SUPREME COURT OF INDIA

H.P. State Forest Company Ltd.

Vs.

United India Insurance Co. Ltd.

C.A.No.6347 of 2000

(Dalveer Bhandari and Harjit Singh Bedi JJ.)

18.12.2008

JUDGMENT

Harjit Singh Bedi, J.

1. The facts leading to this appeal are as under:

2. In October 1987, a meeting was convened by the Managing Director of the appellant with representatives of various Insurance Companies in Shimla with a proposal to insure the timber lying in several forest areas of the State. A proposal was also made to the National Insurance Company on 26th October 1987 to act as a lead company while the other Insurance Companies were to be co-sharers. After negotiations, the respondent agreed (on the 30th October 1987) to insure the timber lying in the South Zone in the value of Rs.3.42 Crores and also issued a cover note dated 7th November 1987 followed subsequently by a policy dated 16th November 1987 to be valid from 6th November 1987 to 5th November 1988. The appellant also deposited a sum of Rs.2,43,504 as the tentative premium subject to the approval by the Tariff Advisory Commission. It appears that on account of heavy rains in the Shimla region in September 1988 and consequent large scale flooding in the South Zone, the insured timber was washed away. This fact was conveyed to the respondent by several letters between 3rd October 1988 and 31st September 1989. The case of the appellant is that instead of meeting its contractual obligations, the respondent refuted its liability to pay on the 13th October 1988 on the pretext that the policy had, in fact, been issued for a period of 8 months only starting from 6th November 1987 and ending on 5th July 1988 and the period of one year mentioned in the policy was on account of a typographical mistake. It also appears that after prolonged negotiations, some additional premium was paid with respect to the aforesaid policy. It is the grievance of the appellant that despite having accepted the additional premium even after the policy had been repudiated on 13th October 1988, the respondent- company still refused to make good the loss. The appellant accordingly issued a legal notice dated 7th May 1992 followed by another dated 7th December 1992 but to no avail, and on the contrary, the respondent vide its communication dated 24th December 1992 yet again repudiated the appellant' claim. Faced with this situation, the appellant through its Advocate issued a notice dated 18th April 1993 to the respondent under clause 13 of the

Insurance Policy calling for the appointment of an arbitrator. In its reply dated 19th May 1993, the Insurance Company refused to accept this proposal as well. Frustrated thereby, the appellant filed a complaint before the National Consumer Redressal Forum (hereinafter called the "Commission") on 18th April 1994 on which notice was issued to the respondent. Several objections such as the complaint being belated as the claim had been repudiated by letter dated 13th October 1988, and that the insurance covered only a period of 8 months, were taken by the respondent. A rejoinder affidavit was thereafter filed by the appellant controverting the pleas raised by the respondent. The Commission, however, after prolonged hearing by its order dated 15th February 1996 relegated the appellants to the remedy of a civil court. This order was challenged and was set aside by this Court on 13th March 1997 and a direction was issued to the Commission to examine the complaint on merits. The Commission accordingly went in to the matter and dismissed the complaint on 16th August 2000 holding that the issues were covered against the appellant by the judgment of this Court in *National Insurance Co.Ltd. vs. Sujir Ganesh Nayak & Co. & Anr.*[1] in which it had been held that the complaint could not be entertained as it was time barred having been brought before the Commission after the expiry of the period fixed by Clause 6(ii) of the Insurance Policy. It is against this order that the present appeal has been filed.

3. Mr. Sharma, the learned counsel for the appellant has submitted that Section 44 of the Limitation Act provided a period of limitation of 3 years from the date of disclaimer and as such the period of 12 months fixed by clause 6(ii) could not be sustained by virtue of the provisions of section 28 of the *Contract Act, 1872*. In this connection, he has pointed out that this matter was concluded against the respondent by the judgment in *Food Corporation of India vs. New India Assurance Co.Ltd. & Ors.*[2] which had been reaffirmed in *Muni Lal vs. Oriental Fire & General Insurance Co.Ltd. & Anr.*[3] and that Sujir Ganesh Nayak case (supra) which was based on the pre amended Section 28 ibid was, therefore, inapplicable. Mr. Nandwani, the learned counsel for the respondent has, however, submitted that the claim had, in fact, been repudiated on 13th October 1988 and as the 3 years period was deemed to have commenced from that day, the complaint was barred even on the appellant's best case as the complaint had been filed in April 1994. He has, further, argued that as far back as in the judgment in *Vulcan Insurance Co.Ltd. vs. Maharaj Singh & Anr.*[4] and followed subsequently in several judgments (and even in those referred to above), it had been held that a clause in an Insurance Policy fixing a period of limitation extinguishing the right to file a suit or complaint within a certain stipulated period which could be less than that prescribed by the Limitation Act, was not violative of Section 28 of the Contract Act and as such the findings of the Commission were perfectly in accordance with the law for this additional reason as well.

4. We have considered the arguments advanced by the learned counsel for the parties.

5. It is clear from the record that the timber had been washed away some time in September 1988 and after prolonged correspondence, the respondent ultimately vide its communication dated 13th October 1988 repudiated the appellant's claim. It is also clear from the counter affidavit filed by the respondent that the appellant had, vide its letter dated 7th November 1987, asked for insurance cover for a period of 8 months and that the period of one year

fixed in the insurance policy was evidently a typographical mistake which had, in any case, been rectified in the records of the company on 17th December 1987, that is long before the flood. The claim of the appellant that the respondent company had, even after the 13th October 1988, impliedly admitted its liability under the policy also appears to be incorrect as the surveyors had been appointed on the persistent demand of the claimant/appellant and the premium taken thereafter was only to make good the deficiency in the premium that had been paid for the policy for the period of eight months. It is, therefore, apparent that as on the date of the flood, there was no insurance policy in existence or any commitment on behalf of the respondent to make the payment under the policy. We, therefore, endorse the argument raised by the respondent that even accepting the case of the appellant at its very best that the period of limitation would be 3 years under Section 44 of the Limitation Act, the complaint would, even then, be beyond time, having been filed in April 1994.

6. In view of the above observations, we find that the second issue with regard to the implications of clause 6 (ii) of the policy vis-`-vis Section 28 is really academic, but as the learned counsel for the parties have addressed us on this score, we have chosen to deal with it as well. We see from the order of the Commission that it has relied upon Sujir Ganesh Nayak's case (supra) to hold that the complaint could not be entertained as being time barred. The counsel for the appellant had, however, argued before the Commission as before us, that as Section 28 of the Contract Act had undergone significant amendments, the aforesaid judgment required a re- appraisal. This submission had been rejected by the Commission by observing that it was bound by the judgment in Sujir Ganesh Nayak's case and that the appellant could agitate the question as to its correctness before the Supreme Court. The matter was, accordingly, adjourned by us to enable the parties to find out if the amendment had, indeed, been made and, if so, to what effect. During the resumed hearing, the learned counsel for the appellant candidly admitted that the amendment had been made but had thereafter been repealed and the matter would, thus, have to be examined under Section 28 of the Contract Act, as originally placed. We have, accordingly, chosen to deal with this matter under that provision.

7. It would be clear from the above prefatory note that the discussion would involve an appreciation of Clause 6(ii) of the Policy and Section 28 of the Contract Act. Both these clauses are reproduced below:

> "6(ii) In no case whatsoever shall the company be liable for any loss or damage after the expiration of 12 months from the happening of the loss or damage unless the claim is the subject of pending action or arbitration: it being expressly agreed and declared that if the company shall declaim liability for any claim hereunder and such claim shall not within 12 calendar months from the date of the disclaimer have been made the subject matter of a suit in a court of law then the claim shall for all purposes be deemed to have been abandoned and shall not thereafter be recoverable hereunder. Section 28 Agreements in restrain of legal proceedings void-Every agreement, by which any party thereto is restricted absolutely from enforcing his rights under or in respect of any contract, by the usual legal proceedings in the ordinary tribunals, or

which limits the time within which he may thus enforce his rights, is void to that extent.

Savings of contract to refer to arbitration dispute that may arise

Exception 1 - This section shall not render illegal a contract, by which two or more persons agree that any dispute which may arise between them in respect of any subject or class of subjects shall be referred to arbitration and that only the amount awarded in such arbitration shall be recoverable in respect of the dispute so referred.

Savings of contract to refer questions that have already arisen.

Exception 2 - Nor shall this section render illegal any contract in writing, by which two or more persons agree to refer to arbitration any question between them which has already arisen, or affect any provision of any law in force for the time being as to references to arbitration."

8. In Sujir Nayak's case (supra) to which primary reference has been made by the learned counsel for the parties while dealing with an identical situation where a contract contained a provision prescribing a period of limitation shorter than that prescribed by the Limitation Act, it was held that the contractual provision was not hit by Section 28 as the right itself had been extinguished.

9. Mr. Sharma has, however, submitted that in view of the observations in some paragraphs in Food Corporation of India's case, the observations in Sujir Nayak's case were liable to reconsideration. We, however, find no merit in this plea for the reason that in Sujir Nayak's case, Food Corporation of India's case (supra) has been specifically considered and Vulcan Insurance Company's case (supra) too had been relied upon. In Sujir Nayak's case, this Court was called upon to consider condition 19 of the policy which was in the following terms:

"Condition 19. - In no case whatever shall the company be liable for any loss or damage after the expiration of 12 months from the happening of loss or the damage unless the claim is the subject of pending action or arbitration."

10. While construing this provision vis-`-vis Section 28 of the Contract Act and the cases cited above and several other cases, in addition, this is what the Court ultimately concluded:

"16. From the case-law referred to above the legal position that emerges is that an agreement which in effect seeks to curtail the period of limitation and prescribes a shorter period than that prescribed by law would be void as offending Section 28 of the Contract Act. That is because such an agreement would seek to restrict the party from enforcing his right in Court after the period prescribed under the agreement expires even though the period prescribed by law for the enforcement of his right has yet not expired. But there could be agreements which do not seek to curtail the time for enforcement of the right but which provide for the forfeiture or waiver of the right

itself if no action is commenced within the period stipulated by the agreement. Such a clause in the agreement would not fall within the mischief of Section 28 of the Contract Act. To put it differently, curtailment of the period of limitation is not permissible in view of Section 28 but extinction of the right itself unless exercised within a specified time is permissible and can be enforced. If the policy of insurance provides that if a claim is made and rejected and no action is commenced within the time stated in the policy, the benefits flowing from the policy shall stand extinguished and any subsequent action would be time-barred. Such a clause would fall outside the scope of Section 28 of the Contract Act. This, in brief, seems to be the settled legal position. We may now apply it to the facts of this case.

19. The clause before this Court in Food Corpn. case extracted hereinbefore can instantly be compared with the clause in the present case. The contract in that case said that the right shall stand extinguished after six months from the termination of the contract. The clause was found valid because it did not proceed to say that to keep the right alive the suit was also required to be filed within six months. Accordingly, it was interpreted to mean that the right was required to be asserted during that period by making a claim to the Insurance Company. It was therefore held that the clause extinguished the right itself and was therefore not hit by Section 28 of the Contract Act. Such clauses are generally found in insurance contracts for the reason that undue delay in preferring a claim may open up possibilities of false claims which may be difficult of verification with reasonable exactitude since memories may have faded by then and even ground situation may have changed. Lapse of time in such cases may prove to be quite costly to the insurer and therefore it would not be surprising that the insurer would insist that if the claim is not made within a stipulated period, the right itself would stand extinguished. Such a clause would not be hit by Section 28 of the Contract Act.

21. Clause 19 in terms said that in no case would the insurer be liable for any loss or damage after the expiration of twelve months from the happening of loss or damage unless the claim is subject of any pending action or arbitration. Here the claim was not subject to any action or arbitration proceedings. The clause says that if the claim is not pressed within twelve months from the happening of any loss or damage, the Insurance Company shall cease to be liable. There is no dispute that no claim was made nor was any arbitration proceeding pending during the said period of twelve months. The clause therefore has the effect of extinguishing the right itself and consequently the liability also. Notice the facts of the present case. The Insurance Company was informed about the strike by the letter of 28-4-1977 and by letter dated 10-5-1977. The insured was informed that under the policy it had no liability. This was reiterated by letter dated 22-9- 1977. Even so more than twelve months thereafter on 25-10-1978 the notice of demand was issued and the suit was filed on 2-6-1980. It is precisely to avoid such delays and to discourage such belated claims that such insurance policies contain a clause like clause 19. That is for the reason that if the claims are preferred with promptitude they can be easily verified and settled but if it is the other way round, we do not think it would be possible for the insurer to verify

the same since evidence may not be fully and completely available and memories may have faded. The forfeiture clause 12 also provides that if the claim is made but rejected, an action or suit must be commenced within three months after such rejection; failing which all benefits under the policy would stand forfeited. So, looked at from any point of view, the suit appears to be filed after the right stood extinguished. That is the reason why in Vulcan Insurance case while interpreting a clause couched in similar terms this Court said: (SCC p. 952, para 23)

"It has been repeatedly held that such a clause is not hit by Section 28 of the Contract Act." Even if the observations made are in the nature of obiter dicta we think they proceed on a correct reading of the clause."

In the light of the fact that Food Corporation's case has been considered in Sujir Nayak's case, no further argument remains in the present matter, as Clause 6(ii) and Condition

19 are, in their essence, pari materia.

11. Mr. Sharma has also placed reliance on Muni Lal's case (supra). In this case, the primary issue before the Court was as to whether an amendment under Order 6 Rule 17 of the CPC ought to be allowed after the relief which had been sought to be introduced had become time barred. We, therefore, find that no case for interference is made out. The appeal is, accordingly, dismissed. There will be no order as to costs.

[1]*(1997) 4 SCC 366*
[2]*(1994) 3 SCC 324*
[3]*(1996) 1 SCC 90*
[4]*(1976) 1 SCC 943*