Sr.No.2

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-CARB-25-2023(O&M)
Date of decision:18.08.2023

Aditya Birla Fashion & Retail Limited …..Appellant

versus

Dayanand ….Respondent

CORAM: Hon'ble Mr. Justice G.S.Sandhawalia
Hon'ble Ms. Justice Harpreet Kaur Jeewan

Present: Mr. Varun Sharma, Advocate, for the appellant.

Harpreet Kaur Jeewan, J.

1. Present appeal has been filed under Section 37(2) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Act") seeking quashing of the order dated 10.06.2023 passed by the sole Arbitrator in an arbitration proceeding.

2. As per the facts on record respondent-Dayanand was the owner of the premises bearing area of 103982-72 sq.ft., and carpet area of 9660.31 sq.mts. on the ground floor situated at Meesha Sehrawat Warehouse, Khasra No.130/19, 12, 20, 21, 23, 22, 18/2 & 131/25 in the revenue estate of Village Pataudi, Ward No.13, Rewari Road, Tehsil Pataudi, Gurugram (herein after referred to as the "leased premises"). The same was leased out to the appellant vide lease deed dated 20.04.2016 executed between the parties for 9 years on monthly rent @Rs.10 lakhs. The period of lease was agreed to be started from 01.05.2016. The refundable security of Rs.60 lakhs was deposited by the appellant-lessee. As per the terms and conditions of the lease deed, respondent-lessor was required to get the entire building and equipments insured against fire and

other perils whereas the appellant-lessee was required to insure its equipments, goods, fixtures and belongings. The electricity power with 120 KVA maximum with commercial three phase separate submeter was required to be provided by the lessor along with the fire hydrant, sprinklers, fire alarms, fire extinguishers, etc. Apart from this appellant-lessee was entitled to terminate the lease by giving three months prior written notice.

2.1 A dispute between the parties arose on account of the fire incident which took place on 16.10.2018 at 10:20 p.m.

2.2 As per the version of the appellant-lessee, the employees Mr. Naresh Kumar and Mr. Vinod Kumar were present at the leased premises at that time. They initially made an attempt to extinguish the fire by using fire extinguishers available at the premises but later on also called the fire brigade and ultimately the fire was extinguished. However, appellant-lessee's goods worth approximately Rs.115 Crores to Rs.120 Crores were destroyed in the said fire incident. The Fire Department, Gurugram issued a report dated 28.11.2018 wherein it was recorded that the reason for fire could be "short circuit". Even in the Final Survey and Loss Assessment Report dated 28.06.2019 submitted by the Surveyor, likelihood of short circuiting of the live wire and /or some electrical fixture was recorded as the reason of the fire. Various communications *inter se* between both the parties were exchanged to sort out the loss suffered by both the parties in the said fire incident. Ultimately, the appellant-lessee terminated the lease w.e.f., 18.10.2019 vide letter dated 17.07.2019 as the leased premises was wholly destroyed and could no longer be used for the purpose for which it was taken on lease. The appellant-lessee requested the respondent-lessor to acquire the vacant possession of the leased premises on 18.10.2019 and refund the remaining security deposit after adjusting the rent for three months which was equivalent to the notice period. However, as a counter blast to the said notice the respondent issued a legal notice dated 29.07.2019 seeking compensation from the appellant apart from demanding the rent and surrender of the security deposits alleging negligence on the part of the appellant staff for the said fire incident. The appellant-lessee sent a reply dated 20.08.2019 to the said notice. In pursuance to the termination notice dated 17.07.2019 the vacant possession of the leased premises was handed over to the respondent-lessor on 18.10.2019. However, the respondent did not refund the security deposit to the appellant and also disallowed the appellant-lessee to remove the salvage from the leased premises. As such, the appellant filed a petition under Section 9 of the Act at District Court, Gurugram seeking an injunction against the respondent. During the pendency of the said litigation, the respondent-lessor allowed the appellant-lessee to remove its goods, material and scrap from the leased premises and thereafter, the said petition was dismissed as withdrawn vide order dated 07.05.2022.

2.3 An Arbitrator was appointed as per the Order dated 09.01.2023 in Arbitration Case No.350 of 2019(O&M) by this High Court on the petition filed by the respondent-lessor under Section 11 of the Act and the respondent filed a claim titled as "*Dayanand vs. Aditya Birla Fashion & Retail Limited*", alleging negligence on the part of the appellant-lessee leading to the causing of fire to the leased premises. The appellant-lessee filed two applications out of which one was under Order XI Rule 5, seeking production of insurance documents from the respondent-lessor and second was under Order I Rule 10(2) CPC seeking impleadment of Oriental Insurance Company Ltd. as a respondent in the said proceedings. The said applications were dismissed by the Arbitrator by passing the impugned order dated 10.06.2023, which has been challenged by way of filing the present appeal.

3. Learned counsel for the appellant-lessee has submitted that the documents relating to the insurance claim filed by the respondent-lessor were necessary to determine as to whether the respondent-lessor had been negligent in causing the fire at the leased premises. The surveyor of the insurance company might have recorded reasons for the cause of fire and the said information was very crucial for fair resolution of the arbitration proceedings. Therefore, the application under Order XI Rule 5 CPC has been wrongly declined. Similarly, it was argued that the Insurance Company of the lessor was necessary party for the adjudication of the dispute.

4. We have considered the above submission. Respondent-lessor has filed a Claim petition before the Arbitrator (Annexure A-18) whereby the respondent-lessor has claimed damages from the appellant-lessee *inter alia* on the ground that the claimant had suffered a huge financial loss on account of negligence of the staff of the appellant-lessee. It was also mentioned in para No.9 of the claim petition that the lessor had provided all the fittings and equipments mentioned in Annexure-C of the lease deed and it would be the responsibility of the lessee to maintain all

the goods in a good condition. However, the lessee has failed to do so due to which the fire incident took place. It was specifically alleged in para No.10 that the entire wiring of the warehouse was done by the respondent-lessee and low quality of wires have been used in the warehouse which amounts to a negligent and a careless act, which had led to the short circuit causing the fire incident. It was further alleged that the claimant had installed good quality of electrical panel, fire extinguishers and other necessary equipments which were duly inspected by the respondent's official at the time of inspection on 12.04.2016.

5. By way of filing an application under Order XI Rule 5 CPC the following documents were sought to be produced:-

> "(i) Contract of insurance executed between the claimant and the Oriental Insurance Company Ltd;
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> (ii) Claim form that the claimant may have filed with the Oriental Insurance Company Ltd. in relation to the claim form of the leased premises alongwith supporting documents for the claim;
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> (iii) Surveyor's report/assessment report issued by the Oriental Insurance Company Ltd; and
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> (iv) Letter/notice issued by the Oriental Insurance Company Ltd; to claimant;
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> (v) Letter of acknowledgement issued or receipt of payment (through cheque/RTGS/NIFT etc.) towards the grant of claim by the Oriental Insurance Company Ltd. and
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> (vi) Communication exchanged between the claimant and insurance company."

6. We may also observe that the insurance of the warehouse from Oriental Insurance Company was valid upto 28.05.2019 and the respondent has not withheld any information and the same was disclosed in para No.17 of the claim petition. It is also mentioned that the insurance company had sanctioned the claim amount of Rs.2,52,24,554/-, in favour of the claimant.

7. The aforesaid documents cannot be treated as necessary documents for adjudication of the claim petition by the Arbitrator before whom the issue is of negligence of the appellant company. The appellant-lessee would get an opportunity to produce counter evidence to rebut the evidence of the respondent who is claimant before the Arbitrator and it can always summon the relevant record and the material witness at the time of leading its evidence. It is not a case of the appellant-lessee that the respondent-lessor had withheld some information which was sought to be produced by way of producing the said documents. The Arbitrator had observed in para No.16(b) of the impugned order that the claimant had disclosed in the reply to the said application that he had already produced the insurance policy issued by the Oriental Insurance Company and attached the same with his claim petition. He had also attached the bank statement showing the credit of an amount of Rs.2,52,24,554/- on 20.11.2019 in his account by the insurance company.

8. Keeping in view the aforesaid facts and circumstances, we are of the considered opinion that the application for seeking production of aforesaid documents had been filed only with an intention to delay the proceedings before the Arbitrator and there is no illegality in the

impugned order passed by the Arbitrator rejecting the said request of the appellant.

9. Learned counsel for the appellant-lessee has further submitted that impleading of the insurance company was necessary as the insurance company was a necessary party for proper adjudication of the controversy between the parties. The Arbitrator had failed to record any substantive reasons in the impugned order for non-impleading the insurance company. It was further submitted that the learned Arbitrator had failed to consider the facts and evidence on record which necessitated impleadment of the Oriental Insurance Company as it is the case of the appellant-lessee that the claim filed before the Arbitrator is not at all maintainable. The same could only be maintainable against the insurance company as there was a contract between the respondent-lessor and the insurance company. It was submitted that as per Clause 13 of the lease deed the lessor had agreed to get the building and the equipments provided to the lessor insured against fire. It was further submitted that once the respondent-lessor had accepted the insurance amount which was admittedly granted to him to the tune of Rs.2,52,24,554/- against the policy of Rs.5 crores, the respondent-lessser has waived off his right to raise any other claim either from the concerned insurance company or from the appellant-lessee. However, these facts are not considered by the Arbitrator while dismissing the application under Order I Rule 10 CPC as such the impugned order is liable to be set aside for dismissal of the said application.

10. We have considered the above submissions. It is well settled that claimant is a *dominus litis* of his claim. The amount which has been awarded by the insurance company has been disclosed by the respondent-lessee. The respondent-lessor has claimed compensation on account of the fire incident alleging negligence on the part of the appellant-lessee. The Arbitrator would be determining as to whether any compensation is to be awarded to the lessor on account of any negligence on the part of the lessee which resulted in the fire incident. As such, the insurance company is not a necessary party as there is no dispute *inter se* between the claimant and the insurance company.

11. The claimant cannot be forced to litigate against the insurance company by way of impleading the company as respondent-lessor as the respondent has not objected to the claim amount received from the insurance company. In view of these circumstances, the order of dismissal of the application under Order I Rule 10(2) CPC also by the Arbitrator does not suffer from any infirmity.

12. In view of the above reasons, we are of the considered opinion that the present petition is devoid of any merits. No grounds are made out to interfere in the findings recorded by the Arbitrator. As such, the present appeal has no merits and is accordingly dismissed.

13. Pending miscellaneous application(s), if any, also stand disposed of.

(G.S.Sandhawalia) **(Harpreet Kaur Jeewan)**
18th August, 2023
Shivani Kaushik

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No