

(2013) 10 JH CK 0022

Jharkhand High Court

Case No: Civil Revision No. 173 of 1993 and Miscellaneous Case No. 20 of 1992

United India Insurance Co. Ltd.

APPELLANT

Vs

M/s. D.P.S. Computers and Allied
Product (P) Ltd. and Another

RESPONDENT

Date of Decision: Oct. 25, 2013

Hon'ble Judges: P.P. Bhatt, J

Bench: Single Bench

Advocate: M. Sohail Anwar, A. Ahmed, A. Hussain and S. Verma, for the Appellant; V. Shivnath, S. Shrivastav and K.K. Ambastha, for the Respondent

Final Decision: Disposed Off

Judgement

P.P. Bhatt, J.

The present revision application is filed u/s 115 of the Code of Civil Procedure, being aggrieved and dissatisfied by the order dated 17.06.1992 passed by the learned Sub Judge, Ranchi in Misc. Case No. 20 of 1992, whereby the application of the petitioner made under Section- 9 of the Arbitration Act, 1940 regarding cancellation/setting aside the appointment of Shri H.K. Lal, Ex-Principal, Chhotanagpur Law College, Ranchi as sole arbitrator, has been rejected and the alternative prayer to allow the petitioner further time to appoint an arbitrator of their choice and to stay the further proceeding by the opposite party before the sole Arbitrator, has also been rejected. The brief facts of the case are as under:-

(i) The opposite party no. 1 was engaged in manufacturing of computer stationery at Ranchi in the industrial area. The Canara Bank, Ranchi as a mortgagee and the opposite party no. 1 as mortgagor were jointly "Insured" by the petitioner.

(ii) The petitioner under 1/5 Policy No. 33201/01/1000/923/88 covering the period of 02.11.1988 to 01.11.1989 had insured the stock of paper, computer paper, carbon paper, chemicals finished or unfinished raw materials, etc. for a sum of Rupees 10 lakhs only. The risks or perils come under the policy were fire, R.S.O. explosion, etc.

as per Fire Policy "C" in accordance with terms and conditions of Fire Tariff.

(iii) Similarly, under 1/5 Policy No. 33201/01/7/33201/01/7/01924/88 covering the period of 02.11.1988 to 01.11.1989, the petitioner had insured the building, plant and machinery and Furniture, Fixtures and Fittings for the value of Rs. 32 lakhs 5 thousand. The risk covered were fire, R.S.D. as per policy "C". The Bihar State Financial Corporation Ltd. was the mortgagee and the opposite party as mortgagor and as such, were jointly insured.

(iv) On 05.07.1989, at about 10.30 PM, it is alleged that due to short-circuit; fire broke out in the premises of the opposite party no. 1, wherein, insured goods and articles were kept. The opposite party informed the concerned Police Station and also to the petitioner. The petitioner, immediately, thereafter appointed a surveyor to inspect the factory and assess the loss, if any suffered by the opposite party no. 1.

(v) On 8.8.1988, the representative of M/s. Mehta and Padamsey, surveyor along with the Director of the opposite party no. 1, namely, Shri Pravin Kumar, carried out their joint inspection and recorded the observation, which was duly acknowledged by the parties. After holding several rounds of discussion with the insured, the surveyor had assessed the loss with regard to machinery at Rs. 2,95,000/-. Initially the insured had raised objection to the estimate made by the surveyor. But it appears that ultimately, when a lump sum offer of Rs. 2,95,000/- was made without any deduction on account of depreciation towards the final assessment of loss in respect of machinery, the opposite party no. 1, i.e. "Insured" agreed and accepted it as full and final settlement.

(vi) Similarly, M/s. Mehta and Padamsey Surveyors (P) Ltd. and A.K. Mukherjee conducted the survey of loss suffered by the opposite party no. 1 in respect of stock. The surveyors after examining all the relevant records and after preparing a joint inventory of the damages observed, which was jointly signed by the surveyor and the insured, assessed the loss at Rs. 7,54,865/-, which was agreed and accepted by the insured as full and final settlement of the claim.

(vii) It is the case of the petitioner that towards the final payment of the above two claims as agreed between the parties, the opposite party received Rs. 7,53,315 and Rs. 2,98,750/- by cheques and acknowledged receipt of the said two cheques in full and final discharge of claims. The discharge vouchers were signed by him on 28.10.1991, as token of receipt of the above amount and also as a token of final discharge of the claims. The discharge vouchers were also jointly signed by the respective mortgagee i.e. Bihar State Financial Corporation, Ranchi and the Canara Bank, Ranchi.

(viii) According to the petitioner, after signing of the disbursement voucher and on receipt of the cheque of the amount agreed upon, the claim finally stood discharged and the insurance policy of the Opposite party No. 1 stood automatically terminated and no further claim is pending against the Insurance Company.

(ix) On 10.01.1992, Shri Bemki Prasad, Advocate, Ranchi served a notice to the petitioner demanding appointment of the arbitrator by the petitioner and informed that the opposite party No. 1 has already appointed, Mr. H.K. Lal, Ex-Principal, Chhotanagpur Law College, Ranchi as their arbitrator. It was also stated in the said notice that a dispute has arisen regarding payment of interest, damages and loss of profit, on account of delay in settling the claim. It was also stated that in case of default to appoint Arbitrator within two months; Shri H.K. Lal will act as sole arbitrator and decide the dispute.

(x) It has also come on record that during the pendency of this review the sole arbitrator Shri H.K. Lal has passed an award dated. 29-06-1992 and the execution case is also pending.

2. It appears that earlier the revision application filed by the Insurance Company against the dismissal of Misc. Case No. 20 of 1992 was dismissed by this Court vide its order dated 05.07.1993. Thereafter, being aggrieved and dissatisfied by the said order, the Insurance Company preferred Civil Appeal No. 1678 of 1994, SLP (C) No. 16399 of 1993 and the said S.L.P's was allowed by the Hon'ble Supreme Court vide its order dated 07.03.1994 and accordingly, the matter was remanded to the High Court. The relevant abstract of the order is quoted hereinbelow:-

Special Leave granted.

Heard counsel on both sides.

Two grievances were made before us by the learned counsel for the appellant-Insurance Co. The first was that the appellant-Insurance Company had paid two amounts of Rs. 2,98,750/- and Rs. 7,53,615/- under the vouchers at pages 45 & 46 of the paper book dated 14.11.1991. The printed recital on these vouchers state that the payment is in full and final discharge of claims upon them as per the said particulars i.e. the particulars given in the voucher. On this basis it was said that the dispute was finally settled by payment and there was a valid discharge and hence there was no question of invoking clause 13 of the Contract for going to arbitration. The appellant had filed the petition in the Court of the Special Sub-Judge Ranchi, u/s 9 of the Arbitration Act, 1940, to prevent the sole arbitrator from entering upon arbitration and making an award. In the alternative it was prayed that in view of section 9(b), proviso, the appellant should be given an opportunity to appoint their arbitrator, should the Court rule against them on the first point. It appears that the Court recorded the finding without any material or evidence placed before it to the following effect:

I find that the opp. Party signed on the disbursement vouchers only to receive the amount and not in full and final settlement of claims.

Counsel for the appellant rightly objects to this finding having been recorded without parties having had an opportunity to lead evidence in that behalf even if

that was taken as a disputed fact. The High Court did not examine the matter from that point of view nor make a speaking order. We are of the opinion that this was not a matter which the High Court should have disposed of without recording reasons particularly when the finding recorded above was likely to fetter even the arbitrator. We do not desire to express any opinion as to the correctness or otherwise of the contention raised but, we think, if the Court were to enter upon that disputed fact, the parties should have had an opportunity to adduce evidence. That is not to say it is necessary for the Court to go into that factual aspect but if it did so it could not have recorded the finding without the parties being given an opportunity to adduce evidence. As regards the second contention also the High Court has not expressed any opinion. In the circumstances we feel that the proper course is to set aside the order of the learned Single Judge of the High Court and remit the matter to the High Court for disposal in accordance with law bearing in the mind the aforesaid two contentions urged before us. Once again we clarify that we do not express any opinion on either of the two contentions. We would only like the High Court to apply its mind on both the contentions and record a speaking order. The Appeal will stand disposed of accordingly with no order as to costs, (emphasis supplied)

Thereafter, once again the said revision was heard and dismissed vide order dated 23rd May, 1995. The applicant/insurance company once again moved SLP before the Hon"ble Supreme Court in SLP (C) No. 22013 of 1996. The said SLP was allowed and again the matter was remanded to the High Court as per the order dated 07th May, 1996, passed by the Hon"ble Apex Court. The relevant abstracts of the order passed by the Hon"ble Supreme Court of India in SLP (C) No. 22013 of 1996 is reproduced hereinbelow:-

Leave granted.

The impugned order dated 23rd May, 1995, passed by Narain Roy, J. of the Patna High Court in Civil Revision No.-173 of 1993 purports to be in pursuance of the order dated 7th March, 1994 passed by this court in Civil Appeal No.-1618 of 1994 in this very matter between the same parties at an earlier stage. The submission of learned counsel for the appellant is that the impugned order of the learned Single Judge of the High Court is not in accordance with this Court's order dated 7th March, 1994, when this matter had come up earlier to this Court. In Civil Appeal No.-1618 in this court, one of the contentions of the appellant was that the payment made by the appellant to respondent No.-1 was in full and final settlement of the entire claim and, therefore, there was in existence no dispute between them to confer jurisdiction on the arbitration to make any award. This court in its order dated 7th March, 1994 set aside the earlier order of the High Court stating that this point was required to be decided by the High Court giving reasons for its conclusion on this question of fact, and if, necessary the parties were also be given opportunity to adduce evidence on points. A perusal of the order dated 7th March, 1994 clearly

indicates that while remitting the matter to the High Court it made plain that this was one of the points which had to be decided by the High Court after permitting the parties to adduce evidence, if any, and by giving reasons in support of the conclusion reached on this question of fact.

Admittedly, the impugned order made by the learned Single Judge of the High Court is not in accordance with requirements, clearly specified in this court's order dated 7th March, 1994. It is sufficient in for us to observe that the directions given in this court's order dated 7th March, 1994 require to be complied with strictly and the matter has to be disposed of afresh in accordance therewith.

Consequently, the appeal is allowed, the impugned order dated 23rd March, 1995 passed in Civil Revision No. 173/93 is set aside and the High Court is required to decide the Civil Revision afresh in accordance with law as indicated above. We also direct that the award made in favour of respondent No. 1 shall not be executed till the decision of the Civil Revision and it shall be subject to the final outcome thereof.

3. In view of the above order passed by the Hon"ble Apex Court, this Court vide its order dated 01.09.2003, passed the following order:-

The direction of the Apex Court referred to above is very clear whereby the parties to this case have to adduce only regarding the disputed facts which is to the effect as to whether the opposite party has signed on the disbursement voucher only to receive the amount and not in full and final settlement of the claim. There is no direction of the Apex Court to give an opportunity to adduce the evidence regarding the appointment of Shri H.K. Lal as Arbitrator in the said arbitral proceeding as well as, as to whether the petitioner had participated in the said arbitral proceeding or not. Viewed thus, I see no substance in the contention of the learned counsel for the petitioner for according him any opportunity of adducing evidence on the question of appointment of Shri H.K. Lal as Arbitrator for the opposite party as well as, as to whether the petitioner has participated in the said arbitral proceeding or not.

In view of the direction of the Apex Court and with the consent of both the parties that the evidence has to be recorded in this case in respect of the disputed fact referred to above, I direct the learned court below to record the evidence of the parties to this case and remit the evidence so recorded including documentary evidence, if any, admitted into evidence to this Court as early as possible but positively within three months from the date of receipt of this order. Both the parties are directed to appear before the learned court below on 15th of September 2003 with their witnesses for recording their evidence.

Let the lower court record of Misc. Case No. 20 of 1992 be sent to the court of Sub-Judge I, Ranchi forthwith with a copy of this order.

Let this case be listed under the heading "For Hearing" immediately soon after the receipt of the record of lower court below along with the depositions of the

witnesses recorded by him.

4. In the present case, following documentary evidence are on record:-

List of documents exhibited on behalf of petitioner

Lists of documents exhibited by the opposite parties

5. In the present case, petitioner examined altogether four witnesses.

6. Now the aforementioned evidence on record is require to be appreciated in view of observation and directive given by the Hon"ble Apex Court by formulating following two issues:-

(i) Whether the opposite party had signed the disbursement voucher only to receive the amount and not in full and final settlement of the claim and if yes then whether the opposite party was competent to invoke clause 13 of the contract of arbitration for referring the dispute to the arbitration?

(ii) If the first issue is decided against the petitioner then in that case whether the petitioner insurance company is required to be given an opportunity to appoint his own arbitrator as per proviso to section 9 of the Arbitration and Conciliation Act?

7. So far the first issue is concerned; the learned Senior Counsel, Mr. Sohail Anwar, appearing for the petitioner referred the disbursement claim vouchers (Exhibit-1 and 2) and pointed out the printed recital in the voucher "received from UNITED INDIA INSURANCE CO. LTD. the aforesaid sum in full and final discharge of claims upon them". He further submitted that the disbursement claim voucher of Rs. 298750/- was duly marked as Exhibit-1 and the signature of the Managing Director DPS Computer was exhibited as Exhibit-7 and the Branch Manager, Bihar State Financial Corporation as marked as Exhibit-8 without objection. The disbursement claim voucher of Rs. 753615/- was marked as Exhibit-2 and the signature of Managing Director of D.P.S. Computer was marked as Exhibit-7/1 and the Signature of Manager Accountant was marked as exhibit 10 without objection. The learned senior counsel for the petitioner further submitted that since the payment had been accepted in full and final discharge of its claim hence the arbitration proceeding started by the sole arbitrator Shri H.K. Lal cannot be sustained in eye of law. The learned senior counsel appearing on behalf of the petitioner also submitted that the legal notice dated 10-01-1992 was an afterthought in order to make up a case and is not bonafide.

8. The learned Senior Counsel for the petitioner further submitted that as per the order dated 01.09.2003 passed by the Hon"ble High Court of Jharkhand in the matter, the only question to be decided is as to whether the opposite party had singed the disbursement voucher only to receive the amount and not in full and

final settlement of the claim. It is further submitted that under provision of section 102 of the Indian Evidence Act, the onus of proof lies on the Opposite Party No. 1 to prove the contention raised by him.

9. The learned Senior Counsel, Mr. Sohail Anwar, appearing for the petitioner also submitted that reference should be made to sections 91 and 92 of Indian Evidence Act in the present case. Under the said provisions, oral evidence is excluded in the face of documentary evidence, and hence the documentary proof of Disbursement (Claims) vouchers (Exhibit-1 & 2), having been signed by the opposite party without making any objection, are the conclusive proof of the opposite party received the amount from the Insurance company in full and final settlement of the claim amount. By referring Clauses (a) and (b) of Exhibits 6 & 6/1 it is further submitted that the agreed Bank clause between the parties, bars the Opposite Party No.-1 completely from raising the claim that the amount received was not in full and final settlement of the claim of the Opposite Party.

10. The learned Senior counsel, Mr. Sohail Anwar, appearing for the petitioner further submitted that the co-insured namely the Canara Bank and B.S.F.C. did not make any objection nor invoked the arbitration clause. They were satisfied with the claim settled and payments made thereafter. It is further submitted that the petitioner is a Government company and dealt in the manner which usually followed for settlement of claims in the normal course of business i.e. inspection by the Government of India approved surveyors as per the norms and submitted the detailed report (Mark X for identification), thereafter settlement of claim was approved by the Head office in the normal course of business. It is further submitted that no allegation of personal mala fide or even unfair play by any officer of the petitioner is made, as such making a presumption of law that the petitioner dealt in the matter in the normal course and without mala fide, ill will or abnormality. It is further submitted that the allegation of coercion is not proved by any documentary or reliable oral evidence particularly in view of the fact that objection or protest was made after more than two months and perhaps thereafter on some legal advice, a belated claim for additional payment is alleged to have been made.

In support of his contentions, the learned counsel for the petitioner has referred to and relied upon the following judgments:-

(i) [P.K. Ramaiah and Company Vs. Chairman and Managing Director, National Thermal Power Corpn.,](#) wherein, it is held that the full and final satisfaction was acknowledged by a receipt in writing and the amount was received unconditionally. Thus there is accord and satisfaction by final settlement of the claims. The subsequent allegation of coercion is an afterthought and a devise to get over the settlement of the dispute. There is no existing arbitrable dispute for reference to the arbitration. (Para-8)

(ii) *Nathani Steels Ltd. Vs. Associated Constructions* reported in : 1995 Supp (3) SCC 324, wherein, it is held that once parties have arrived at a settlement in respect of any dispute or difference arising under a contract and that dispute or the difference is amicably settled by way of a final settlement by and between the parties, unless the settlement is set aside in proper proceedings, it cannot lie in the mouth of one of that parties to the settlement to spurn it on the ground that it was a mistake and to proceed to invoke the arbitration clause. It was not open to the respondent unilaterally to treat the settlement as non east and proceed to invoke the Arbitration clause (Para-3).

(iii) [Krishna Associates Vs. Central Coalfield Ltd. and Others](#), wherein the fact is that the petitioner therein, received all his claim on 23.01.1996. The respondents also refunded the earnest money and security money along with the final bill. The petitioner after receiving the amount in full and final settlement of the claim started writing letters that he is entitled to claim suffered by it due to the equipments and labourers sitting idle for 217 days. After considering the facts of the case, it is held the petitioner after having received the amount in full and final settlement of the claim cannot be permitted to raise additional claim and demanded reference of dispute for arbitration.

(iv) [Satya Narayan Agarwall Vs. Baidyanath Mandal and Others](#), wherein, it is held that the Court has wide powers u/s 9(b) of arbitration act, 1940 in setting aside the appointment of an arbitration (Para-8)

11. The learned Senior Counsel, Mr. V. Shivnath, appearing for the opposite party submitted that contention regarding practicing of coercion and undue influence has very well been proved by producing oral as well as documentary evidences. He has referred to the inspection report dated 10.7.89 submitted by the committee constituted by RIADA (Exhibit-A) and submitted that the committee in its report assessed the damage of Rs. 2496000/- for printing machine and Rs. 870000/- for damaged raw materials.

12. The learned Senior Counsel, Mr. V. Shivnath, appearing for the opposite party further submitted that whatever payment has been made was only part payment and cannot be treated as discharge of whole claim of the opposite party. The learned Senior Counsel of the opposite party further submitted that the signature under the disbursement claim voucher was made under coercion and undue influence hence the same cannot be said to be binding upon the opposite party.

13. The learned Senior Counsel for the opposite party also submitted that the contents of exhibit 1 & 2 have not been proved by the petitioner as required under the law and therefore the submission of the petitioner that the payment are towards full and final settlement is not tenable. He further submitted that even if the document is fully proved and become admissible the same could not ipso facto prove the contents of the document. To support his above submission the learned

Senior Counsel referred the judgment reported in [Narbada Devi Gupta Vs. Birendra Kumar Jaiswal and Another](#),

14. The learned senior counsel of the opposite party, in reply to the submission made on behalf of the petitioner that the oral evidence cannot be looked into in view of Sec.- 91 and 92, submitted that Sec.- 92 excludes the oral evidence only when the document is drawn under any statute or required by law to be in written form. He further submitted that the petitioner failed to prove that under which law the Exhibit 1 and 2 is prepared hence the oral evidence in this regard cannot be excluded.

15. The learned Senior Counsel for the opposite party also placed reliance on the evidence of O.P. Witness No. 1, O.P. Witness No.-2 and O.P. Witness No.-3 and the O.P. Witness No.-4 wherein they stated that the officers of the Insurance Company had told them that if they will protest then nothing will be paid.

16. The learned Senior Counsel for the Opposite party further submitted that the petitioner failed to prove that under which provision the exhibit 1 & 2 were prepared. The survey report which is marked as Exhibit-X cannot be the basis of preparation of the Exhibit 1 & 2.

17. The learned counsel for the opposite party also submitted that the burden of loan and its interest was increasing day by day due to delay hence the respondent had no option but to accept the payment. The petitioner taken undue advantage of the situation and pressurized the opposite party to accept the payment on the printed recital and thus the same would be void and not binding upon the opposite party.

18. The learned Senior Counsel for the opposite party cited decision of the Hon"ble Apex Court delivered in the case of [National Insurance Co. Ltd. Vs. Boghara Polyfab Pvt. Ltd.](#), This judgment appears to be relevant for deciding the present case.

Para 26., 47 and 48 reads as follows:-

26. When we refer to a discharge of contract by an agreement signed by both the parties or by execution of a full and final discharge voucher/receipt by one of the parties, we refer to an agreement or discharge voucher which is validly and voluntarily executed. If the party which has executed the discharge agreement or discharge voucher, alleges that the execution of such discharge agreement or voucher was on account of fraud/coercion/undue influence practised by the other party and is able to establish the same, then obviously the discharge of the contract by such agreement/voucher is rendered void and cannot be acted upon. Consequently, any dispute raised by such party would be arbitrable.

47. In United India Insurance v. Ajmer Singh Cotton & General Mills-this Court held:

4. The mere execution of the discharge voucher would not always deprive the consumer from preferring claim with respect to the deficiency in service or consequential benefits arising out of the amount paid in default of the service rendered. Despite execution of the discharge voucher, the consumer may be in a position to satisfy the tribunal or the Commission under the Act that such discharge voucher or receipt had been obtained from him under the circumstances which can be termed as fraudulent or exercise of undue influence or by misrepresentation or the like. If in a given case the consumer satisfies the authority under the Act that the discharge voucher was obtained by fraud, misrepresentation, undue influence or the like, coercive bargaining compelled by circumstances, the authority before whom the complaint is made would be justified in granting appropriate relief...

5. In the instant cases the discharge vouchers were admittedly executed voluntarily and the complainants had not alleged their execution under fraud, undue influence, misrepresentation or the like. In the absence of pleadings and evidence the State Commission was justified in dismissing their complaints.

The above principle was followed and reiterated in *National Insurance Co. Ltd. v. Nipha Exports (P) Ltd.* and *National Insurance Co. Ltd. v. Sehtia Shoes*.

48. It will also not be out of place to refer to what this Court had said in *Central Inland Water Transport Corpn. Ltd. v. Brojo Nath Ganguly* in a different context (not intended to apply to commercial transactions)

"89....This principle is that the courts will not enforce and will, when called upon to do so, strike down an unfair and unreasonable contract, or an unfair and unreasonable clause in a contract, entered into between parties who are not equal in bargaining power. It is difficult to give an exhaustive list of all bargains of this type. No court can visualise the different situations which can arise in the affairs of men. One can only attempt to give some illustrations. For instance, the above principle will apply where the inequality of bargaining power is the result of the great disparity in the economic strength of the contracting parties. It will apply where the inequality is the result of circumstances, whether of the creation of the parties or not. It will apply to situations in which the weaker party is in a position in which it can obtain goods or services or means of livelihood only upon the terms imposed by the stronger party or go without them. It will also apply where a man has no choice, or rather no meaningful choice, but to give his assent to a contract or to sign on the dotted line in a prescribed or standard form or to accept a set of rules as part of the contract, however unfair, unreasonable and unconscionable a clause in that contract or form or rules may be. This principle, however, will not apply where the bargaining power of the contracting parties is equal or almost equal. This principle may not apply where both parties are businessmen and the contract is a commercial transaction. In today's complex world of giant corporations with their vast infrastructural organisations and with the State through its instrumentalities and agencies entering into almost every branch of industry and commerce, there

can be myriad situations which result in unfair and unreasonable bargains between parties possessing wholly disproportionate and unequal bargaining power. These cases can neither be enumerated nor fully illustrated. The court must judge each case on its own facts and circumstances.

19. In view of ratio laid down by the Hon"ble Apex Court in the aforesaid judgment it appears that if the opposite party establishes by sufficient evidences that the discharge voucher or agreement was on account of fraud/coercion/undue influence practiced by the other party then obviously the discharge of the contract by such agreement/voucher is rendered void and cannot be acted upon. Consequently, any dispute raised by such party would be arbitrable.

20. The argument of the petitioner that as per section 91 & 92 of the Evidence Act, the opposite party shall be excluded from giving any oral evidences to disprove the content of Exhibit 1 & 2 cannot be accepted for the reason that the Hon"ble Apex court in the case of National Insurance Co. Ltd. vs. Bhogra poly tabs (P) Ltd. (supra.) has clearly held the opposite party may lead evidence with regard to allegation of fraud/coercion/undue influence even though the discharge voucher is signed in full and final settlement of the claim. It is also held that if he sufficiently proved the allegation, the court may strike down the contract/agreement.

21. Now the position is very clear from the guidelines given by the Hon"ble Apex Court that even though the receipt/voucher is signed as full and final discharge of claim, but if it is proved that the payment was made under coercion or undue influence as claimed by the opposite party, the same shall not be binding upon the opposite party and the dispute raised would be arbitrable.

22. Thus to find out the truthiness of the transaction, the documentary as well as oral evidence produced by both the parties is required to be appreciated.

23. It appears that the petitioner produced the disbursement claim voucher and the same has been marked as Exhibit-1 and 2. It also appears from perusal of the (Exhibit 1 & 2) that there appears printed recital that the payment has been received in full and final discharge of the claim. Exhibit-1 appears to be signed by the Managing Director, D.P.S. Computer and The Branch Manager, Bihar State Financial Corporation and the Signature was marked as Exhibit-7 and 8. The Exhibit-2 appears to be signed by Managing Director, D.P.S. Computer and The Manager Accountant, Canara Bank and the signature was marked as Exhibit-7/1 and 10. All the exhibits were made without objection. From the perusal of the Exhibit-1 and 2 it appears that the payment has been received in a printed recital that the payment has been received in full and final settlement of the claim. However, in the oral evidence, the opposite party witness nos. 1, 2, 3 and 4 contradicted the same. From perusal of the oral evidence of opposite party witness no. 1 it appears that in Para-8 he stated that on information he alongwith his team went to the place of occurrence and found that the machinery, plant, raw materials and stock were completely damaged and

the building was also cracked. In Para-9 he stated that at the time of accident about 27-28 lacs was due upon the opposite party. In Para-10 he stated that the payment was not made in full and final settlement but it has been made as part payment. In Para-16 he identified his signature in the report of the committee of RIADA and the same has been marked as Exhibit-A. In Para-27 on cross examination he stated that the insurance co. told him that if the B.S.F.C. will protest then noting will be paid.

Opposite Party witness No.-2 in his evidence stated in Para-8 that due to fire the damage was caused to the tune of Rs. 35 lacs to the Opposite Party No. 1. In para-13 he stated that on protest of Mr. Praveen Kumar, the Insurance Company told him that it is a part payment and also told that nothing will be paid if the signature will not be put on the condition mentioned in the voucher. In Para-14 he stated that Praveen Kumar made his signature under pressure.

Opposite Party witness No.-3 in his evidence in Para-10 proved the inspection report prepared by the committee and the same has been marked as Exhibit-B. He stated in Para-18 that the machine was completely damaged and the same could not be repaired although the same has not been written in the report.

Opposite Party witness No.-4 in Para-10 stated that opposite party no. 1 claimed for Rs. 25 lacs and Rs. 10 lacs from the insurance company under both the policies. In Para-11 he stated that the payment has not been made in full and final settlement. In Para-16 he stated that the payment is made as part payment and the rest amount shall be paid later. In Para-17 he stated that the branch manager told him that if he will not sign then noting will be paid. In Para-18 he stated that the signature has been obtained under pressure. In Para-19 he stated that at the time of accident, about 33 lacs was due of canara bank and the B.S.F.C. and on 28-10-1991 the said amount raised up to 49 lacs. In Para-66 of his cross examination he stated that he has not been allowed to write part payment in the disbursement claim voucher.

24. On perusal of the oral evidence of all the witnesses of opposite party it appears that they claimed that the signature has been obtained by practicing fraud that the amount which is going to be paid is part payment and the rest amount shall be paid later. It also appears that all the witness stated that the officer of the petitioner insurance company told them that if they will protest than nothing will be paid and thus the signature was obtained under pressure coercion and undue influence. The vital witness who is the opposite party witness no. 4 stated that at the time of accident the loan amount was of Rs. 33 lacs and on 28-10-1991 the same raised up to 49 lacs. In cross examination at Para 66 he stated that he came to know about the payment of cheque after 20-25 days of the signature on the disbursement voucher as the cheque was not given to him and the same was sent to the B.S.F.C. and Canara Bank.

25. So far the damage is concerned, it appears that both the parties have produced document on the basis of which they assessed the loss. The petitioner produced the

surveyor report conducted by its surveyor which is marked as Mark-X wherein the surveyor assessed the loss of Rs. 2,95,000/- for damage caused to machinery and Rs. 7,54,865/- for damage of stock and Rs. 5000/- for damage caused to building. The report of the surveyor was proved by The Divisional Manager, United India Insurance Co. Ltd. Shri Rajesh Kumar but the Surveyor was not produced for examination. On the other hand the opposite party produced a report prepared by the committee constituted by the RIADA which is marked as Exhibit-B and the committee assessed the loss to the machinery of Rs. 2496000/- and loss to the damaged raw material Rs. 870000/-. The Signature of the Divisional Manager, B.S.F.C. on the report of the committee has been marked as Exhibit-A without objection.

26. The another important thing which requires consideration by this court is the huge difference in the assessment of loss both the surveyor and the committee constituted by the RIADA. The committee assessed that the machinery was completely damaged whereas the surveyor in his report opined that some of the part of the machinery could be repaired. The surveyor in his report in column no. 34 mentioned that one Senior Technical Engineer from Rotary Mfg. Co. Bombay inspected the machine and declared the machine to be a total loss and offered the insured the quotation for replacement of all items of machinery valued over Rs. 3400000/-. However the same has been objected by the surveyor.

27. From the close analysis of the fact and evidence it appears that the opposite party very well proved that the signature was obtained under coercion that if the opposite party will protest then nothing will be paid. It is also proved that the burden of loan was increasing and therefore the opposite party had no option but to receive the amount on the condition (printed recital) of the petitioner. On the other hand the petitioner failed to prove that the payment whatever has been made is just and reasonable amount because the petitioner did not examine the surveyor who might describe about the damage. The transaction, on the face of it, also did not appear to be genuine because there was huge difference in the claim and the payment. This court is of the view that the instance given by the Hon"ble Apex court in Para 48 the case of National Insurance Co. Ltd. vs. Bhogra poly tabs (P) Ltd. (supra.) will apply in this case because in the present case also from the circumstances it appears that the respondent had no choice but to give his assent to the prescribed or standard disbursement voucher as the parties were not in equal bargaining power. In the opinion of the expert i.e. Senior Technical Engineer from Rotary Mfg. Co. Bombay and also the report of the committee loss was assessed about 32-35 lacs whereas payment has been made only of Rs. 1000000/-.

28. This court is of the opinion that the opposite party no. 1 has sufficiently explained the reason for not making the protest early in Para 66 of his cross examination wherein he stated that he came to know about the payment of cheque after 20-25 days of the signature. His submission also finds support by exhibit 4 and

4/1, whereby the cheque was sent to the B.S.F.C. and Canara Bank, as the copy of the same were not forwarded to the opposite party no. 1 for information.

29. For the reason assigned aforesaid first issue is decide on the term that the opposite party had signed the disbursement voucher only to receive the amount and not in full and final settlement of the claim. Hence the opposite party was very well competent to invoke clause 13 for referring the dispute to the arbitration.

30. So far the second issue it appears from perusal of the evidence of the petitioner witnesses that it has been accepted that a notice for appointment of arbitrator was received and the same notice has been replied. Thereafter the opposite party informed the petitioner that Shri H.K. Lal will be the sole arbitrator. It is also appears that in the arbitration proceeding Shir N.K. Rai, Advocate appeared on behalf of the petitioner but did not participated in the proceeding. The opposite party has no were in the evidence proved that the petitioner actively participated in the proceeding before the sole arbitrator and adduced any evidence in his favour and thereby submitted its case.

31. It appears that the petitioner remained under assumption that arbitration proceeding initiated by the opposite party is not in accordance with law and maintainable hence it did not actively participated in the said proceeding.

32. Since this court already decided that the disbursement voucher was singed only to receive the amount but not in full and final settlement of the claim hence with a view to observe the principle of natural justice the petitioner is require to be given sufficient opportunity to participate in the arbitration proceeding.

33. Under the circumstances the order passed by the learned Sub-Judge Ranchi dt. 17-06-1992 and also the award passed by the arbitrator Shir H.K. Lal dated 29-06-1992 is set aside. All the proceeding started in consequence to the award shall have no effect.

34. Since the case is very old, the parties are directed to appoint their own arbitrator within one month from the date of this order and the arbitrator appointed shall in accordance with the provision of law decide the matter within six months thereafter after giving full opportunity to the parties to be heard. The parties are directed to co-operate in the proceeding before the arbitrator. It is also worth to mention here that whatever observation has been made by this court are prima facie in nature and the arbitrator shall in no way be prejudiced in any manner by any of the observations made by this court and shall decide the case without being influenced by the order of this court.

35. Looking to the nature of dispute, the parties will be at liberty to approach Jharkhand State Legal Services Authority for referring and placing the matter/case before the Lok Adalat or National Lok Adalat to be held on 23rd Nov. 2013 for exploring the possibility of amicable settlement, if any, so that long pending dispute

between the parties can be resolved amicably through the medium of Lok Adalat, which is one of the effective method of ADR for resolving dispute having element of finality as the settlement, if any, arrived between the parties at Lok Adalat shall be final and binding to the parties and there shall be no appeal in view of the Legal Services Authority Act. Present review is disposed of on the terms and condition mentioned hereinabove.