

(2006) 03 KAR CK 0045

In the Karnataka High Court

Case No : Civil Miscellaneous Petition No. 17 of 2006

E-Spring Building Systems (I) Private Limited

APPELLANT

Vs

Regional Manager, Tata AIG General Insurance Company
Limited

RESPONDENT

Date of Decision : 22-03-2006

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 11 (6)

Citation : (2006) ACJ 1488 : (2006) ILR (Kar) 2021

Hon'ble Judges : D.V. Shylendra Kumar, J

Bench : Single Bench

Advocate : Gopal V. Bilalmane, for the Appellant;

Final Decision : Dismissed

Judgement

D.V. Shylendra Kumar, J.—Petition is u/s 11(6) of the Arbitration and Conciliation Act, 1996 (for short, "the Act"), seeking for appointing M/s. Kodigi and Company, Sri Girish Kodgi Advocate, 5/1, SLN Mahal, I Floor, Link Road, 3 Cross, Malleshwaram, Bangalore-560 003, as the Arbitrator to enter into reference and adjudicate the dispute between the parties.

2. Respondent-M/s. Tata AIG General Insurance Company Limited, it appears had issued an "All Risk Insurance Policy" in favour of the petitioner and that a certain claim has been put forth by the petitioner under the terms of the policy, but the claim itself having been rejected by the respondent, petitioner it appears had issued legal notice and had sought for conciliating the matter. Respondent not being enthusiastic had suggested for appointment of an Arbitrator in terms of a clause in the policy itself, but the respondent being lukewarm even to such a suggestion had even got a legal notice issued, copy at Annexure-B, dated 31-2-2006, calling upon the respondent for appointment of an Arbitrator, but the respondent still remained mute and silent, hence the petitioner has come up with this petition praying for intervention of the Court invoking Section 11(6) of the Act.

3. Submission of Sri Gopal Bilalmane, learned Counsel for the petitioner, is that the policy which is the agreement between the parties provides for an arbitration clause; that in fact the arbitration clause is one which provides for appointment of an Arbitrator on mutual agreement between the parties to the policy; that if the parties are unable to arrive at mutually agreed terms for the appointment of a sole Arbitrator, there is also a provision for appointing panel of Arbitrators; that the efforts on the part of the petitioner to have an Arbitrator in the beginning or even a panel of Arbitrators later, has not worked out so far because of the non-co-operation on the part of the respondent and therefore it is a fit case where this Court should intervene and appoint an Arbitrator.

4. The arbitration clause as contained in the policy reads as follows:

Clause 7: If any dispute or difference shall arise as to the quantum to be paid under this policy (liability being otherwise admitted) such difference shall independently of all other questions be referred to the decision of a sole Arbitrator, to be appointed in writing by the parties to or, if they cannot agree upon a single Arbitrator within 30 days of any party invoking arbitration, the same shall be referred to a panel of three Arbitrators comprising of two Arbitrators - one to be appointed by each of the parties to the dispute/difference, and the third Arbitrator to be appointed by such two Arbitrators and arbitration shall be conducted under and in accordance with the provisions of the Arbitration and Conciliation Act, 1996.

It is clearly agreed and understood that no difference or dispute shall be referable to arbitration as hereinbefore provided, if the Company has disputed or not accepted liability under or in respect of this policy.

It is hereby expressly stipulated and declared that it shall be a condition precedent to any right of action or suit upon this policy that the award by such Arbitrator/Arbitrators of the amount of the loss or damage shall be first obtained.

5. Submission of Sri Gopal Bilalmane, learned Counsel for the petitioner, is that when once the policy provides for appointment of an Arbitrator and the parties are not agreeing for the appointment of the Arbitrator nor even the panel of Arbitrators as is provided under the very clause, petitioner is left with no choice but to approach this Court seeking for intervention and for appointment u/s 11(6) of the Act and submits that all questions relating to the dispute between the parties can be examined by the Arbitrator including the question of liability on the part of the respondent etc.

6. It transpires that the respondent had in fact disputed the liability for appointment or settling the claim on the premise that under the policy they were not liable to settle third party claims in terms of their reply dated 16-2-2006, copy at Annexure-E, which reads as under:

We have for acknowledgment your above letter issued on behalf of M/s. E-Spring Building Systems (I) Private Limited. The claim of your client was repudiated

based on the policy terms and conditions, which exclude coverage for employees and their families.

All the issues raised by you have been answered vide our reply dated 2-2-2006 (copy enclosed) that as per policy conditions the arbitration can be invoked only when there is no dispute on admission of liability under the subject policy. Any dispute relating to liability under the Policy cannot be decided through arbitration. A copy of the Policy is also enclosed for your reference.

Therefore, we cannot accede to your request for settlement of this dispute through arbitration. We hereby expressly reject the appointment of the Arbitrator by you. By a copy of this letter, we are also informing Mr. Girish Kodgi the same.

We also bring to your notice that any costs and expenses relating to arbitration will not be borne by us. Any proceeding brought on us will be defended at your costs and expenses.

7. The arbitration clause provides for appointment of an Arbitrator in the situation of a dispute relating to the quantum of compensation payable in respect of a claim i.e., a referable dispute, which is a dispute relating to the quantum and on the admission of the liability by the insurer.

8. In the present case the insurer is denying the liability itself and therefore the arbitration clause does not spring into action, i.e., it is as if there is no arbitration clause for a dispute of this nature. If such is the agreement providing for the very appointment of an Arbitrator the question of appointing an Arbitrator either by the volition or by the intervention of the Court does not arise at all.

9. Situation is not one which fits into the situation contemplated u/s 11(6). No occasion to entertain this petition. CMP is dismissed.