THE ORIENTAL INSURANCE CO. LTD. & ANR. V. DICITEX FURNISHING LTD.

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No. 8550 OF 2019

(ARISING OUT OF SLP (C) NO. 34186 OF 2015)

-Anuj Singh

Court – Supreme Court

Bench – J. S. RAVINDRA BHA, J. ARUN MISHRA

Decided on - 13 November, 2019

Relevant sections – Section 11(6) of the Arbitration and Conciliation Act, 1996.

FACTS OF THE CASE :

(1) On 17.09.2011, Dicitex Furnishing ltd. obtained a Standard Fire and Special Peril Policy issued by the appellant (The Oriental insurance Company ltd.) The total sum insured was ₹13 crores. Clause 13 of the terms and conditions of the said policy contained an arbitration clause. On 25.05.2012 fire broke out at night in the godown and all the goods of the respondent i.e. Dicitex Furnishing ltd destroyed .

(2) The respondent informed the appellant on 26.05.2012, about the fire and the consequential loss. The appellant appointed M/s. C.P. Mehta & Co. as Surveyors and Assessors to survey the loss suffered. Respondent lodged a total and final claim upon the appellant for a sum of ₹14,88,14,327 comprising ₹13,52,85,752 towards cost of the materials destroyed and ₹1,35,28,575¬ as overheads. On 14.08.2012 the surveyor after scrutinizing the factory's and godowns filed a Final Survey Report recommending that the claim be settled for an amount of ₹12,93,26,704.98¬ and that after deducting an amount of 5% towards compulsory deduction

for excess, a net amount of ₹12,28,60,369¬ be paid over to Dicitex Furnishing ltd. The respondent alleged that a copy of this survey report was not given to him by the appellant.

(3) The respondent informed the appellant about the economic distress he was facing and requesting them to clear his claim on priority basis. Respondent also informed about the sale value of the goods destroyed was above ₹19 crores and that it had not only lost its goods but also its profits and He also provided documents around 35,000 in number. On requests were made to the insurer to release the amounts. Apparently, the appellant appointed a Chartered Accountant M/s Naveen Jhand & Associates to carry out a survey of the claim made by respondent. Respondent provide additional documents required by the new surveyor.

(4) On 04.03.2013, when the insurer paid the said sum of ₹3.5 crores to respondent as on account payment in the matter of its claim. The surveyor was refusing to commit to any fixed date for its report so respondent wrote a letter to general manager of appellant about setting a deadline as he was facing huge financial losses. The report submitted by the surveyor assessed ₹7,16,30,148 and accordingly, the competent authority had granted the claim. The appellant did not explain the reason of assessed amount of survey to the respondent which is nearly 50% of the claim of respondent. The appellant enclosed the working of the claim and requested respondent to go through it and send an unconditional discharge voucher duly signed by it and the bankers. After 2 years of the claim respondent was in economic distress and accept the voucher and voluntarily gave discharge receipt in full and final settlement of their claim, present or future, arising directly/indirectly in respect of the said loss/accident and subrogated all their rights and remedies to appellant in respect of the loss/damages. By the letter dated 06.06.2014, from respondent withdrew the earlier letter submitted along with the discharge voucher for a full and final settlement of their claim. It requested the appellant to remit the claim amount immediately. The appellant refused to do so thus in these circumstances, Dicitex Furnishing Ltd. approached the Bombay High Court for appointment of an arbitrator

ISSUES

The issue arises here that :

(1) The Dicitex Furnishing ltd. i.e. respondent had signed the discharge voucher and accepted the amount offered. The signature was done under duress and coercion. Thus the discharge was not maintainable.

(2) There was a demand to appoint arbitrator under the Section 11(6) of the Arbitration and Conciliation Act, 1996.

ANALYSIS

- The Oriental insurance Company ltd. resisted the application, contending that respondent had not demonstrated whether the second discharge voucher signed by it was under economical or financial duress under the arbitration agreement. The amount paid was under full and final settlement, thus the application was not maintainable. The appellant relied on some decisions of Supreme court **New Indian Assurance Co. Ltd v Genus Power Infrastructure** Ltd. (2015) 2 SCC 424, **National Insurance Co. Ltd v Boghara Polyfab Pvt Ltd** (2009) 1 SCC 267, **Union of India (UOI) and Ors. v Master Construction Co.** (2011) 12 SCC 349 etc.

- The court observes that the first surveyor appointed by the insurer had recommended the payment of more than ₹12 crores in favour of the respondent. Somehow insurer did not accept the report and appoint a new surveyor. The court noticed the conduct of new surveyor and the requirement of unwarranted documents which was provided by respondent around 3700 documents. The court notice that prima facie the respondent was facing economic distress which is spanning over two years¬ stating that it was facing financial crisis on account of the delay in settling the claim, were addressed to the appellant.

- The court while going through the case of **National Insurance Co. Ltd v Boghara Polyfab Pvt Ltd** (2009) 1 SCC 267 founds that a claim for arbitration cannot be rejected merely or solely on the ground that a settlement agreement or discharge voucher has been executed by the claimant. A plea of fraud, coercion, duress or undue influence is not enough and the party who sets up such plea must prima facie establish the same by placing material before the Chief Justice/his designate. If the Chief Justice/his designate finds some merit in the allegation than he may decide the same or leave it to be decided by the Arbitral Tribunal. Further the court observes that no rule of universal application was indicated in this case and subsequent judgments which followed it, were in the context of the facts as were presented to the court

- The court cited the case of **Velugubanti Hari Babu v. Parvathini Narasimha Rao** & Anr. (2016) 14 SCC 126 state that the contractee accepted the final payment in full and final satisfaction of all its claims, there is no point in raising the claim for losses incurred during

the execution of the Contract at a later stage which creates doubt as to why such claim was not settled at the time of submitting Final Bills that too in the absence of exercising duress or coercion on the contractee by the Appellant¬ Contractor. It was held that in this case there was no reason for arbitral dispute.

CONCLUSION

The court prima facie convinced about the genuineness or credibility of the plea of coercion. The decisions of this court in Associated Construction v Pawanhans Helicopters Ltd. (2008) 16 SCC 128 and National Insurance Co. Ltd v Boghara Polyfab Pvt Ltd (2009) 1 SCC 267 upheld the concept of economic duress. Therefore the appeal is held to be unmerited. It was dismissed, without order as to costs.