispute on the quantum of loss payable on the claim of the petitioner under SFSP Policy No.71230011140100001972.

* * *

For Petitioner : Mr.R.Ashwanth

For Respondents : Mr.S.R.Sundar for RR 1 and 2

ORDER

This Original Petition is filed seeking for appointment of an Arbitrator on behalf of the respondents 1 and 2 to adjudicate the dispute on the quantum of loss payable on the claim of the petitioner under SFSP Policy No.71230011140100001972.

2. The petitioner company is in the business of printing and it subscribed insurance policy with the respondents 1 and 2 covering, *inter alia*, loss or damage to the insured properties by flood. The insured properties are printing equipments, furniture, fixtures, etc. also stocks/stocks in process. The petitioner stated that since it availed financial facilities from Union Bank of India, on the security of the said assets, the policy is issued in favour of the Bank along with the petitioner and the bank is entitled to the extent of its loan to receive the amount, if any paid under the policy.

3. The unit of the petitioner was inundated during the floods on 02.12.2015 causing loss to the extent of Rs.68,14,580/-. The petitioner submitted its claim with the second respondent, who deputed a Surveyor for assessment. The petitioner stated that the

Surveyor failed to act in accordance with IRDAI Regulations in surveying the property and not even given a copy of the survey report to the petitioner. The second respondent, based on the said report, admitted insurance claim only to the extent of Rs.18,71,624/- on 26.10.2016. Thereafter, only on 18.07.2018, a copy of the survey report was provided by the second respondent. The petitioner represented to many of the authorities in the office of the second respondent about the quantum of the claim and submitted various letters seeking enhancement of the same.

4. Since its grievance is not redressed, the petitioner invoked Condition No.13 of the Policy, which provides for arbitration of dispute on quantum towards the admitted liability, and nominated an Advocate, who is the third respondent herein, as their arbitrator vide letter dated 30.10.2018 and sought for nomination from the second respondent. However, the second respondent sent a reply dated 26.11.2018 refusing to appoint arbitrator. The respondents 1 and 2 denied the receipt of any communication from the petitioner in the interregnum and thus, stated that there is inordinate delay on the part of the petitioner in responding to the offer letter dated 26.10.2016 and 20.02.2017. In such circumstances, the petitioner is before this Court.

5. The respondents 1 and 2 filed a counter-affidavit dated 04.07.2019 denying the allegation of the petitioner and resisting the prayer. It is stated therein that Clause 6(ii) prohibits any claim for loss or damage after the expiry of 12 months, unless the same is subject matter of pending action or arbitration and hence, the petitioner's present petition filed only on 04.02.2019 is not maintainable. It is claimed that the petitioner submitted claim for a sum of Rs.68.14 lakhs without sufficient materials, and based on the proper assessment made by the independent Surveyor, the claim amount was determined and the same cannot be questioned by the petitioner after lapse of 12 months from the date of discharge voucher being sent to them, as per the policy terms and conditions.

6. Heard the learned counsels on either side. Learned counsel for the parties submitted that they are agreeable for the appointment of Hon'ble Mrs.Justice Chitra Venkataraman, a retired Judge of this Court as the sole Arbitrator.

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7. Considering the submissions of the learned counsels for the parties, this Court appoints Hon'ble Mrs.Justice Chitra Venkataraman, a retired Judge of this Court, having residing at New No.31, Old No.17-B, IV Main Road, Raja Annamalaipuram, Chennai-600 028

(Phone No.24355679), as the Sole Arbitrator to enter upon reference and adjudicate the disputes inter se the parties. The learned Arbitrator may, after issuing notice to the parties and upon hearing them, pass an award as expeditiously as possible, preferably within a period of six months from the date of receipt of the order. The learned Arbitrator is at liberty to fix her remuneration and other incidental expenses. The proceedings shall be conducted preferably in the Madras High Court Arbitration Centre and in accordance with the Madras High Court Arbitration Rules.

8. The Original Petition is ordered accordingly, leaving the parties to bear their own costs.

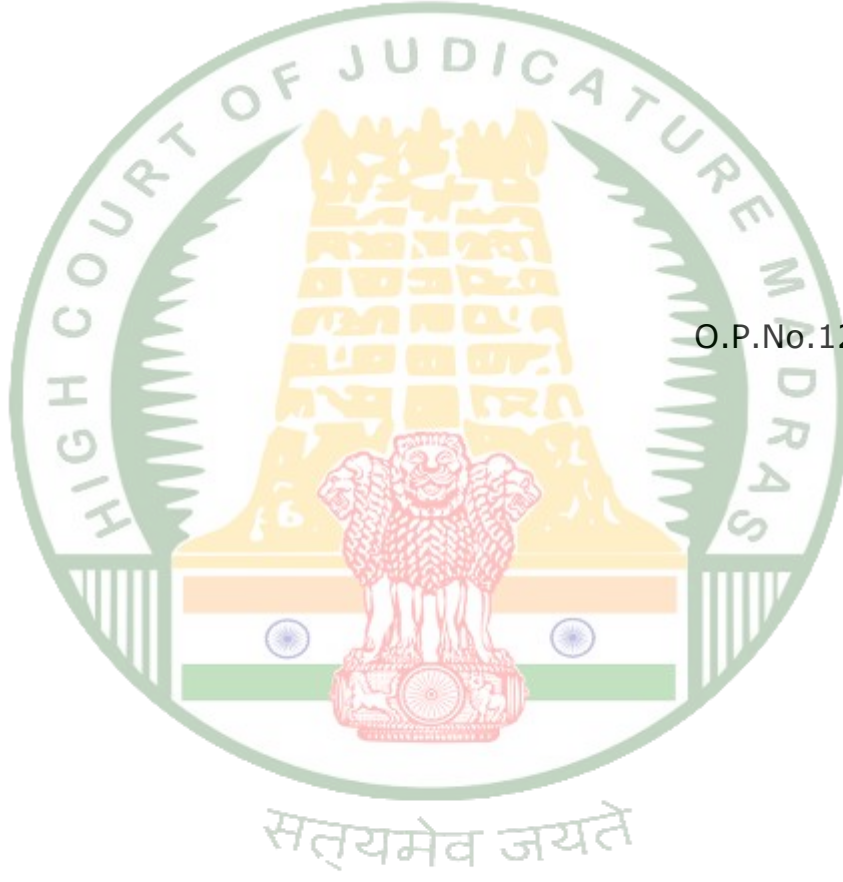
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PUSHPA SATHYANARAYANA, J.

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