

(2019) 10 DEL CK 0101

In the Delhi High Court

Case No : First Appeal From Order (OS) (COMM) No. 220 Of 2018

United India Insurance Co Ltd

APPELLANT

Vs

M/S Shreedhar Malik Foods Ltd

RESPONDENT

Date of Decision : 15-10-2019

Acts Referred:

Arbitration And Conciliation Act, 1996 — Section 34, 37
Commercial Courts Act, 2015 — Section 11, 13

Citation : (2019) 178 DRJ 213

Hon'ble Judges : G.S.Sistani, J;Jyoti Singh, J

Bench : Division Bench

Advocate : Vineet Malhotra, Vishal Gohri, Sachin Datta, Dinesh Sharma, Ritika Jhureri, Jipsa Rawat, Anmol Kathuria

Final Decision : Dismissed

Judgement

G.S. Sistani, J

1. This is an appeal under Section 37 of the Arbitration and Conciliation Act, 1996, read with Section 13 of the Commercial Courts Act, 2015 laying challenge to an order passed by the learned Single Judge dated 26.04.2018, whereby the learned Single Judge has allowed the objections to the Award dated 03.06.2017 filed by the respondent. The Award passed by the Arbitrator was set aside leaving it upon the parties to take appropriate legal remedy as may be available to them in accordance with law.

2. Some necessary facts required to be noticed for disposal of this appeal are that the respondent has purchased an insurance policy (Standard Fire and Perils Policy) bearing Policy No. 040801/11/13/11/00000259 for a sum of Rs. 98.50 crores for the period of 26.03.2014 to 25.03.2015 from the appellant's company. The respondent's Milk Powder Godown caught fire on the night of 21.04.2014 due to an electric short circuit. The appellant appointed M/s. Soni and Company, as a surveyor on 22.04.2014 to assess the losses. The respondent filed for an initial claim of Rs. 175,680,233/- vide claim form dated 22.04.2014 (submitted

vide letter dated 14.10.2014). The surveyor evaluated the loss at Rs. 3,03,82,687/-. The respondent filed his full and final claim vide the communication dated 17.03.2015, seeking release of Rs.9,77,28,615/-towards the final settlement. The insurance company had relied upon a Discharge Voucher duly signed by the respondent on 18.06.2015, wherein it was written that the amount received by the respondent in the sum of Rs.8,80,35,058/- (after deducting premium) stood paid and received without any protest and demur and thus, was not entitled to any further amount as claimed. Thereafter, the respondent post the 15th day of receiving the amount, requested the appellant to provide the survey report and reasons for deduction vide letter dated 03.07.2015. The surveyor report dated 13.07.2015 was supplied by the appellant to the respondent.

3. The respondent invoked the Arbitration Agreement and approached the Court by filing a petition under Section 11 of the Act, which was allowed and a sole arbitrator was appointed.

4. The learned Arbitrator found merit in the stand of the insurance company and the claim of the respondent was rejected. Objections to the award were filed by the respondent. Learned Single Judge set aside the Award while relying on two circulars dated 24.09.2015 and 07.06.2016 issued by IRDA. Hence, the present appeal.

5. Mr. Malhotra, counsel for the appellant submits that the learned Single Judge has exceeded his jurisdiction while setting aside the impugned Award as it is a settled law that the Court, while hearing objections to the award does not sit as an appeal over the findings and decisions of an Arbitral Tribunal. It is contended that the Award is neither contrary to the substantive provisions of law nor the view taken by the Arbitrator is unreasonable. It is also submitted that the findings of the Arbitrator cannot be disturbed, whereas the learned Single Judge has set aside the Award on the ground that two circulars were not taken into consideration, which would have a direct bearing on the facts of the present case. It was further contended that the learned Single Judge has ignored the finding given by the Arbitrator that there was no duress, coercion or pressure on the claimant at the time of signing the Discharge Voucher, which is evident from the fact that the Discharge Voucher was received by the claimant on 18.06.2015 and signed on 26.06.2015, which would show that the claimant had enough time to think over the matter and in case the claimant was not satisfied with the amount reflected in the Discharge Voucher, the claimant would not have signed the same.

6. Mr. Malhotra further contends that neither the respondent complained about the Discharge Voucher having being executed under duress or coercion after the receipt of the sanctioned amount on 26.06.2015 nor the communication dated 03.07.2015, which was addressed to the appellant mentioned any form of protest regarding the Discharge Voucher having been signed under duress.

7. Mr. Malhotra, thus, contends that the submission with regard to signing of the Discharge Voucher under duress is an afterthought and the respondent cannot seek undue benefit and advantage out of the same. Counsel further contended that a conclusive finding of the Arbitrator in regards with the voucher, which was signed without any duress and thus, now cannot be faulted in proceedings under Section 34 of the Arbitration and Conciliation Act. It is further pointed out that the claimant was in regular touch with the Insurance Company and the amounts were willfully accepted without any protest.

8. Mr. Malhotra submits that the learned Single Judge has failed to appreciate that the IRDA circular dated 24.09.2015 was not in accordance with the IRDA Regulation 2002 and thus, is no longer valid and thus, could not be relied upon in view of the circular dated 07.06.2016. For the sake of brevity, the operative part of the fresh circular of IRDA dated 07.06.2016 has been reproduced below:

".....

i. Wherever there are no disputes by the insured/s or claimant/s to the amount offered by the insurer towards settlement of a claim, the present system of obtaining the discharge voucher may be continued. However, the insurers must ensure that the vouchers collected must be dated and complete in all respects while obtaining the signature/s of the insured/s or claimant/s.

ii. If the amount offered is disputed by the insured/s or claimant/s, insurers would take steps to pay the amount assessed without waiting for the voucher discharged by the insured/s or claimant/s.

iii. Under no circumstances the Discharge vouchers shall be collected under duress, by coercion, by force or compulsion. Since there is no uniformity in the format/wordings of the Discharge vouchers in use, Authority would suggest that the insurers may consider adopting a standardized format/wording/s of the Discharge voucher."

9. Counsel for the appellant further submits that the circulars issued by IRDA were produced before the arbitrator and the same were relied upon by the respondent in their petition, seeking appointment of an arbitrator and the same circular is found mentioned in the order dated 19.11.2015 in Arb. Pet. 495/2015. It is the case of the appellant that in the cross examination of the respondent before the Arbitral Tribunal, the respondent's witness Mr. Anand B. Saxena has admitted that he was in regular touch with the appellant company regarding the settlement of the claim and was fully aware of the final settlement, yet did not raise any protest over the letter dated 17.03.2015 as being given under duress or coercion. Thus, the learned Single Judge wrongly held that the arbitrator has not gone into the issue of the Discharge Voucher as the arbitrator after due examination of the circulars held that the consent given by the respondent to the amount received from the appellant was not given under duress and coercion.

10. Mr. Malhotra has placed reliance on the Apex Court's decision in the case of

National Insurance Co. Ltd. Vs. Boghara Polyfab Pvt. Ltd., 2009 (1) SCC 267 wherein the Court in para 52 held as under:

"(52) (v) A claimant makes a claim for a huge sum, by way of damages. The respondent disputes the claim. The claimant who is keen to have a settlement and avoid litigation, voluntarily reduces the claim and requests for settlement. The respondent agrees and settles the claim and obtains a full and final discharge voucher. Here even if the claimant might have agreed for settlement due to financial compulsions and commercial pressure or economic duress, the decision was his free choice. There was no threat, coercion or compulsion by the respondent. Therefore, the accord and satisfaction is binding and valid and there cannot be any subsequent claim or reference to arbitration."

11. Counsel for the appellant further placed reliance on para 30 of ONGC Mangalore Petrochemicals Ltd. v. ANS Constructions Ltd., reported in (2018) 3 SCC 373, wherein the court held as under:-

"30. From the materials on record, we find that the contractee company had issued the "no-dues/no-claim certificate" on 21-9-2012, it had received the full amount of the final bill being Rs 20.34 crores on 10-10-2012 and after 12 days thereafter i.e. only on 24-10-2012, the contractee company withdrew letter dated 21-9-2012 issuing "no-dues/no-claim certificate". Apart from it, we also find that the final bill has been mutually signed by both the parties to the contract accepting the quantum of work done, conducting final measurements as per the contract, arriving at final value of work, the payments made and the final payment that was required to be made. The contractee company accepted the final payment in full and final satisfaction of all its claims. We are of the considered opinion that in the present facts and circumstances, the raising of the final bill and mutual agreement of the parties in that regard, all claims, rights and obligation of the parties merge with the final bill and nothing further remains to be done. Further, the appellant contractor issued the completion certificate dated 19-6-2013 pursuant to which the appellant contractor has been discharged of all the liabilities. With regard to the issue that the "no-dues certificate" had been given under duress and coercion, we are of the opinion that there is nothing on record to prove that the said certificate had been given under duress or coercion and as the certificate itself provided a clearance of no dues, the contractee could not now turn around and say that any further payment was still due on account of the losses incurred during the execution of the contract. The story about duress was an afterthought in the background that the losses incurred during the execution of the contract were not visualised earlier by the contractee. As to financial duress or coercion, nothing of this kind is established prima facie. Mere allegation that no-claim certificates have been obtained under financial duress and coercion, without there being anything more to suggest that, does not lead to an arbitrable dispute. The conduct of the contractee clearly shows that "no-claim certificate" was given by it voluntarily; the contractee accepted the amount voluntarily and the contract was discharged voluntarily."

12. Per contra, Mr. Sachin Datta, learned Senior Counsel appearing for the respondent, submits that there is no infirmity in the order passed by the learned Single Judge. The learned Single Judge has rightly observed that the Arbitrator has failed to return any finding on the issue of the Discharge Voucher, as the Arbitrator only took note of the deduction made by the appellant on the ground of the non-disclosure of the construction of cold room but erred by not indulging into the issue of the Discharge Voucher as to whether the Discharge Voucher could have been executed by the respondent with his free will. Additionally, Mr. Datta further contends that the learned Single Judge has rightly pointed out that the Arbitral tribunal has failed to consider the fact that even the Discharge Voucher was executed out of free will, the effect thereof on the claim of the respondent has to be considered in the light of circular(s) dated 24.09.2015 and 07.06.2016 issued by IRDA.

13. Mr. Datta has rebutted the appellant's contention that the respondent was well aware of the reason for deduction as the respondent was in regular touch with the appellant-company, however, the appellant has failed to point out any letter showing such information being given to the respondent. On the contrary, the appellant's witness in his cross-examination admits that the Higher Claims Committee (HCC) has further directed the deduction to be made from the amount assessed by the surveyor and the respondent was not aware.

14. Mr. Datta submits that the appellant's claim of full and final settlement would not apply for the reason that in the case of ONGC Mangalore Petrochemicals Ltd. (supra), a stale claim was raised and the final order was prepared and signed by the parties, which are not the facts in the present case. Mr. Datta has relied upon para 26 of the judgment rendered in the case of National Insurance Co. Ltd. v. Boghara Polyfab (P) Ltd., reported in (2009) 1 SCC 267, which read as under :

"26. When we refer to a discharge of contract by an agreement signed by both the parties or by execution of a full and final discharge voucher/receipt by one of the parties, we refer to an agreement or discharge voucher which is validly and voluntarily executed. If the party which has executed the discharge agreement or discharge voucher, alleges that the execution of such discharge agreement or voucher was on account of fraud/coercion/undue influence practised by the other party and is able to establish the same, then obviously the discharge of the contract by such agreement/voucher is rendered void and cannot be acted upon. Consequently, any dispute raised by such party would be arbitrable."

15. We have heard the learned counsels for the parties, and examined the rival submissions. While there is no quarrel regarding the proposition of law urged by Mr. Malhotra, learned counsel for the appellant, who states that the scope of interference under Section 34 of the Arbitration & Conciliation Act is rather narrow and limited. However, the power of the court is not limited to interfere in those cases where the arbitrator has ignored either vital evidence or the award is perverse or falls foul of the fundamental policy of Indian Law.

16. Ld. Counsel for the appellant submits that it cannot be said that the finding of the Arbitrator is either based on no evidence or the Arbitrator has ignored any vital piece of evidence or that the decision of the Arbitrator can be termed as perverse. The following issues were framed by the Arbitrator :

"1. Whether deductions of 10% towards non-disclosure of material facts, of 6.81% towards under-insurance, of 2.5% towards dead stock and of 5% towards excess from the amount as assessed by the surveyor have erroneously and arbitrarily been made as alleged by the claimant?

2. Whether consent to the amount received from the respondent was given by the claimant under duress and coercion and/or being in acute financial crises as alleged?

3. Whether amount of Rs.8,79,44,848/- was paid towards full and final settlement of the claim as alleged by the respondent?

4. Whether claimant is entitled to interest? If so, at what rate, on which amount and for which period?

5. Relief "

17. Issue No. 2 is a specific issue as to whether the consent to the amount received from the insurance company by the claimant was under duress, coercion and/or in acute financial crises. This court in the order dated 19.11.2015 passed in Arbitration Petition No. 495/2015 filed by the present Respondent under Section 11 of the Arbitration and Conciliation Act, had taken note of the circular dated 24.09.2015 issued by the IRDA, which was reflected in the order passed by the Ld. Single Judge along with the circular dated 07.06.2016. They are reproduced hereinbelow:

"Ref No.: IRDA/NL/CIR/Misc/173/09/2015

Date: 24th September, 2015

To

CEOs of all General Insurance Co.,

Circular

Reg: Discharge Voucher in settlement of claim.

The Insurance Companies are using 'discharge voucher' or "settlement intimation voucher" or in some other name, so that the claim is closed and does not remain outstanding in their books: However, of late, the Authority has been receiving complaints from aggrieved policyholders that the said instrument of discharge voucher is being used by the insurers in the judicial fora with the plea that the full and final discharge given by the policyholders extinguish their rights to contents the claim before the Courts.

While the Authority notes that the insurers need to keep their books of accounts in order, it is also necessary to note that insurers shall not use the instrument of discharge voucher as a means of estoppels against the aggrieved policyholders when such policy holder approaches judicial fora.

Accordingly insurers are hereby advised as under: Where the liability and quantum of claim under a policy is established, the insurers shall not withhold claim amounts. However it should be clearly understood that execution of such vouchers does not foreclose the rights of policyholder to seek higher compensation before any judicial fora or any other fora established by law. All insurers are directed to comply with the above instructions."

(Emphasis Supplied)

"CIRCULAR

Ref-IRDA/NL/CIR/MISa113/06/2016 Date: 07.06.2016 All CEOs of General Insurance Cos including Stand-alone Health Insurance Cos and Specialized insurance Cos

Re: Discharge Voucher Issue

This refers to the circular no-IRDA/NL/cir/Misc./173/09/2015 dated 24th September, 2015 on the captioned subject. Since then insurers, on various occasions, have submitted that the above circular is not in the line with the IRDA (protection of policyholders interests) Regulations, 2002 (PPI Regulations) and the Indian Contract Act.

The Authority has reviewed the matter taking into consideration the provisions of the Contract Act, PPI Regulations and Apex Court Judgments. Taking equal cognizance of the legal rights of the policy holders and insurers, the Authority hereby further directs that- (i) Wherever there are no disputes by the insured/s or claimant/s to the amount offered by the insurer towards settlement of a claim, the present system of obtaining the discharge voucher may be continued. However, the insurers must ensure that the vouchers collected must be dated and complete in all respects while obtaining the signature/s of the insured/s or claimant/s.

(ii) If the amount offered is disputed by the insured/s or claimant/s, insurers would take steps to pay the amount assessed without waiting for the voucher discharged by the insured/s or claimant/s.

(iii) Under no circumstances the Discharge vouchers shall be collected under duress, by coercion, by force or compulsion Since there is no uniformity in the format/wordings of the Discharge vouchers in use. Authority would suggest that the insurers may consider adopting a standardized format/wording/s of the Discharge voucher.

Insurers are directed to comply with the above with immediate effect.

Sd/-

PJ Joseph

Member (NL) "

(Emphasis Supplied)"

18. Having examined both the circulars, we are of the view that the Discharge Vouchers were being obtained by the insurance company in anticipation of payments. The IRDA has also acknowledged that the execution of vouchers would not foreclose the right of the policy holder to seek higher compensation and the explanation rendered in the subsequent circular dated 07.06.2016, in our view, has rightly been upheld by the Single Judge. These two important circulars could not have been ignored by the learned Arbitrator while passing the award. We are also informed that the Arbitrator has taken note of the Discharge Voucher dated 17.03.2015. However, this in fact was not the last or the only Discharge Voucher, which was obtained by the appellant company from the respondent and the payment was not made in pursuance of the Discharge Voucher dated 17.03.2015. The learned Single Judge has also taken note of the fact that the appellant company vide its letter dated 18.06.2015 had clearly stated that payment would be released to the respondent only upon the respondent signing the Discharge Voucher, which was in a pre-printed form, which acknowledges the receipt of the payment would admittedly the same, which was not paid. These standard forms of the contract are termed as 'Contracts of Adhesion'.

19. The Apex Court in the case of LIC of India and Anr. Vs. Consumer Education & Research Centre and Ors. reported at (1995) 5 SCC 482 explained the test to mark the reasonability of the terms of the contract, the relevant portion has been reproduced as under:-

"If a contract or a clause in a contract is found unreasonable or unfair or irrational one must look to the relative bargaining power of the contracting parties. In dotted line contracts there would be no occasion for a weaker party to bargain or to assume to have equal bargaining power. He has either to accept or leave the services or goods in terms of the dotted line contract. His option would be either to accept the unreasonable or unfair terms or forego the service forever. With a view to have the services of the goods, the party enters into a contract with unreasonable or unfair terms contained therein and he would be left with no option but to sign the contract. An unfair and untenable or irrational clause in a contract is unjust and amenable to judicial review. In common law a party was relieved from such contract. In USA, the standard forms of contract are called "Contracts of Adhesion". Whether the presence of the correlative social role of the drafting party and adherent is available in equal terms is the test."

20. While we are conscious of the act that the scope of interference in proceedings under Section 34 are very narrow, however, the power of the Court

is not restricted to interfere in those cases where the Arbitrator has ignored either vital evidence or the award is perverse or falls foul of fundamental policy of Indian Law. While deciding the issue, the learned Arbitrator has ignored two vital circulars which would have an impact to the present dispute. The Supreme Court in the case of Ssangyong Engineering & Construction Co. Ltd. Vs. National Highway Authority of India (NHAI) reported at 2019 SCC Online SC 677, wherein the Court held as under:-

"31. The third juristic principle is that a decision which is perverse or so irrational that no reasonable person would have arrived at the same is important and requires some degree of explanation. It is settled law that where:

(i) a finding is based on no evidence, or

(ii) an Arbitral Tribunal takes into account something irrelevant to the decision which it arrives at; or

(iii) ignores vital evidence in arriving at its decision, such decision would necessarily be perverse.

32. A good working test of perversity is contained in two judgments. In Excise and Taxation Officer-cum-Assessing Authority v. Gopi Nath & Sons [1992 Supp (2) SCC 312], it was held: (SCC p. 317, para 7)

"7. ... It is, no doubt, true that if a finding of fact is arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant material or if the finding so outrageously defies logic as to suffer from the vice of irrationality incurring the blame of being perverse, then, the finding is rendered infirm in law."

In Kuldeep Singh v. Commr. of Police [(1999) 2 SCC 10 : 1999 SCC (L&S) 429], it was held: (SCC p. 14, para 10)

"10. A broad distinction has, therefore, to be maintained between the decisions which are perverse and those which are not. If a decision is arrived at on no evidence or evidence which is thoroughly unreliable and no reasonable person would act upon it, the order would be perverse...."

In the present case, the Ld. Arbitrator has not drawn reference to the circulars dated 24.09.2015 and 07.06.2016 issued by the IRDA or emails dated 30.04.2015 and/ or 11.06.2015 in the impugned award. The said circulars were essential and could not have been ignored. Further, the Ld. Arbitrator failed to return any finding on the issue of the Discharge Voucher dated 18.06.2015 as being issued out of free will or under duress.

21. This bench is of the view that the order passed by the Ld. Single Judge merits no interference. Accordingly, the present appeal stands dismissed.

CM APPL 39881/2018 (stay)

22. In view of the order passed in the appeal, the application stands disposed of.