

SUPREME COURT OF INDIA

Oriental Insurance Co.Ltd.

Vs.

Tejparas Associates

C.A.No.6524 of 2009

(R.Banumathi and A.S.Bopanna,JJ.,)

03.10.2019

JUDGMENT

A.S.Bopanna,J.,

1. The appellant insurance company had issued fire insurance policy in respect of the plant and machinery of the respondent company. The sum for which it was insured was a sum of Rs.70,00,000/- (Rupees Seventy Lakhs only). In respect of the policy issued on 01.12.1999, the claim arose 23.04.2000 when fire accident took place in the premises of the respondent. In respect of the claim, the appellant insurance company offered a sum of Rs.7,98,019/- (Rupees Seven Lakhs Ninety-Eight Thousand Nineteen only) to the respondent on 06.12.2000. The respondent having refused to accept the same, a meeting was thereafter convened on 20.09.2001 wherein Vijaya Bank at whose instance the policy was issued was also present. In the said meeting, the appellant insurance company revised the offer to pay the respondent a sum of Rs.33,80,925/- (Rupees Thirty-Three Lakhs Eighty Thousand Nine Hundred Twenty-Five only). The said sum was also not acceptable to the respondent but a sum of Rs.25,00,000/- (Rupees Twenty-Five Lakhs only) was paid to the respondent through Vijaya Bank. The respondent therefore being aggrieved that the claim for insurance reimbursement was not satisfied, had approached the National Consumer Disputes Redressal Commission, New Delhi ("NCDRC" for short) by filing OP No. 146 of 2002. The said complaint came to be dismissed on the ground that the claim involves complicated questions of law and the Civil Court would have jurisdiction to decide the matter.

2. The matter was, however, ultimately referred to arbitration by an Arbitral Tribunal consisting of three learned Arbitrators. In the arbitral proceedings, an award dated 28.06.2004 was passed, whereunder two out of three arbitrators awarded the sum of Rs.44,90,000/- (Rupees Forty-Four Lakh Ninety Thousand only) with interest at 18% per annum also the costs as indicated therein. Since, a sum of Rs.25,00,000/- had already been paid by the appellant on 20.09.2001, the award constituted the entire sum of Rs. 70,00,000/- (Rupees Seventy Lakhs only) for which it was insured. The third learned arbitrator, however, dissented from the majority award and held that the sum of Rs.

33,80,925/- offered by the appellant insurance company was fair and proper. Subsequent thereto the appellant herein filed an application under Section 33 of the Arbitration and Conciliation Act, 1996 (“Act, 1996” for short) seeking for clarification relating to the award dated 28.06.2004 and also with regard to the venue of arbitration as indicated in the award. The said application filed under Section 33 of the Act was dismissed through the order dated 17.12.2004. Pursuant thereto the appellant insurance Page 3 of 19 company, in order to assail the award dated 28.06.2004 and the order dated 17.12.2004 filed the petition under Section 34 of the Act, 1996 on 24.02.2005. Since, the award indicated that the same was passed at Jaipur and the third learned arbitrator in his order had declared the venue of the arbitral tribunal to be at Jaipur, the appellant insurance company filed the petition on 24.02.2005 before the learned District Judge, Jaipur.

3. The respondent on appearing in the said proceedings had objected to the proceedings being held at Jaipur, since according to the respondent the entire cause of action had arisen at Jodhpur. The learned District Judge at Jaipur on considering the rival contentions had through the order dated 12.03.2008 held the petition as not maintainable before that Court but exercised the power under Order 7 Rule 10 and 10 A of the Civil Procedure Code and returned the petition to the appellant insurance company and directed that the parties shall be present before the learned District Judge, Jodhpur, on 02.04.2008 for presentation of the petition therein and proceed with the matter. The appellant insurance company however presented the petition before the learned District Judge, Jodhpur, only on 10.04.2008, instead of the specified date of 02.04.2008. In that circumstance, the respondent herein filed an application under Section 3 of the Limitation Act, before the learned District Judge, Jodhpur, in the re-presented petition under Section 34 of the Act, 1996 which was numbered as arbitration application number 18-A of 2008. Through the said application the respondent had sought rejection of the petition on the ground of the limitation.

4. At this stage, the appellant insurance company filed an application dated 03.05.2008 under Section 14 of the Limitation Act, seeking that the time spent in the proceedings before the learned District Judge, Jaipur, be excluded and the petition be entertained on its merits. The respondent herein opposed the said application. The learned District Judge, Jodhpur, through the order dated 15.07.2008 had considered the applications under Section 14 and 3 of the Limitation Act and dismissed the application filed by the appellant insurance company under Section 14 of the Limitation Act and allowed the application filed by the respondent herein under Section 3 of the Limitation Act. Consequently, the petition filed under Section 34 of the Act, 1996 was dismissed. The appellant insurance company therefore claiming to be aggrieved filed the appeal under Section 37 of the Act, 1996 before the High Court of judicature for Rajasthan at Jodhpur. The High Court after taking note of the order passed by the learned District Judge, Jodhpur, while disposing of the application under Section 3 & 14 of the Limitation Act has dismissed the appeal through the order dated 06.02.2009. The appellant insurance company therefore claiming to be aggrieved by the said order dated 06.02.2009 passed by the High Court in SP (C) Misc. Appeal No. 1103/2008 is before this Court in this appeal.

5. We have heard Dr. Meera Aggarwal, learned advocate for the appellant, Mr. Puneet

Jain, learned advocate for the respondent and perused the appeal papers.

6. As noted in the sequence of events that flowed from the point the policy was issued on 01.12.1999 and a claim relating to the same being made in view of the fire accident, the dispute essentially is with regard to the quantum of compensation which had led to the dispute between the parties. The present proceeding has however arisen in the background of the petition under Section 34 of the Act, 1996 being dismissed on the ground of limitation. In that circumstance, though the appellant had also filed the appeal under Section 37 of the Act, 1996 and had raised the contentions with regard to correctness or otherwise of the award dated 28.06.2004 and the order dated 17.12.2004 on the application under Section 33 of the Act, 1996, the merits of the rival contentions relating to the claim would not arise for consideration at this stage. This is for the reason that in the proceedings under Section 34 of the Act, which is the remedy available to assail the award, the contentions on merits of the claim relating to the insurance policy has not been gone into to consider the correctness or otherwise of the arbitral award and the proceedings has been concluded on the ground of limitation. Consequently, in the appeal filed under Section 37 of the Act, 1996 also it is on examination of that aspect the appeal has been dismissed.

In that view, the limited consideration to be made in this appeal is to determine whether the dismissal of the petition under Section 34 of the Act, 1996 on the ground of limitation is justified. In that regard, if the conclusion to be reached by us is to the effect that in the present circumstance the petition under Section 34 of the Act, 1996 was to be considered on merits, the matter would thereafter have to be gone into on merits before the learned District Judge, Jodhpur, to advert to the merits limited to the consideration permissible under Section 34 of the Act, 1996.

7. While taking note of these aspects the fact that the award was initially passed on 28.06.2004 and the third learned arbitrator disposed of the application under Section 33 of the Act, 1996 on 07.12.2004 is the position which emerges from the record. In that view, the petition filed under Section 34 of the Act, 1996 before the learned District Judge, Jaipur, on 24.02.2005 is within the time frame as stipulated under Section 34 (3) of the Act, 1996. The position is also that the learned District Judge, Jaipur, returned the original application through the order dated 12.03.2008 permitting the appellant to present it before the learned District Judge, Jodhpur, on 02.04.2008. If the petition was presented on the said date in terms of the order the need for consideration on delay would not have arisen. However, as noticed the appellant insurance company re-presented the petition before the learned District Judge, Jodhpur only on 10.04.2008. In view of the application filed by the respondent under Section 3 of the Limitation Act seeking dismissal in that context, the appellant herein filed the application under Section 14 of the Limitation Act. The issue that would therefore arise is as to whether the presentation of the petition before the learned Judge, Jodhpur, should be considered as a fresh petition and the explanation for the entire period from the original limitation period i.e., from the date of the award is to be considered for the purpose of condonation of delay for prosecuting in an alternate jurisdiction, while considering the application under Section 14 of the Act or in the present circumstance since the earlier Court had exercised the power under Order 7 Rule 10 and

10A of the Civil Procedure Code, the consideration should be for the delay condonation between the period 02.04.2008 to 10.04.2008 merely being the delay in re-presentation.

8. The learned counsel for respondent in that regard has contended that when a plaint is returned under Order 7 Rule 10 CPC to be filed before the Court having jurisdiction and in that circumstance when the plaint is presented in the Court having jurisdiction the petition can be deemed to be instituted in the proper Court as a fresh petition when the plaint is presented in such Court. To buttress such contention, the learned counsel has relied on the decision in the case of *Shri Amar Chand Inami vs. Union of India*¹ with reference to para 9 thereof. We have carefully perused the said decision in the background of the said contention. Though such decision was rendered in the facts arising therein and the decision was rendered on 13.10.1972 in the context of the provision contained in Order 7 Rule 10 CPC as it existed, it is to be noted that amendment was made on 01.02.1977 whereunder Rule 10A was substituted under Order 7 Rule 10 of CPC. A perusal of the same will indicate that after amendment the matter is not left in a limbo after the plaint is returned in terms of Rule 10(2) which existed earlier. Presently through Rule 10A to Order 7 of CPC on an application being made a date is to be specified for its presentation so as to enable the appearance before the Court in which it would be re-presented. Therefore, the re-presentation of the petition in the Court which is indicated in the order for return cannot be considered as a fresh filing in all circumstances when, it is returned to the plaintiff for such re-representation. This Court in the case of *Joginder Tuli vs. S.L. Bhatia and another*² has held that normally, when the plaint is directed to be returned for presentation to the proper court perhaps it has to start from the beginning but in the cited case, since the evidence was already adduced by the parties, the matter was tried accordingly. The High Court had in that case directed to proceed from the stage at which the suit stood transferred and this Court did not find any illegality in such order passed by High Court to treat the same as a continuation of the proceedings.

9. In the instant case though the appellant herein had not filed the application indicating the Court to which the petition would be re-presented and did not seek for fixing the date of hearing, the Court at Jaipur while ordering return of the petition after consideration of the application of the respondent under Order 7 Rule 11 CPC had indicated the Court to which it was to be presented and the date for appearance on 02.04.2008 for that purpose. Hence, it is not as if the proceeding came to an abrupt end when the petition was returned so as to consider the next filing as a fresh petition. In that circumstance when the time had been granted and date was fixed by the learned District Judge at Jaipur and if for any reason the re-presentation was not possible on that date, the course open to the appellant was to file an application under Section 148 of CPC before the Court at Jaipur which ordered for return and fixed the time for presentation in the Court at Jodhpur, seeking extension of time granted earlier. However, since the same was not resorted to by the appellant and the petition was re-presented before the District Court at Jodhpur with a delay of about 8 days from the date fixed for presentation and as Page 12 of 19 no extension was also sought as indicated above, condonation of such delay ought to have been sought. Since the petition was filed with delay and no other application had accompanied the petition, the respondent filed the application under Section 3 of Limitation Act which prompted a knee jerk

reaction by the appellant in filing the application under Section 14 of the Limitation Act. Though the said application has invoked Section 14 of Limitation Act and thereafter supported by an additional affidavit, the averments in the application is in the nature of an application seeking condonation of delay in re-presentation of the petition as against the date fixed by the Court for presentation in Jodhpur.

10. The learned counsel for the appellant has relied on the decision in the case of *S. Ganesharaju (dead) through LRs. and Anr. vs. Narsamma (dead) through LRs. and Ors*³. to contend that the expression “sufficient cause” as contemplated under Section 5 of the Limitation Act should be given liberal construction so as to advance substantial justice and the delay should be condoned unless the opposite party is able to show malafide in not approaching the Court within time. It is further contended that it is held therein that the rules of limitation are not meant to destroy or foreclose the right of parties. The learned counsel for the respondent on the other hand would contend that the said decision rendered is in the context of consideration of “sufficient cause” as contemplated under Section 5 of the Limitation Act which would not be applicable to proceedings under Section 34 of the Act, 1996. In that regard, the learned counsel for the respondent has relied on the decision in the case of *Union of India vs. Popular Construction Company*⁴, wherein it is held that Section 5 of the Limitation Act is not applicable to the proceedings under Section 34 of the Act, 1996 for setting aside the arbitral award. Further the decision in the case of *Simplex Infrastructure Ltd. vs. Union of India*⁵, is also relied upon to contend that Section 5 of the Limitation Act has no application to a petition challenging the arbitral award under Section 34 of the Act, 1996. The said decision would however indicate that Section 14 of the Limitation Act is applicable to an application submitted under Section 34 of the Act, 1996 seeking for exclusion of certain period if the application under Section 34 of the Act, 1996 is at the first instance filed within the limitation period provided under Section 34(3) of the Act, 1996. The position of law that Section 5 of the Limitation Act is not applicable to condone the statutory period under Section 34(3) of Act, 1996 is well established and needs no reiteration.

11. Having noticed the said decisions, in the instant case as already indicated above the condonation of delay sought is not for filing the petition under Section 34 of the Act, 1996 for the first time. The petition filed under Section 34 of the Act, 1996 at Jaipur was within the period of limitation and the delay regarding which explanation is put forth is for the period of 8 days in re-presenting the petition beyond the date fixed after it was returned under Order 7 Rule 10 of the Civil Procedure Code. Therefore, in that circumstance even if the term “sufficient cause” as contained under Section 5 of the Limitation Act is taken note, in the present facts the same is not with reference to petition under Section 34 of Act, 1996 for condonation of delay beyond the period prescribed under Section 34(3) of the Act, 1996. Though that be the position what is necessary to be taken note herein is that the application filed for excluding the time is under Section 14 of the Limitation Act. In addition to the very decisions cited above indicating that Section 14 of the Limitation Act would be applicable to the proceedings under Section 34 of the Act, 1996 subject to the petition under Section 34 being filed within time, the learned counsel for the appellant has also relied upon the decision in the case of

*M/s Consolidated Engineering Enterprises vs. The Principal Secretary, Irrigation Department & Ors*⁶. wherein the same position is reiterated.

12. The learned counsel for the respondent would however, refer to the very same decision and contend that even if Section 14 of the Limitation Act is applicable, the exclusion of time can only be of the proceedings which is bonafide initiated in a Court without jurisdiction. It is contended that in the instant case the entire cause of action had occurred at Jodhpur and despite the same the appellant had deliberately initiated the proceedings at Jaipur which cannot be considered as a bonafide mistake. Though such contention is put forth, what cannot be lost sight in the instant facts is that the learned Judge of the Additional District Court, Jaipur while considering the maintainability of the proceedings before that Court, through the order dated 12.03.2008 has taken note of the very rival contentions with regard to the cause of action as contended and also the Court before which the proceedings was required to be initiated. Though at this point of time the position of law has been enunciated through several decisions, and there is clarity, at that juncture the consideration with regard to the definition of Court as contained in the Act was required to be interpreted and on taking note of various decision of the Supreme Court had arrived at the conclusion that keeping in view the fact situation the petition is to be returned for presentation in the appropriate Court. The very nature of consideration made by the Court at Jaipur would indicate that the matter required a detail consideration before exercising the power under Order 7 Rule 10 and 10A of the Civil Procedure Code and the Court during the said proceedings has not arrived at a conclusion that the proceedings had been initiated malafide before that Court. However, keeping in view the overall facts and circumstance of the present case the Court had ordered return of the petition for appropriate presentation and the date had been fixed. The correctness of the said order had not been assailed by the respondent herein seeking absolute rejection of the petition by raising grounds on the nature of findings rendered therein since that Court had not held the petition to be malafide.

13. In such circumstance, in the fact situation wherein the issue of delay had arisen only in the context of the delay of 8 days in re-presentation as permitted by the Court at Jaipur, re-examination of the matter to consider the entire period spent before the Court at Jaipur as malafide so as to nonsuit the appellant and deny consideration of proceedings under Section 34 of Act, 1996 which was initiated within the period of limitation at the first instance, on its merits will not be justified.

14. In that view, the order dated 15.07.2008 passed on the application filed under Section 14 and Section 3 of the Limitation Act passed by the Additional District and Sessions Judge S.No.3, Jodhpur and the order dated 06.02.2009 passed by the High Court in S.B. (Civil) Misc. Appeal No.1103/2008 are not sustainable. They are accordingly, set aside. Consequently, the proceedings in Arbitration Application No.18-A of 2008 is restored to the file of the Additional District Judge S.No.3, Jodhpur.

15. The parties shall appear before the said Court on 15.10.2019 as the first date for appearance without issue of notice/summons from that Court. The proceedings thereto

shall be considered on merits in an expeditious manner. All contentions in that regard are left open.

16. The appeal is, accordingly allowed with no order as to costs. All pending applications shall stand disposed of.

Judgment Referred.

¹(1973) 1 SCC 0115

²(1997) 1 SCC 0502

³(2013) 11 SCC 0341

⁴(2001) 8 SCC 0470

⁵(2019) 2 SCC 0455

⁶(2008) 7 SCC 0169