

Amol

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
APPEAL NO. 423 OF 2019
IN
ARBITRATION PETITION NO. 604 OF 2017
WITH
NOTICE OF MOTION NO. 779 OF 2019
IN
APPEAL NO. 423 OF 2019
IN
ARBITRATION PETITION NO. 604 OF 2017

Detco Textiles Pvt Ltd

...Appellant

Versus

Jakhariya Polycott

...Respondent

Ms Atika Vaz, for the Appellant.

Mr SB Kotak, for Respondent No. 1.

CORAM G.S. Patel &
Gauri Godse, JJ.
DATED: 18th August 2022

PC:-

1. There is an Affidavit of Deepesh Ranka, a director and authorised signatory of the Appellant. The Affidavit is dated 17th

August 2022. That Affidavit has been affirmed before a Notary. We will require the deponent to come to Court so that the same Affidavit can be reaffirmed before the Court Master/Associate. The Affidavit is taken on record.

2. To avoid any misunderstanding we reproduce paragraph 1 to 7 of the Affidavit.

“1. I say that I am the director and authorised signatory of the Appellant and am conversant with the facts of the case. I am therefore able to depose to the same.

2. The Appellant has filed a Consumer Complaint No.449 of 2014 (“**Complaint**”) before the National Consumer Dispute Redressal Commission, New Delhi (“**NCDRC**”) challenging the rejection of its insurance claim by the insurance company, M/s The New India Assurance Company Limited (“**Insurance Company**”). The Complaint is to be listed on 13 October 2022 for final hearing before the NCDRC. The Appellant has inter alia sought amounts towards its claim under the Standard fire and Special Perils Policy dated 08.05.2013 for a period from 12.05.2013 to 11.05.2014. This includes a claim towards the value of the damaged goods belonging to the Respondent of the amount of INR 7,69,689 (which is the subject matter of the present proceedings before this Hon’ble Court).

3. The Appellant undertakes to make payment towards the Respondent’s claim of INR 7,69,689 for the damaged goods belonging to the Respondent, subject and to the extent only that the Appellant receives monies from the Insurance Company, towards the Respondent’s claim,

within 7(seven) days from the receipt thereof. If the Appellant is granted interest in context of the above claim, then, it shall pay such proportionate interest to the Respondent upon receipt of the same from the Insurance Company.

4. The above is subject to any orders passed by the NCDRC and/or any appellate/challenge proceedings that may be preferred by any party to the proceedings.

5. It is clarified that the Appellant will not be liable to make any payment to the Respondent in respect of its claim or interest, if the Appellant does not receive the monies from the Insurance Company towards the Respondent's claim or interest, as stated in paragraph 3.

6. The Appellant will intimate the Respondent's advocate on email, of the outcome of the proceedings before the NCDRC, within a period of 1(one) week from the receipt of the order of the NCDRC.

7. In view of the aforesaid, the impugned order dated 25 June 2019 passed in the captioned Arbitration Petition and the impugned award dated 26th June 2017 may be set aside."

3. The undertakings in the Affidavit are accepted as undertakings to the Court.

4. We have briefly heard both sides on merits. However, in light of this Affidavit and these undertakings, we do not believe it could be appropriate or even necessary to render a decision on merits. There may be other cases where similar issues are involved. The

Affidavit and its undertakings adequately address the concerns of the Respondent to the Appeal.

5. In light of this, the Appeal is disposed of with the above order accepting the undertakings. The impugned order of 25th June 2019 is accordingly is quashed and set aside by consent.

6. In order to ensure that the matter is not unduly delayed, we will post the matter for directions. We do so because we are told that the next date of hearing before the NCDRC is on 13th October 2022.

7. List the matter on Supplementary Board for directions on 20th October 2022.

8. The pending Notice of Motion will also stand disposed of as infructuous.

(Gauri Godse, J)

(G. S. Patel, J)