
(2006) 03 P&H CK 0126
In the Punjab And Haryana At Chandigarh

New India Assurance Co. Ltd.

APPELLANT

Vs

Fashion Secrets and Others

RESPONDENT

Date of Decision : 01-03-2006

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 34

Citation : (2007) 1 ACC 226

Hon'ble Judges : Jasbir Singh, J

Bench : Single Bench

Judgement

Jasbir Singh, J.—This appeal has been filed against judgment dated March 16, 2004 vide which objection application of the petitioner against the arbitration award dated April 16, 2003, was dismissed.

2. Facts reveal that the goods lying in the premises of M/s. Fashion Secrets, respondent No. 1, were insured by the appellant. A fire had broken out in the premises of respondent No. 1 on September 16, 2001, due to which goods/material worth lakhs of rupees were destroyed. Surveyors, appointed by the appellant, assessed the loss in fire at Rs. 26,60,243 and the same was paid by the appellant to respondent No. 1, who feeling dissatisfied with that assessment, invoked arbitration clause in the policy and accordingly matter was referred to an _ Arbitration Tribunal, consisting of one nominee each of the appellant and respondent No. 1 and also an Umpire, appointed by both the Arbitrators, referred to above. On conclusion of arbitration proceedings, award was passed on April 16, 2003. By majority decision, amount to the extent of Rs. 10,64,146 over and above the amount already paid by the appellant, was awarded in favour of respondent No. 1. The Arbitrator, who was nominated by the appellant, in his dissenting award, h assessed the total loss only at Rs. 19,70,490 and further held that as the appellant had already paid an excess amount, no further liability remained to be discharged.

3. Under the circumstances, referred to above, the appellant filed an application u/s 34 of the Arbitration and Conciliation Act, 1996, raising objection to the said

award. That application was dismissed vide judgment dated March 16, 2004. Hence this appeal.

4. It is apparent from the records that two of Arbitrators, after noticing entire evidence on record, held that respondent No. 1 was entitled to a further claim of Rs. 10,64,146. Perusal of the arbitration award indicates that the Arbitrators, while passing award in favour of respondent No. 1, took note of a fact that initially the insurance cover was for Rs. 20,00,000. Thereafter, the goods were insured upto Rs. 39,00,000. A second policy was also issued by the appellant insuring goods upto Rs. 6,00,000. In this matter, the total insurance cover for the goods, lying in the premises of respondent No. 1, was Rs. 45,00,000. To pronounce award in favour of respondent No. 1, the Arbitrators looked into the balance sheets and Income Tax return of respondent No. 1 for the relevant period. Detail of the stock was also looked into, which was retrieved from a half-burnt computer. By looking into sale and purchase, during the relevant period, and also closing stock on September 15, 2001, i.e., one day prior to the accident, it was held that respondent No. 1 was entitled to claim further amount of Rs. 10,64,146, over and above the amount, already paid by the appellant. Detailed discussion in that regard is available at pages 54 to 67 of this paper book. This Court is of the view that before pronouncing the award, both the Arbitrators have looked into and analysed all documents on record in a very minute manner.

5. So far as dissenting decision given by Mr. Sanjiv Duggal, Arbitrator, is concerned, the same cannot be relied upon, as he has assessed the loss, caused to respondent No. 1 even less than the amount assessed by the Surveyor, appointed by the appellant. This Arbitrator has given too much importance to minor discrepancies which, otherwise, were looked into and discussed by other two Arbitrators in a very detailed manner. The Court below has rightly said that the Court is not supposed to sit as a Court of Appeal on arbitration award. It can interfere only if a case is made out as per provisions of Section 34 of the Act, which envisages many eventualities, in which the Court is competent to set aside an arbitration award. The appellant has failed to show that in what manner, the Arbitrators have misconducted themselves and also that award pronounced was not in terms and conditions of the insurance policy. Before passing award, both the Arbitrators have given ample opportunities to the parties to produce evidence and only thereafter they formed their opinion, which this Court feels is perfectly justified in view of facts and circumstances of the case. No case is made out for interference in pure findings of fact. Dismissed.