



Supreme Court clarifies that a court can refer a matter to arbitration if a plea of coercion and economic duress is raised, even if the claimant has accepted an amount in full and final settlement¹

Brief Facts

The present Special Leave Petition was filed by the Appellant, impugning a decision of the Bombay High Court allowing the Respondent's application under Section 11(6) of the Arbitration and Conciliation Act, 1996 ("**Act**"). The Respondent took a Standard Fire and Special Peril Policy containing an arbitration clause from the Appellant, to cover goods lying in its godown. A fire destroyed the Respondent's stocks. A surveyor appointed by the Appellant assessed the loss suffered at INR 12.93 crores against the Respondent's claim of INR 14.88 crores. Thereafter, the Respondent accepted a discharge voucher for INR 3.5 crores as 'on account' payment pending final assessment, as the Appellant had appointed another surveyor to resurvey, who recomputed the loss at INR 7.16 crores. The Appellant sent an unconditional discharge voucher for the remaining INR 3.66 crores to the Respondent which it refused to endorse for lack of basis/explanation in arriving at the reduced figure. Eventually the Respondent relented due to grave financial distress and endorsed the discharge voucher.

The Appellant argued that no dispute existed as the Respondent had accepted the 'on account' payment of INR 3.5 crores and the amount of INR 3.66 crores with an unconditional discharge voucher.

Subsequently, the Respondent invoked arbitration and sought the appointment of an arbitrator. The Bombay High Court allowed the appointment of an arbitrator, since there was a huge difference between the claim and settlement amount, the correspondence *prima facie* indicated that the Respondent was under pressure to repay bank loans, and the final amount was sanctioned by the Appellant 27 months after the fire, causing continued loss to the Respondent. It also noted that the Respondent admittedly refused to accept the discharge voucher initially but later signed the same due to the Appellant's pressure and therefore, this cannot be considered as an unconditional discharge.

Issue

Whether a party can invoke an arbitration clause after it has accepted an amount in full and final settlement of its claim?

Judgment

The Supreme Court upheld the decision of the Bombay High Court and referred to its decision in **Union of India v. Master Construction Co.**,² which *inter alia* recognised that a party can be a victim of economic coercion that results in signing a document discharging the other party of its obligations. Therefore, it is necessary to find out, *prima facie*, whether the dispute is *bona fide* and genuine.

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The Court went on to hold that the correspondence between the parties, which spans over two years, and the Respondent's financial documents, clearly show that the Respondent was facing a financial crisis and required funds to pay off its bank loans, salaries and wages. The Court noted that the Respondent was unable to pay its income tax dues as well. The Respondent also averred that the Appellant refused to pay the Respondent unless the discharge voucher was executed exactly in the form and manner as required by the Appellant. In the eyes of the Court, this was sufficient to prove the involuntary nature of the discharge voucher.

The Court further held that in an application for appointment of an arbitrator, the Court cannot give findings on the claims of the parties, which they are free to take before the arbitral tribunal. At this stage, the Court only needs to see if an arbitrable dispute exists and if there is a genuine plea of coercion. The Court said that if it were to minutely examine the plea and judge its credibility, there would be a danger of denying a forum to the parties altogether. This is because rejection of the application would render the finding about the finality of the discharge voucher final and thus, preclude the parties' right to approach a civil court.

Analysis

As rightly noted by the Supreme Court, the concept of financial duress is an omnipresent problem and therefore, a plea of coercion needs to be looked into and cannot be brushed aside without appreciating the evidence. The Court also reiterated that it is only required to look into whether a dispute is arbitrable *prima facie* and cannot give definitive findings with respect to the dispute. Therefore, the Court has, once again, illustrated the scope of its interference under a Section 11 application.

The Court also noted and distinguished its decisions in **National Insurance Co. v. Boghara Polyfab Ltd.**³ and **New India Insurance Co. v. Genus Power Infrastructure Ltd.**⁴ where the Court held that if there was accord and satisfaction due to a 'No Dues Certificate', a reference under Section 11 was not maintainable. In the present case, it is clear that no rule of universal application was indicated and records indicating economic duress and coercion were noticed and directed to be established in arbitration proceedings.

Needless to say, through this judgment, the Court has expanded the scope of arbitration and opened doors for many claimants who are victims of rigid insurance policies and agreements with unequal bargaining power.

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1 Authored by Siddhartha Datta, Partner, and Surabhi Binani and Sejal Agarwal, Associates; *The Oriental Insurance Co. Ltd. & Anr. v. Dicitex Furnishing Ltd.*, SLP(C) No. 34186 of 2015, Supreme Court, 2019 SCC OnLine SC 1458, judgment dated 13 November 2019.

Quorum: Arun Mishra and S. Ravindra Bhat, JJ.

2 (2011) 12 SCC 349.

3 (2009) 1 SCC 267.

4 (2015) 2 SCC 424.

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