A VISHNU BHAGWAN AGRAWAL & ANR.

v.

NATIONAL INSURANCE CO. LTD.

(Civil Appeal No. 4661 of 2007)

B OCTOBER 26, 2017

[R. F. NARIMAN AND SANJAY KISHAN KAUL, JJ.]

Arbitration – Appellant kept jute stock, which was insured – Appellant subsequently purchased more stock of jute and asked C *for increase in the value of the insurance policy – This, according to insurance company was not accepted – Raw jute involved in a fire incident – Dispute whether the insured stock should be valued as on the date of the fire or on the date of purchase – Appellant produced evidence in the form of purchase receipts of the value of stock of jute which amounted to Rs.703/- per quintal – However,* D *this was not accepted in the survey done at the behest of the insurance company, the surveyors valued stock @ Rs.404/- per quintal by adopting the spot rate fixed in the market – Appellant invoked arbitration proceedings – In view of divergence of opinion between the arbitrators, the matter was referred to an Umpire –* E *Umpire concluded that the insurance company had accepted and agreed to the insured's letter and property covered under policy in question stood increased in value and simply because an endorsement letter was not issued before the date of incident, it would not mean that insurance company can go back from its commitment – Courts below found the award passed by the Umpire* F *perverse – Insurance company contended that Umpire misconducted himself and that when insurance policy is written, it can be amended only in writing and not by the conduct of the parties – Held: The Umpire took a possible view in the facts of the case after having analysed the evidence before him – Though the insurance policy* G *was to be amended in the manner known to the law and that too in writing between the parties, yet estoppel by conduct was a ground the Umpire was well within his legal ken to hold – Further, in absence of anything to rebut the evidence produced on behalf of the appellant that the purchase price of the jute would reflect the market value as on the date of the fire, equally the umpire was well within* H *his legal bounds in arriving at conclusion, on facts, that the sum of*

Rs.703/- per quintal would reflect the market value of the jute stock as on the date of fire – Insofar, as grounds for challenge are concerned, no legal error apparent on the face of the Umpire's award or misconduct in the sense of legal misconduct – Thus, the award by Umpire resuscitated. A

Allowing the appeal, the Court B

HELD: 1. The Umpire took a possible view on the facts of the case having analysed the evidence before him and having arrived at the conclusion that the insurance policy was raised, given the conduct of the Insurance Company, not only in not replying to the letter dated 01.07.1985 (which showed that the appellant purchased more stock of jute and asked for an increase in the value of the insurance policy) but also in adjusting the sum of additional premium. It is clear that though the insurance policy may have to be amended in the manner known to the law and that too in writing between the parties, yet estoppel by conduct is a ground the Umpire was well within his legal ken to hold. Further, in the absence of anything to rebut the evidence produced on behalf of the appellant that the purchase price of the jute would reflect the market value as on the date of the fire, equally the umpire was well within his legal bounds in arriving at a conclusion, on facts, that the sum of Rs.703.23/- per quintal would reflect the market value of the jute stock as on the date of the fire. [Para 8] [283-E-G] C D E

2. An arbitration award is not to be lightly interfered with. So far as the grounds for challenge are concerned, no legal error apparent on the face of the award or misconduct in the sense of legal misconduct, i.e. that material evidence that is vital has been ignored, is made out on the facts of the present case. The arbitrator's findings can be said to be a possible one on the facts of the case. None of the findings are impeachable and therefore, the impugned judgment deserves to be set aside. The Umpire's award is thus resuscitated and payments that have to be made under the Award shall be made by the Insurance Company. [Para 10] [284-C-F] F G

Polymat India (P) Ltd. & Anr. v. National Insurance Co. Ltd. & Ors. **(2005) 9 SCC 174 : [2004] 6 Suppl. SCR 535 – referred to.** H

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Case Law Reference

[2004] 6 Suppl. SCR 535 referred to Para 6

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 4661 of 2007

B From the Judgment and Order dated 22.01.2004 of the High Court of Judicature at Allahabad, Lucknow Bench, Lucknow in First Appeal from Order No. 192 of 1997.

Manoj Swarup, Ms. Lalita Kohli, Abhishek Swarup, Sajid Imam Naqvi (for M/s. Manoj Swarup and Co.), Advs. for the Appellant.

C Vishnu Mehra and B. K. Satija, Advs. for the Respondents.

The Judgment of the Court was delivered by

R. F. NARIMAN, J. 1. The present appeal arises from the judgment of a Division Bench of the Allahabad High Court dated 22.01.2004, upholding the judgment of the learned Civil Judge dated D 22.04.1997, by which a learned Umpire's Award was set aside.

2. The facts of this case are that the appellant kept jute stock in the premises of Haryana Oil Mills situated at Lucknow, which was mortgaged in favour of the Bank of Baroda. The original period for which this stock was insured was from 13.10.1984 to 13.10.1985. It is E not in dispute that as on 27.10.1984, the amount for which the jute was insured was raised from Rs.10 lakhs to Rs.20 lakhs. The entire stock pledged to the Bank was insured. By a letter dated 01.07.1985, it appears that the appellant purchased more stock of jute and asked for an increase in the value of the insurance policy limited to Rs.25 lakhs and odd. This, F according to the Insurance Company, was not accepted and is one bone of contention between the parties. Another bone of contention between the parties is whether the insured stock should be valued as on the date of the fire or as on the date of purchase.

3. The appellant before us produced evidence in the form of G purchase receipts of the value of stock of jute which amounted to Rs.703.21/- per quintal. However, this was not accepted in the survey that was done at the behest of the Insurance Company. By their report dated 07.10.1985, the Surveyors valued stock @ Rs.404/- per quintal on the basis that no authentic rate quotations were available in the Lucknow/Kanpur jute market. The Surveyors, therefore, adopted the

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spot rate quoted in the Calcutta market for W-5 quality jute, which was adjusted to the qualities the insured had in stock, (which was W-4 and TD 5 quality jute), and after adding expenses incurred, an average rate of Rs.404/- per quintal for both qualities was worked out. The ultimate amount, therefore, that was offered by the Insurance Company, based on the Surveyor's report, came to a sum of Rs.12,30,039.41np. Since this was not accepted by the appellant, arbitration between the appellant and the respondent began. Mr. P.B. Agrawal, one learned Arbitrator, found in favour of the appellant and awarded a sum of Rs.23,55,132.71p., with interest @ 10 % per annum from 10th March, 1986, up to the date of the Award and @ 6 % per annum from the date of the Award to the date of payment. Mr. P.P. Malhotra, another learned Arbitrator, came to the conclusion that the limit of the fire insurance policy itself was Rs.20 Lakhs and could not be exceeded and that the loss suffered by the claimant, as per the market value prevailing on the date of the fire, came to Rs.12,30,039.41np as per the Surveyor's report. In view of this divergence of opinion between the arbitrators, the matter was referred to an Umpire, namely Mr. S.C. Maheshwari, learned Senior Advocate. After considering the facts of the case, the learned Umpire concluded as follows:

> "It is thus clear that the Insurance Company had accepted and agreed to insured's letter dated 1.7.85 and the property covered under the policy in question stood increased from Rs.20 lakhs to Rs.25, 45, 121.70 with effect from 1.7.85 to 13.10.85 and simply because an endorsement letter was not issued by the company before the date of happening, it would not mean that the Insurance Company can go back from its commitment. As discussed earlier, the first increment in the policy from Rs.10 lakhs to Rs.20 lakhs was though effected from 27.10.84 but the endorsement letter was issued by the company as late as 11.2.85 and had there been any happening in between 27.10.84 to 11.2.85, the company could not have taken the plea that the original policy was only for Rs.10 lakhs and the same was never increased. Having once given the implied consent, the Insurance Company is now estopped from pleading that the sum insured was only Rs.20 lakhs and not Rs.25,45,121.70 as claimed by the claimant.
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> 9. Keeping in mind the evidence led by the parties as well as the facts and circumstances attending to the present case, I am of

A the firm opinion that as on 1st July 1985, the sum insured of the policy stood increased to Rs.25,45,121.70 np (Rs.23, 13, 747 plus 10 per cent) and the basis of loss settlement also stood amended to the cost price plus 10 per cent instead of the market price.

10. There is no dispute about the fact that the quantity of
B raw jute involved in the fire was 3122.72 quintals and the cost price of the same was Rs.703.21 per quintal. Both the figures have also been confirmed by the surveyor appointed by opposite party No.1. On this basis the cost price works out to Rs.21,95, 927.93 and since the basis of the loss settlement is cost price plus 10 per cent, the amount works out to Rs.24, 15, 520.72."
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4. The learned Civil Judge, by his judgment dated 22.04.1997, found that the learned Umpire had misconducted himself on two counts; firstly, the fact that the letter dated 01.07.1985 which was sent by the appellant to the Insurance Company, and no response thereto by the Insurance Company would be taken to mean that the proposal was
D accepted. According to the learned District Judge, there can be no acceptance by implication or by conduct, and therefore, this part of the Umpire's award was set aside. Further, it was also held that the value of the goods should be at the time of the fire and since this is so, the purchase price of the said goods cannot be looked at. Therefore, both the
E conclusions of the learned Umpire were set aside on the ground that the Umpire misconducted himself, and the Umpire was directed to file his reconsidered award in light of the judgment of the learned District Judge within four months. An appeal from the aforesaid judgment was unsuccessful. The High Court basically reiterated the same conclusion as the learned District Judge and found the learned Umpire's Award to
F be perverse.

5. The learned Senior Advocate appearing on behalf of the appellant has urged before us that the Umpire's award is certainly a possible view that could be taken on the facts of the case. The learned District Judge, as well as the High Court, have exceeded their jurisdiction
G in treating the Umpire's award as a first appeal. Equally, according to the learned counsel, the Umpire having taken Rs.703.21 as a figure per quintal of jute, did so on the basis of evidence produced before him and, as the fire occurred within an extremely short time from the date of purchase, the purchase price would certainly reflect the market value of
H the said jute on the date of the fire. Equally, he placed the Surveyor's

report before us and stated that instead of arriving at a figure based on the purchase price, the Surveyor was extremely arbitrary in going to the spot rate for different quality jute, in a completely different market; arriving at a much lower figure; and, therefore, the Umpire's award was not merely a possible view, it was the correct view on the facts of the case. Both the District Judge and the High Court were incorrect in holding that the Umpire had misconducted himself and that his award is beyond jurisdiction.

6. In reply, Shri Vishnu Mehra, appearing on behalf of the Insurance Company, has sought to place the judgments of the District Judge as well as the High Court before us, and has stated that it is obvious that the Umpire has misconducted himself on both the counts. He relied upon the judgment of this Court in *Polymat India (P)Ltd. & Anr. vs. National Insurance Co. Ltd. & Ors.,(2005) 9 SCC 174,* for the proposition that when the insurance policy is written, it can be amended only in writing and not by conduct of the parties, and that, therefore, the arbitrator's view was not a possible view in law on the facts of the case.

7. We have heard the learned counsel for the parties.

8. In our view, the learned Umpire took a possible view on the facts of the case having analysed the evidence before him and having arrived at the conclusion that the insurance policy was raised, given the conduct of the Insurance Company, not only in not replying to the letter dated 01.07.1985 but also in adjusting the sum of additional premium. It is clear that though the insurance policy may have to be amended in the manner known to the law and that too in writing between the parties, yet estoppel by conduct is a ground the Umpire was well within his legal ken to hold. Further, in the absence of anything to rebut the evidence produced on behalf of the appellant that the purchase price of the jute would reflect the market value as on the date of the fire, equally the umpire was well within his legal bounds in arriving at a conclusion, on facts, that the sum of Rs.703.23/- per quintal would reflect the market value of the jute stock as on the date of the fire.

9. Shri Mehra, learned counsel for the Insurance Company, cited a judgment *Polymat India (P) Ltd. (supra)* in reply and relied on paragraph 22, in particular, that when the terms of contract have been reduced to writing it cannot be changed without the mutual written agreement of both the parties. On the facts of that case, it was found in paragraph 14 that where three amendments to the policy were suggested

A by the petitioner, the Insurance Company by its reply agreed to only one. This being the case, since the other two amendments were not, in fact, agreed to by the Insurance Company, the Court held that where the terms of a contract are in writing they cannot be changed without mutual agreement of parties. It is in this context that the Court held that mutuality is necessary to effect changes in an insurance policy. We have found on B the facts of the present case that the Insurance Company would be estopped by conduct because of encashing and adjusting the enhanced insurance premium, which would lead to the limit being raised to over Rs.25 lakhs. We are, therefore, of the view that this judgment does not advance the respondent's case any further.

C 10. It has been settled by a catena of judgments under the Arbitration Act, 1940, that an arbitration award is not to be lightly interfered with. So far as the grounds for challenge are concerned, no legal error apparent on the face of the award or misconduct in the sense of legal misconduct, i.e. that material evidence that is vital has been ignored, is made out on D the facts of the present case. The arbitrator's findings can be said to be a possible one on the facts of the case. We find that none of these findings are, therefore, impeachable and that, therefore, the impugned judgment deserves to be set aside. The Umpire's award is thus resuscitated by us, and payments that have to be made under the Award shall be made by the Insurance Company within a period of three months E from the date of this judgment. Mr. Manoj Swarup, learned counsel for the appellant, states that the Bank is no longer involved in this matter, in that, all dues to the Bank have since been paid off. We accept this statement and, therefore, direct the Insurance Company to pay the appellant his dues within a period of three months from today.

F 11. The judgment of the High Court is set aside. The appeal is allowed, and the Umpire's award is consequently upheld.

Ankit Gyan Appeal allowed.