
(2010) 09 SHI CK 0202
In the High Court Of Himachal Pradesh
Case No : Arbitration Case No. 16 of 2006

Sanjay Madan and Another	Vs	APPELLANT
National Insurance Company		RESPONDENT

Date of Decision : 15-09-2010

Acts Referred:

Arbitration Act, 1940 — Section 14, 14(2), 2, 30
Arbitration and Conciliation Act, 1996 — Section 34, 42

Citation : (2010) 3 ShimLC 76

Hon'ble Judges : Surjit Singh, J

Bench : Single Bench

Judgement

Surjit Singh, J.—Claimants Sanjay Madan and Sunil Madan had insured their house and fittings & fixtures in that house with Insurance Company-Objection Petitioner. It was a Policy of reinstatement, which term implies that the entire loss sustained by the insured, i.e. the claimants, was to be made good by the Insurance Company-Objection Petitioner, in the event of any mishap resulting in loss of or damage to the house.

2. On the night of 21st February, 1992, when the Insurance Policy was operative, a fire broke out, in which the insured house of the claimants was completely gutted. A claim for Rs. 36,00,000/- was preferred by the claimants. Insurance Company-Objection Petitioner deputed a Surveyor, who assessed the reinstatement claim at Rs. 26,09,668/-. Surveyor submitted his report on 18th August, 1992. Claimants were paid a sum of Rs. 10,00,000/-, on 18th February, 1993, against receipt Ex. PW-4/D and another sum of Rs. 16,09,668/- against receipt Ex. PW-4/C. The receipt is though undated, it is the admitted case of both the parties that the payment was made on 23rd August, 1993. Receipt Ex. PW-4/C records that the money had been received in full and final settlement of the claim, arising out of the fire that took place on 21st February, 1992. However, under the signatures of the claimants, letters "WP" are written, which according to the claimants are abbreviation for words "without prejudice".

3. On 5th September, 1993 or say about 12 days after the execution of receipt Ex. PW-4/C, notice Ex. CR/1 was issued by the claimants to the Insurance Company-Objection Petitioner, claiming a sum of Rs. 9,30,332/-, as balance amount of their insurance claim. They stated in the notice that they had received the amount of Rs. 16,09,668/-, without prejudice. When they did not get any favourable response, they resorted to the arbitration clause in the Insurance Policy. Two Arbitrators, one by the claimants and another by the Insurance Company-Objection Petitioner, were appointed. Claimants appointed Shri R.L. Sood, Advocate, as Arbitrator, while Insurance Company-Objection Petitioner appointed Shri Maharaj Bakhsh Singh. On the request of the parties, an Umpire was appointed by this Court on 8th March, 1996. The Umpire appointed by this Court was Shri G.D. Verma, the then President of the Bar Association.

4. During the course of the proceedings before the Arbitrators, nominated by the parties, Umpire had also been participating. Evidence was recorded by the Arbitrators, in the presence of the Umpire, who used to associate with them. Arguments were also heard, when Umpire had been with them. The two Arbitrators were having differences. They held atleast two meetings to resolve their differences. Umpire also attended those meetings. Differences could not be resolved. Shri Maharaj Bakhsh Singh gave his separate award on 24th July, 2003. Thereafter, Shri R.L. Sood, Advocate, gave his award on 28th April, 2004. While Shri Maharaj Bakhsh Singh did not award any amount of money to the claimants, Shri R.L. Sood awarded a sum of Rs. 9,30,332/-, i.e. the difference of the claim made by the claimants, soon after the occurrence of incident of fire and the amount paid by the Insurance Company-Objection Petitioner, on the basis of Surveyor's report.

5. Since the Arbitrators did not agree, matter was referred to the Umpire, who vide award dated 12th December, 2004 agreed with the award of Shri R.L. Sood and awarded the amount mentioned therein, together with interest and costs, as awarded by said Shri R.L. Sood.

6. After the Umpire gave his award, an Objection Petition, u/s 34 of the Arbitration and Conciliation Act, 1996, was filed by the Insurance Company-Objection Petitioner in this Court. Court summoned the award of the Arbitrator alongwith record. All the three awards, alongwith the record, were submitted to this Court. This Court rejected the objections vide order dated 23rd December, 2005, holding that objections, u/s 34 of Arbitration and Conciliation Act, 1996, were not maintainable, as the provisions of the old Act, i.e. Arbitration Act, 1940, were applicable to the case. Awards and record were returned to the Arbitrator.

7. Shir R.L. Sood, one of the Arbitrators, to whom the record had been returned and who had had the custody of the record, prior to its submission to the Court, in connection with the aforesaid Objection Petition, u/s 34 of Arbitration and Conciliation Act, 1996, filed the award in this Court, u/s 14 of the Arbitration Act, 1940. Notices were issued by the Court to both the parties. Claimants applied for making the award of the Umpire Rule of Court, while Insurance Company-

Objection Petitioner filed objections, u/s 30 of Arbitration Act, 1940.

8. Issues, based on the objections and reply thereto filed by the claimants, were framed. The same are as follows:

1. Whether the Arbitrators and Umpire were entitled to file separate award as alleged, if so its effect? O.P.O

2. Whether the Arbitrators have not filed the awards as per Section 42 of the Arbitration Act, if so its effect? O.P.O

3. Whether the award of the arbitrator was filed beyond time as alleged, if so its effect? O.P.O

4. Whether the objections have not been filed in time, if so its effect? OPR

5. Whether the arbitrator travelled beyond the scope as alleged, if so its effect? OPO

6. Whether the matter has been referred to the arbitrator wrongly and has no jurisdiction to decide the same as alleged? OPO

7. Relief.

9. Parties did not lead evidence and made submissions that the objections/issues framed in the case be decided on the basis of the evidence led before the Arbitrators, during the course of arbitration proceedings, as also the record of arbitration proceedings.

10. I have heard the learned Counsel for the parties and gone through the record. My findings on the aforesaid issues are as under.

Issue No. 1:

11. From a reading of Paras 4 and 5 of the First Schedule to Arbitration Act, 1940, which are reproduced below for ready reference, it appears that when the Arbitrators do not agree, matter is required to be referred to the Umpire and it is the Umpire who has to give the award.

4. If the arbitrators have allowed their time to expire without making an award or have delivered to any party to the arbitration agreement or to the umpire a notice in writing stating that they cannot agree, the umpire shall forthwith enter on the reference in lieu of the arbitrators.

5. The umpire shall make his award within two months of entering on the reference or within such extended time as the Court may allow.

12. Making of separate awards in this case by the two Arbitrators, disagreeing with each other, is of little consequence, when the award of the Umpire is also there, which (award) was given by the Umpire only after the matter was referred to him, with the report that the Arbitrators had not been able to agree. Alongwith that report, differing awards of the Arbitrators were also submitted to the

Umpire. Umpire heard the learned Counsel for the parties, afresh, went through the record and came to the conclusion that Shir R.L. Sood had rightly held the claimants entitled to the amount, representing difference between the claim preferred by the claimants soon after the occurrence of the incident of fire and the reinstatement quantum assessed by the Surveyor.

13. In view of the above discussion, it is held that Umpire's award is to be taken as the award, within the meaning of Section 2(b) of the Arbitration Act, 1940, in this case. Issue is decided accordingly.

Issues No. 2 and 3:

14. Learned Counsel for the Insurance Company-Objection Petitioner submits that award was required to be filed by the Arbitrator, Umpire Shri G.D. Verma, in this case and that too only after one of the parties made a request to him, in this behalf, but it had been filed by Shri R.L. Sood, who ceased to be an Arbitrator, once the matter was referred to the Umpire and that too without his having been approached by either side. No doubt, from a reading of Section 14(2) of Arbitration Act, 1940, it appears that the Arbitrators or Umpire, as the case may be, should file the award, on the request of any of the parties to the Arbitration Agreement or any person, claiming under them, but that does not mean that the Arbitrator cannot file the award on his own. In this view of the matter, I find support from a judgment of the Hon'ble Supreme Court in State of Madhya Pradesh Vs. Saith and Skelton (P) Ltd., .

15. As regards the contention that the award has not been filed by the Umpire, it is demonstrated from the record that the record of arbitration proceedings, including the award of the Umpire, and also the two awards (ineffective) given by the Arbitrators, was with Shri R.L. Sood. It was he who had filed the awards and the record of arbitrator proceedings in the earlier case, u/s 34 of the Arbitration and Conciliation Act, 1996 and when those objections were rejected the record was returned to him. So, Shri R.L. Sood, being the custodian of the record, filed the award in this Court. Therefore, it is held that the filing of the award in the Court by Shri R.L. Sood is of no consequence, as it does not cause any prejudice to the Insurance Company-Objection Petitioner, in any manner. It is well settled that there is no limitation for filing of award in the Court, when it is filed by the Arbitrator. Reference in this behalf may be made to Champalal Vs. Mst. Samrath Bai, Issues NO. 2 and 3 are decided accordingly.

Issue No. 4:

16. It is conceded by the learned Counsel for the claimants that objection have been filed within the time limited by law, which is counted from the date of service of notice, regarding filing of the award, upon the party. Issue is answered accordingly.

Issues No. 5 and 6:

17. It is submitted by the learned Counsel for the Insurance Company-Objection

Petitioner that when the claimants had furnished a receipt Ex. PW-4/C, in full and final satisfaction of their claim, arising out of the fire incident, not only that the Insurer's agreement came to an end and, thus, nothing survived for adjudication by the Arbitrator, but also the claimants finally settled their claim, which they could not re-agitate, even before any other forum. According to him, claimants could have resorted to arbitration clause or re-agitated the claim, only if there was any allegation that the writing of complete discharge had been obtained from the claimants by practising fraud upon them or by coercion or misrepresentation etc. He submits that there being no allegation of this kind from the side of the claimants, they had no right to invoke the arbitration clause. It is also his contention that Arbitrator, Shri R.L. Sood, made out a new case for the claimants, while giving his award and that the Umpire, while passing his award, accepting the reasoning given by Shri R.L. Sood, has also fallen in error.

18. Contention of learned Counsel for the Insurance Company-Objection Petitioner that once there is a writing by the claimants, giving complete discharge to the Insurer, no dispute, referable to the Arbitrator, remains, unless plea of fraud or coercion or misrepresentation is there, is supported by a judgment of the Hon"ble Supreme Court. Citation is National Insurance Co. Ltd. Vs. Boghara Polyfab Pvt. Ltd.,

19. In the present case, claimants did not make the allegation of fraud or coercion or misrepresentation etc., either in their notice, which they issued on 5th September, 1993, copy Ex. CR-1, or even in the Claim Petition, which they filed before the Arbitrators. It was only in the statement of one of the claimants, namely Sanjay Madan, which he made during the course of arbitration proceedings as PW-4, that it appeared that the employees of the Insurance Company-Objection Petitioner told the claimants that payment, as per assessment made by the Surveyor, would be made only if they signed the unfilled claim form. No such plea having been raised, either in the notice Ex. CR/1 or the Claim Petition, the Arbitrator was not justified in relying upon the statement of PW-4 Sanjay Madan and concluding that the full and final discharge given by the claimants against receipt Ex. PW-4/C was the result of coercion. PW-4 Sanjay Madan, even while testifying before the Arbitrators, did not say that receipt Ex. PW-4/C was obtained by coercion, though he did say that they had furnished the receipt, without prejudice.

20. Learned Arbitrator has interpreted letters "WP" written below the signatures of the two claimants, on receipt Ex. PW-4/C, to mean "without prejudice". Writing of these two letters, even if, it be assumed that they meant "without prejudice" did not give any right to the claimants to re-agitate the claim, when they had executed receipt Ex. PW-4/C, in which it was very clearly and specifically written that the money had been received by the claimants in full and final satisfaction of their claim, arising out of the fire incident, under the Insurance Policy. Claimants offered no explanation for signing the receipt, containing a clause giving complete discharge to the Insurance Company-

Objection Petitioner, in regard to its liability under the Insurance Policy, leave alone making and proving allegation of fraud or coercion or misrepresentation etc. Both the claimants are educated persons, as admitted during the course of hearing.

21. In view of the abovestated position, it is held that when the claimants had given complete discharge to the Insurance Company-Objection Petitioner, by executing receipt Ex. PW-4/C, there remained no dispute between the parties, leave alone a dispute, referable to arbitration under the Insurance Policy. Also, it is held that the Arbitrators were not justified in concluding that receipt Ex. PW-4/C was the result of coercion, when such a plea had not been raised not only in notice Ex. CR/1, but also in the claim petition and also the claimants did not testify so, during arbitration proceedings. Issues are decided accordingly.

Issue No. 7: Relief.

22. In view of the above findings, objections filed by the Insurance Company-Objection Petitioner are allowed and the award of the Arbitrator is set aside.

Petition stands disposed of accordingly.