
(1998) 02 MP CK 0006
In the Madhya Pradesh High Court
Case No : M.A. No. 1147 of 1997

United India Insurance Company Ltd.	APPELLANT
Vs	
P.K.G.K. Panikkar	RESPONDENT

Date of Decision : 03-02-1998

Acts Referred:

Arbitration Act, 1940 — Section 2, 20

Citation : (1998) 2 MPLJ 72

Hon'ble Judges : Ramesh Surajmal Garg, J

Bench : Single Bench

Advocate : Pradeep Naolekar, for the Appellant; S.R. Ghosh, for the Respondent

Final Decision : Allowed

Judgement

R.S. Garg, J.

Being aggrieved by the order dated 8-1-1997 passed in Arbitration Case No. 35-1/94, by the Additional District Judge, Durg, the appellant has preferred this appeal.

At the outset Shri Ghosh, learned counsel for the respondent attached on the very maintainability of the appeal submitting that an appeal may lie u/s 39 of the Act but as this appeal does not fall under any clause of Section 39(1) of the Indian Arbitration Act, the appeal has to be thrown at the threshold. Shri Naolekar, learned counsel for the appellant, on the other hand submits that the respondent had filed an application u/s 20 of the Indian Arbitration Act, making the prayer that the present appellant be directed to file the insurance policy containing the arbitration agreement, therefore, it has to be presumed that the Court directed the appellant to file the agreement and as it found that there was a dispute and proper cause was not shown it directed the parties to give the name of the arbitrators to be appointed. Without entering into the dispute this Court is of the opinion that even if the appeal is not maintainable, this Court is entitled to interfere in the matter under its revisional jurisdiction.

Shri Naolekar submits that the policy Clause 10, though contains an arbitration agreement but it provides certain conditions for application of the said clause. He submits that unless the pre-conditions for application of the arbitration agreement are available, the matter could not be referred to the arbitrator. He submits that the respondent after obtaining a policy against theft etc. lodged his claim which was immediately denied in toto by the Insurance Company because on an enquiry it was found that the claim was bogus, a police report was lodged almost after one month and Insurance Company was satisfied that the claim was not genuine. He submits that unless the liability is admitted by the Insurance Company a reference could not be made to the arbitrator. On the other hand, Shri Ghosh, learned counsel for the respondent submits that once it is proved to the satisfaction of the Court that the policy contains an arbitration agreement then the Court simply has to refer the matter to the arbitrator/arbitrators for making their award and the Court would have no jurisdiction to look into the arbitration agreement. He submits that the arbitrator himself would be competent to consider whether the pre-conditions were available or not for making the reference.

I have heard the parties at length.

So far as the jurisdiction of the arbitrator is concerned, this Court is of the strong opinion that an arbitrator cannot go beyond the order of reference nor he can consider as to whether pre-conditions were available for his appointment or not. It would be fallacy of law that a person who was appointed as an arbitrator would be permitted to challenge the very order which clothes him with the jurisdiction to act as an arbitrator. An arbitrator can look into the correctness or otherwise of the claims lodged by the parties but he cannot hold or decide that the arbitration agreement was not applicable therefore his appointment was illegal. Appointment of arbitrator is either an act of the parties or is an act of the Court, when the parties confer jurisdiction on an arbitrator they clearly clothes him with the jurisdiction to decide the matter after understanding their legal rights. Where the Court appoints the arbitrator or directs the parties to give the name of the arbitrator/arbitrators then the parties and the arbitrator/arbitrators are bound by the order of the Court. The contention of learned counsel for the respondent deserves to be rejected.

For proper appreciation of the dispute between the parties perusal of clause 10 of the Insurance Policy is necessary. Clause 10 reads as under:-

"Arbitration. - If any difference shall arise as to the quantum to be paid under this policy (liability being otherwise submitted) such difference shall independently of all other questions be referred to the decision of an arbitrator to be appointed in writing by the parties in difference, or if they cannot agree upon a single arbitrator to the decision of two disinterested persons as arbitrators of whom one shall be appointed in writing by each of the parties within two calendar months after having been required so to do in writing by the other party in accordance with the provisions of the Arbitration Act, 1940 as amended from

time to time and for the time being in force. In case either party shall refuse or fail to appoint arbitrator within two calendar months after receipt of notice in writing requiring an appointment, the other party shall be at liberty to appoint sole arbitrator, and in case of disagreement between the arbitrators, the difference shall be referred to the decision of an umpire who shall have been appointed by them in writing before entering on the reference and who shall sit with arbitrators and preside at their meetings.

It is clearly agreed and understood that no difference or dispute shall be referable to arbitration as hereinbefore provided, if the Company has disputed or not accepted liability under or in respect of this policy.

It is hereby expressly stipulated and declared that it shall be a condition precedent to any right of action or suit upon this policy that the award by such arbitrator, arbitrators or an umpire of the amount of the loss or damage shall to first obtained.

It is also hereby further expressly agreed and declared that if the Company shall disclaim liability to the insured for any claim hereunder and such claim shall not, within 12 calendar months from the date of such disclaimer have been made the subject matter of a suit in a Court of law. then the claim shall for all purpose be deemed to have been abandoned and shall not thereafter be recoverable hereunder.

The opening words of Clause 10 clearly provide that if any difference shall arise as to the quantum to be paid under the policy, such difference shall independently of all other questions be referred to the decision of an arbitrator, to be appointed in writing by the parties in difference. The pre-condition for application of this clause provides that if liability is being otherwise admitted the very foundation for building reference would be admission of the liability on the part of the Insurance Company. If the Insurance Company does not in any manner or otherwise admit the liability then the very foundation is removed and a ground would not be available for appointment of an arbitrator. Sub-clause (a) of Clause 10 further provides that "it is agreed and understood that no different or dispute shall be referable to arbitration as hereinbefore : Provided, if the Company has disputed or not accepted liability under or in respect of this policy". If this clause is read in its true perspective it would show, that, the moment company disputes or refuses to accept the liability under or in respect of the policy then a difference or dispute shall not be referable to the arbitration. Sub-clause (1) and (a) if read conjointly, a positive picture would emerge to show that in case the liability is otherwise or in any manner admitted, the matter can be referred to the arbitrators to be appointed in writing by the parties in difference or in case of a dispute regarding the single arbitrator, the matter would be referred to two disinterested persons as arbitrators. The moment Insurance Company disputes its liability under or in respect of the policy or refuses to accept the liability, the matter cannot be referred to the arbitrator. A person having an application for filing of the agreement or seeking assistance of

the Court for appointment of an arbitrator can even otherwise show to the Court that the liability was being otherwise admitted. The agreement clearly provides a situation where the Insurance Company disputes or does not accept the liability but there may be a case where the liability was otherwise admitted.

In the present case, the Insurance Company even before the matter was taken to the Court had refused its liability and also refused to accept the liability and raised the dispute that the claim was fake and forged. In response to this the respondent was required to plead and prove that though the Insurance Company disputed or did not accept the liability but has otherwise admitted its liability. The application filed u/s 20 simply reads that on 6-12-1988 somebody entered in the shop of the respondent and committed a theft. Thereafter, a claim was lodged. Para 6 of the application reads that the Insurance Company illegally and without any justification rejected the claim of the respondent. In para 7, the claimant/respondent has prayed to the Court that the present appellant be directed to file copy of the policy. It is nowhere stated in the application that the liability was otherwise admitted by the Insurance Company. In absence of that material plea and on face of the denial of the Insurance Company about its liability and the dispute raised by them, Clause 10 would not be applicable. The Court below failed to consider these material aspects and in very casual and cursory manner observed that the respondent had filed copy of the policy therefore the parties must propose the names of the arbitrators. After considering the entire material available and perusing Clause 10 of the policy, this Court is of the opinion that the matter could not be referred to the arbitrator. The application u/s 20 was misconceived. It ought to have been and is accordingly rejected. The appeal is allowed. No costs.