
(1992) 05 SHI CK 0015
In the High Court Of Himachal Pradesh
Case No : Civil Suit No. 63 of 1992

Khushal Chand

APPELLANT

Vs

New India Assurance Co. Ltd.

RESPONDENT

Date of Decision : 11-05-1992

Acts Referred:

Arbitration Act, 1940 — Section 20

Citation : (1994) ShimLC 137 Supp

Hon'ble Judges : D.P. Sood, J

Bench : Single Bench

Advocate : Bhupender Gupta, for the Appellant; Deepak Gupta, for the Respondent

Final Decision : Allowed

Judgement

D.P. Sood, J.—Sh. Khushal Chand Chauhan, filed an instant application u/s 20 of the Arbitration Act, 1940 (hereinafter referred to as the "Act") on the allegation that under a policy which remained in force from 11-5-1988 to 10-5-1989, he had insured his three storeyed building plus bath, latrine as per the list attached therewith at village Barthata, Tehsil Jubbal, District Shimla, for Rs. 11,00,000 and the house-hold effects contained therein for Rs. 1,42,000 with the Defendant Company and that in consequence of the unprecedented rains/flood a portion of the building was damaged causing a loss to the tune of Rs. 1,89,125 on 28-8-1988.

2. He thereupon intimated the Defendant Company at Shimla through a telegram dated 10-8-1988 followed by a letter dated 12-8-1988. Due to the inaction of the Defendant Company, he alleges to have got his damaged building inspected from various agencies and thus procured certificates from President, Gram Panchayat, Barthata, Lambardar, Panchgoan Barthata, President, Panchgoan Service Co-operative Society Ltd., Barthata, Patwari, Circle No. 4, Mihana, Tehsil Jubbal, vide A-2 to A-5 and ultimately got its estimate prepared through Junior Engineer, Development Block, Jubbal District" Shimla on 11-5-1989. Despite the above

said intimation given to the Defendant Company allegedly they did not take any action nor intimated of the same which resulted into issuance of a notice dated 8-3-1990 explaining the entire facts and asking them to compensate the Plaintiff for the loss suffered by him. No intimation as to the action taken by them was given to the Plaintiff nor he stood compensated therefor.

3. The application has been opposed by the Defendant Company and pleaded that as per their inquiry through the surveyor, no damage was sustained by the Plaintiff nor the portion alleged to have been damaged as part of the building covered by the policy. In other words, firstly, the denial of damage sustained by the Plaintiff and secondly, that damaged portion is a separate building within the one covered under the policy, have been raised. Resultantly, Defendant Company contended that the application is not maintainable, inasmuch as, claim is false and has been treated as no claim and thus the claim having been repudiated in toto and there is nothing which could be referred to arbitration. For doing so, the Defendant Company have based upon the reports of S/Sh. Kamlesh Gupta, their official Surveyor, R.L. Sharma and an independent Surveyor. The Defendant Company admitted the receipt of letter on 17-8-1988 and subsequent notice referred to above but denied the receipt of the telegram.

4. Clause-10 of the policy pertains to Arbitration. The relevant words thereof are as under:

10. Arbitration:--If any 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 an arbitrator...

5. The learned Counsel for the Plaintiff has submitted that the policy aforesaid refers to a contract entered into between the parties in the instant case. It is urged that such contract is a commercial document between the parties and it must be interpreted, in such a manner as to give efficacy to the contract rather than to validate it. Thus, according to him, mere total repudiation of any liability on the part of the Company does not take the dispute out of the scope of the arbitration clause and as such Arbitration Clause 10 of the policy be directed to be enforced by appointment of an Arbitrator.

6. On the other hand, Sh. Deepak Gupta, has attempted to argue that total repudiation of any liability on the part of the Company takes the dispute between the parties out of the scope of the Arbitration clause referred to above as according to him the same pertains to the difference which arise as to the quantum to be paid under it and where liability being otherwise admitted is shown. It is only in these cases where the dispute can be directed to be referred to the Arbitrator.

7. The submission made by the learned Counsel for the Defendant Company does not appear to have any force since the mere fact that a particular manner of arbitration is provided, applicable in terms only to a certain type of dispute will not prevent at all types of disputes being also arbitrable if there are wide enough

general words to cover them. The expression "independently of all other questions" used in the arbitration case provides other types of disputes being also arbitrable. The type of dispute involved in the instant proceedings i.e. regarding the difference arising as to the quantum to be paid under this policy, is an additional question to that of all other questions regarding which difference arises in between the parties which are included in Clause-10 of the policy. Even otherwise, it does not seem to me to make any difference whether the Defendant Company says that any damage or loss at all has been caused or whether it says that some damage has been caused, but not as much as claimed by the insurer.

8. In either case it is quite obvious that there is a dispute between them as to the amount of loss or damage which falls within the scope of the Arbitration clause in the policy.

9. As the Defendant Company has not disputed the arbitration clause referred to above as stated in the policy filed by the applicant, as such both parties are directed to appoint an Arbitrator strictly in terms of the Arbitration Clause-10 to the policy for the purpose of decision of the instant dispute.

The petition is accordingly allowed with no order as to costs.