
(1969) 04 DEL CK 0030

In the Delhi High Court

Case No : Civil Revision No. 647-D of 1960

Universal Industries and Cotton Mills Ltd.

APPELLANT

Vs

Abdul Rehman and Others

RESPONDENT

Date of Decision : 09-04-1969

Acts Referred:

Citation : (1970) ACJ 101

Hon'ble Judges : Om Prakash, J

Bench : Single Bench

Advocate : R.K. Maheshwari, for the Appellant; Mohd. Sultan Yarkhan, for the Respondent

Final Decision : Dismissed

Judgement

Om Parkash, J.—This revision petition has arisen out of a petition, filed u/s 33 of the Arbitration Act, by the New Asiatic Insurance Co. Ltd., (hereinafter referred to as the Petitioner-company) for challenging the validity of an agreement of arbitration. The petition was based on the following allegations:

2. The Respondent No. 1 had motor vehicle No. MBG 1134 insured with the Petitioner-company on the basis of policy No. M/AG11068. Respondent No. 1 had preferred a claim to the Petitioner-company alleging that the insured vehicle had met with an accident on the 24th March 1958 and was completely burnt out. The Petitioner-company had rejected the claim after receiving the report of its surveyor. Respondent No. 1 had appointed Respondent No. 2 as arbitrator for the determination of the dispute of his claim. The agreement of arbitration contained in the insurance policy had become void as Respondent No. 1 had misrepresented to the Petitioner-company that the carrying capacity of the vehicle was 20 passengers, whereas actually the carrying capacity was 21 passengers.

3. The petition was contested by Respondent No. 1. He took a preliminary objection that the Delhi Courts had no jurisdiction as the Respondents were

residents of Madhya Pradesh and the proposal of insuring the vehicle was made and accepted and the payment of the amount was to be made in Madhya Pradesh. On merits, Respondent No. 1 denied that he had made any misrepresentation and that the agreement of arbitration had become void.

4. The learned Subordinate Judge, who had tried the petition, held that the contract of insurance had been made and concluded in Madhya Pradesh and that Delhi Courts, .had, therefore no jurisdiction to entertain the petition. He, further, held that Respondent No. 1 had not made any misrepresentation and that the agreement of arbitration had not become void. The learned Subordinate Judge dismissed the petition.

5. Against the dismissal of the petition, the Petitioner-company has come up in revision.

6. During the pendency of the revision, the name of the Petitioner-company was changed to Universal Industries and Cotton Mills Ltd. By the order of the Court dated the 5th February 1968, that name was substituted for the original name of the Petitioner-company.

7. The learned Counsel for the Petitioner-company attacked the finding of the learned Subordinate Judge that Delhi Courts had no jurisdiction to try the petition, u/s 33 of the Arbitration Act as the contract of insurance had been made and concluded in Madhya Pradesh. The learned Counsel contended that the contract of insurance had been concluded at Delhi where the proposal of Respondent No. 1 for insuring the vehicle was accepted. The learned Counsel, further, contended that according to the terms of insurance policy, which constituted the contract of insurance, only Delhi Courts had jurisdiction to entertain legal proceedings in respect of any claim arising out of the contract of insurance.

8. The learned Counsel for Respondent No. 1 supported the findings of the learned Subordinate Judge. He contended that the proposal of insurance had been accepted in Madhya Pradesh and not at Delhi and that only Courts in Madhya Pradesh had jurisdiction.

9. The Petitioner-company produced the original proposal made by Respondent No. 1 for effecting insurance of the vehicle. The proposal is dated the 24th April 1957. The proposal was admittedly made at Sarangpur (Madhya Pradesh) and was submitted to authorised representative of the Petitioner-company. The authorised representative had on the 24th April 1957, issued two cover notes ,one relating to loss or damage to the vehicle and the other to third party risk. The relevant portion of the cover note relating to loss or damage to the vehicle reads:

Mr. Abdul Rehman Mohammed Bhai, Sarangpur, District Rajgarh (M.P.) having made a Proposal for the insurance of his Motor on 24.4.1957 and agreed to pay the sum of Rs. 316/2/- being the amount of premium thereon, the Passenger

Bus is hereby held insured, subject to the usual terms and conditions printed on the Company's usual form of policy, for a period of 30 days from date within which period (on the premium being actually paid) the regular Policy will be issued.

10. The cover note clearly indicates that the proposal was accepted and the vehicle was insured. The insurance policy was to be issued in thirty days on payment of the premium. A concluded and binding contract had, therefore, come into existence, between the Petitioner and Respondent No. 1 as soon as the cover note was issued. The proposal was made and the cover note was admittedly issued at Sarangpur (Madhya Pradesh). The contract of insurance was, therefore, concluded at Sarangpur in Madhya Pradesh. It may be pointed out that the authority of the authorised representative to issue the cover note was not questioned on behalf of the Petitioner-company.

11. The learned Counsel for the Petitioner-company invited attention to the note on the reverse of the cover note that by notice the Petitioner-company could decline the proposal and argued that the acceptance of the proposal by the authorised representative was only conditional and not absolute and unqualified and that the acceptance of the proposal would have become only valid when the Petitioner-company had accepted it. The contention does not appear to be sound. Neither the cover note nor the insurance policy issued stated that the acceptance of the proposal by the authorised representative was subject to confirmation or approval by the Petitioner-company. The term on the cover note, referred to, by the learned Counsel for the Petitioner-company was only an incidence of the contract of insurance and was not a condition precedent. The contract of insurance became valid and binding as soon as the cover note was issued at Sarangpur.

12. The learned Counsel for the Petitioner-company cited Bengal Insurance and Real Property Co. Ltd. and Another Vs. Velayammal, in support of his contention that acceptance of the proposal by the Petitioner-company was necessary for a valid and binding contract of insurance. The case cited is distinguishable from the instant case. In the case cited, it was proved on record that the agent had no authority to accept the proposal and that his only function was to get the proposal duly filled and submitted to the Head Office. In the present case, there is nothing on the record to show that the authorised representative had no authority to accept the proposal. Moreover, no cover note was issued in the case cited as was done in the present case.

13. The learned Counsel for the Petitioner also relied on the head-note in Thompson v. Adams (1889) 23 Q.B.D. 361. The head-note reads--

The Plaintiffs, a firm of merchants in New Zealand, in October, 1886, employed a firm of insurance brokers in London to-effect for them insurances against fire upon goods in New Zealand. The brokers instructed B., an insurance broker at Lloyd's to effect a portion of the insurances, and B. prepared a slip containing

particulars of the risk, which was initialled by the Defendant and other underwriters, at Lloyds. Owing to a misunderstanding between the insurance brokers no policy was put forward for signature by the Defendant and the other underwriters, and in February 1887, the goods in New Zealand were seriously damaged by fire. No premiums had then been paid but two days after the fire the insurance premiums were paid by the Plaintiffs to the insurance brokers. A policy was then tendered to the Defendant for signature, but he refused to sign it or to pay the amount for which he had initialled the slip. In an action to recover the amount:

Held, that the slip formed a complete and binding contract of insurance, that it was not subject to an implied condition that a policy should be put forward for "signature within a reasonable time, and that, in the absence of circumstances showing an intention on the part of the Plaintiffs to abandon the insurance, they were entitled to recover.

14. The above head-note does not assist the Petitioner-company at all. If anything, it supports the Respondent No. I's contention that the issue of the cover note constituted a valid and binding contract.

15. As regards the term in the insurance policy that all legal proceedings with respect to claims regarding the vehicle insured shall be instituted at Delhi, it is well settled that parties cannot, by agreement, confer jurisdiction on courts where none exists. As Delhi Courts had no jurisdiction to try the petition, the term in the policy could not confer jurisdiction on those Courts.

16. The learned Subordinate Judge was right in holding that the Delhi Courts had no jurisdiction to try the petition. As the learned Subordinate Judge had no jurisdiction to hear the petition, his finding that agreement of arbitration was not void and that the petition was liable to be dismissed is without jurisdiction. The proper course for the learned Subordinate Judge was to direct that the petition be returned to the Petitioner-company for presentation in a proper Court.

17. As a result of the above discussion, the revision petition is allowed to the extent that the order of the learned Subordinate Judge dismissing the petition is set a side. The learned Subordinate Judge is directed to return the petition to the Petitioner-company for presentation in a Court of competent jurisdiction. The parties will bear their own costs throughout