(2014) 08 P&H CK 0194

In the Punjab And Haryana At Chandigarh

Case No : F.A.O. No. 5761 of 2014 (O&M)

Oriental Insurance Company Limited APPELLANT

Vs

Tilak Handloom Industries RESPONDENT

Date of Decision : 13-08-2014

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 11, 34, 34(2), 37

Citation : (2015) 177 PLR 62

Hon'ble Judges : Rajiv Narain Raina, J

Bench : Single Bench

Advocate : Ashwani Talwar, Advocate for the Appellant; R.S. Madan, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Rajiv Narain Raina, J.—Heard Mr. Talwar for the appellants and Mr. R.S. Madan, for the caveator. By consent, the matter is taken on board for final disposal.

2. This is an appeal filed by Oriental Insurance Company Limited against the order dated 22nd May, 2015 passed by the learned Additional District Judge, Panipat u/s 34 of the Arbitration & Consolidation Act, 1996 (''the Act''). The learned ADJ, Panipat has upheld the award passed by the Sole Arbitrator appointed by the Chief Justice by his Lordships'' order dated 11th January, 2010 on an application u/s 11 of the Act. The Arbitrator is a retired District Judge.

3. The insured is Tilak Handloom Industries, Panipat. It was engaged in the sale of clothing and furnishings in its shop at Panipat. Its stock was insured by the appellants against risk and fire. A substantial financial loss was caused the insured when a fire broke out in the premises, the showroom-cum-shop at Panipat. A surveyor was appointed by the appellants to assess the loss suffered by the respondents in the devastating fire which occurred on 7th March, 2001. The learned Arbitrator in his detailed and exhaustive award has touched upon all the issues arising between the parties, dealt with them and returned cogent

findings thereon.

4. The question raised in the appeal is that a joint surveyor had been appointed by the appellants to assess the loss who found the loss to be Rs. 36,74,842/- against the claim lodged by the respondent for the loss self assessed at Rs. 49,88,050/-. The initial assessment of the respondents was to the tune of Rs. 30,06,572/- for which the claim was entered and revised to Rs. 49,88,050/- after fuller scrutiny of record. The appellants company appearing to be unhappy with the assessment of the joint surveyor got another assessment done in a lower amount of Rs. 19,81,478/-. This amount was accepted by the insured who signed a discharge certificate on 15th April, 2002. The amount being less than the actual loss suffered, the insured gave a written protest that the acceptance of the insurance claim was not in full and final payment of actual loss. All that the insured wrote on the receipt of compensation was "received claim". In the letter that followed suit, a protest was lodged on the same day when money was accepted. Mr. Talwar argues that once the insured had received the claim, it was estopped from raising further claim.

5. There can be no doubt that in terms of the insurance policy where stocks were insured, a declaration of monthly assessment had to be made so that stock situation remains known to both the parties at regular intervals. The revised assessment was tabulated by the insurance company as under:-

6. Total stocks presumed to be insured at the time of fire as per monthly statement declared and found in the books of accounts/records would be Rs. 26,31,151.00 and this amount, the insurance company should be bound to pay but no more, according to Mr. Talwar. The learned Arbitrator has relied found the joint surveyor''s report dated 8th November, 2001, after the first assessment, as being fair, cogent and convincing. In para. 1.4 of the subsequently obtained joint surveyor''s report which the insurance company is trying to resile from by introducing a fresh assessment suitable to them as is pleaded below:-

"The books of accounts/vouchers of the insured were not only subjected to the necessary scrutiny whist being re constructed/details re-arranged but have also been verified upon the completion of re-construction/re-arranging process of the necessary records by insured so as to confirm the authenticity and reliability of the same."

7. As a result of a thread bear examination of the record, documents and stock statements of loss suffered, the learned Arbitrator has awarded the following amounts:-

8. The statement made by Shri Tilak Raj Chaudhary CW1, the insured before the Arbitrator on 3rd February, 2012 is significant and reads:-

"The fire took place on 07.03.2001. I have seen Annexure R/6 dtd. 19.4.2002 of OIC addressed to Tilak Handloom, it bears my signature. By this document I had stated that I received the claim of Rs. 19,77,840/-. It is correct that except to

"Received Claim" nothing else was mentioned by me. The document dtd. 15.4.2002 Annexure R/7 bears my signatures & it is duly notarized . I used to stock & sell Bed Covers, Bed Sheets and Curtain cloth. I was purchasing these items from the open market. I had taken a C.C. Limit of Rs. 25 lakhs from SBI, Commercial Branch, G.T. Road, Panipat. It is correct that for taking the said C.C. Limit statement of the Stock has to be submitted to the Bank, every month which I used to submit, such statements. The books of a/c was maintained by me & a part time accountant was engaged & the same were with him & these were not burnt in the Fire Incident in question. It is correct that I was asked to produce the a/c books during the assessment proceeding conducted by the surveyor but the same were not produced immediately & had informed him that the same would be produced as & when they are completed. It is correct that the pattern of sale of different items differs, some items are fast moving & others take time. Dead stock also accumulates is disposed off at concessional rates. Some of the goods were burnt completely and some partly and some were damaged during fire fighting operations, and on the asking of the surveyor, were put in a godown and thereafter on the asking of the surveyor were disposed off when clearance was given by the surveyor. It is incorrect that inflated claim has been made by me by exaggerating the loss. It is incorrect to suggest that I have made wrong statement in the affidavit regarding the extent of loss suffered by me to more compensation & that I had not raised any protest or objection while accepting the claim."

9. The words "received claim" are not a disclaimer of any further amount which may factually be true and correct with reference to assessment of actual loss of stocks. The insured, therefore, cannot be pinned down on this statement since he lodged the protest on the same day on 18th April, 2002. The insurance company was not doing any favour to the insured of paying the insurance claim as assessed by them by circumventing the joint surveyor''s report. The learned Arbitrator has observed:-

"It is thus obvious from the above quoted contents of the second report of the joint surveyors (Ex. R-5/Ex. CW-2/2) that they fully supported the assessment of the loss made by them in their first report dated 08.11.2001 (Ex. CW-2/1) and gave added reasons to refute the objections raised by the company but according to its desire worked out the loss solely with reference to the last monthly statement submitted by the insured claimant to State Bank of India. The assessment so worked out is just about 50% of the assessment first made with supporting documents (Annexure A-1 to Annexure A-193/A). Prejudice of the company in settling the claim is also manifested by the interpolation made in Ex. CW-2/2 by adding a handwritten line at the end of the said typed report in its copy "Keeping in view the development afterwards the revised assessment seems to be genuine." This sentence is missing from the report which was submitted by the surveyor as deposed by Sh. K.K. Hasija, Surveyor as CW-2. This was a crude attempt to justify the re-worked out assessment at its instance, despite the fact that the interpolation so made is contrary to the typed contents and tenor of the said second report.

In this context it may be mentioned here that the claimant had submitted in his claim petition to the joint surveyors that the declaration of the monthly stock position was made simply to meet the requirement of the banker i.e. State Bank of India at Panipat to cover the risk of the extended cash credit facility extended to him and did not reflect the actual stock position in his shop/showroom; and this was accepted by the surveyors in their report giving cogent reasons after detailed analysis of the material produced before them."

10. The scope of interference in arbitration matters is highly limited and narrow confined to the precepts of section 34 of the Act. In McDermott International Inc. Vs. Burn Standard Co. Ltd. and Others, the Supreme Court observed:

"The 1996 Act makes provision for the supervisory role of courts, for the review of the arbitral award only to ensure fairness. Intervention of the court is envisaged in few circumstances only, like, in case of fraud or bias by the arbitrators, violation of natural justice, etc. The court cannot correct errors of the arbitrators. It can only quash the award leaving the parties free to begin the arbitration again if it is desired. So, scheme of the provision aims at keeping the supervisory role of the court at minimum level and this can be justified as parties to the agreement make a conscious decision to exclude the court''s jurisdiction by opting for arbitration as they prefer the expediency and finality offered by it."

11. In P.R. Shah, Shares and Stock Broker (P) Ltd. Vs. B.H.H. Securities (P) Ltd. and Others, the Supreme Court cautioned:-

"A Court does not sit in appeal over the award of an arbitral tribunal by re-assessing or re-appreciating the evidence. An award can be challenged only under the grounds mentioned in section 34(2) of the Act."

12. In Markfed Vanaspati and Allied Industries Vs. Union of India (UOI), the Court has observed that:

"...the arbitrator is the sole judge of the quality as well as the quantity of the evidence. It will not be for the court to take upon itself the task of being a judge of the evidence before the arbitrator. The court should approach an award with the desire to support it, if that is reasonably possible, rather than to destroy it by calling it illegal"

13. The Division Bench of the Delhi High Court has observed in Food Corporation of India v. Shanti Cereals Pvt. Ltd.,: 2010(3) Arb L.R. 296 as follows:

"There is no gainsaying that the arbitral tribunal is the master of the factual arena and has the right to even go wrong while deciding the factual issues, unless there is something manifest from the face of the award that is so grave as to move the conscience of the court that the error would result in a monumental miscarriage of justice."

14. Examined from the above standpoint the award is not liable to be overturned

much less the order in appeal even beyond Rs. 26,31,151/- the appellant is prepared to pay as conceded by the appellant''s counsel at the hearing. The learned Arbitrator has left no perceptible defects or any infirmity in the thoroughly reasoned award which qualifies as good as a good judgment of a civil court and for this Court in section 37 to think, peep deep into, wrench and pull out the teeth of the award as though sitting in appellate jurisdiction appears improper. Even if this court were sitting in plenary appeal jurisdiction against the award even then it would be shy of disturbing it for its judicious reasoning. No ground whatsoever for interference is made out.

15. Appeal is dismissed but with no order as to costs.