

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).34847/2009

(From the judgement and order dated 19/05/2009 in
of The HIGH COURT OF RAJASTHAN AT JODHPUR)

AA No. 97/2007

M/S VIKAS MINES P.LTD.

Petitioner(s)

VERSUS

UNITED INDIA INSURANCE CO.LTD.

Respondent(s)

(With prayer for interim relief and office report)

Date: 09/07/2010 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE R.V. RAVEENDRAN
HON'BLE MR. JUSTICE H.L. GOKHALE

For Petitioner(s) Mr. H.D. Thanvi, Adv.
Ms. Preeti Thanvi, Adv.
Mr. Sarad Kumar Singhania,Adv.

For Respondent(s) Mr. Ravi Bakshi, Adv.
Mr. Yash Pal Dhingra,Adv.

UPON hearing counsel the Court made the following
O R D E R

Leave granted. Heard the counsel.

In terms of the signed order, we allow this
appeal, set aside the order of the High Court and request
the High Court to appoint an arbitrator for adjudication
of the disputes between the parties.

(Ravi P. Verma) (M.S. Negi)
Court Master Court Master
[Signed order is placed on the file]
IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 5222 OF 2010
[Arising out of SLP(C) No.34847/2009]

M/S. VIKAS MINES PVT. LTD.

.....APPELLANT

Versus

UNITED INDIA INSURANCE CO.LTD.

.....RESPONDENT

O R D E R

Leave granted. Heard the counsel.

2. The appellant is the 'insured' and the respondent is the 'insurer' under a policy of insurance issued by the respondent in regard to an excavator owned by the appellant. The excavator had been insured for Rs.55,00,000/- (rupees fifty five lakhs only). The appellant raised a claim on the insurer in regard to the damage to the insured excavator claiming that there was a 'total loss'. The respondent arranged for assessment of damage and the assessor estimated the loss as Rs. 45 to 47 lakhs. By letter dated 30.6.2003, the appellant informed the insurer that it was not agreeable for the proposal of the insurer to pay any amount less than Rupees Fifty Five lakhs with interest and any payment that will be made by the insurer will be accepted as part payment and not in full and final settlement. Learned counsel for the insurer submits that the letter dated 30.6.2003 was received by the insurer on 7.7.2003.

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3. The insurer sent a sum of Rs.37,20,000/- (rupees thirty seven lakhs twenty thousands only) under cover of letter dated 3.7.2003 stating that the said payment was in full and final settlement. The said cheque was received and accepted by the appellant but the appellant did not give any acknowledgement or receipt confirming that it was receiving the amount in full and final settlement. Nor did the appellant sent any communication confirming that all his claims were settled or that it will give up the right to seek arbitration. There was some further correspondence and the insurer did not agree for reference to arbitration. The appellant, therefore, filed a petition under Section 11 of the Arbitration and Conciliation Act, 1996. The learned designate of the Chief Justice, Rajasthan High Court, by impugned order dated 19.5.2009, dismissed the said

application on the ground that the sum of Rs.37,20,000/- had been paid in full and final settlement. The said order is challenged in this appeal by special leave.

4. The principles in regard to payments in full and final settlement vis-a-vis requests of arbitration has been considered by this Court in National Insurance Co. Ltd. Vs.3.

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Boghara Polyfab Pvt. Ltd. (2009) 1 SCC 267.

This Court

held:

"The Chief Justice/his designate exercising jurisdiction under section 11 of the Act will consider whether there was really accord and satisfaction or discharge of contract by performance. If the answer is in the affirmative, he will refuse to refer the dispute to arbitration. On the other hand, if the Chief Justice/his designate comes to the conclusion that the full and final settlement receipt or discharge voucher was the result of any fraud/coercion/undue influence, he will have to hold that there was no discharge of the contract and consequently refer the dispute to arbitration. Alternatively, where the Chief Justice/his designate is satisfied prima facie that the discharge voucher was not issued voluntarily and the claimant was under some compulsion or coercion, and that the matter deserved detailed consideration, he may instead of deciding the issue himself, refer the matter to the arbitral tribunal with a specific direction that the said question should be decided in the first instance."

This Court also laid down the principles as to when a receipt in full and final settlement will discharge the contract by accord and satisfaction. If the said principles4.

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are applied to the facts of this case, it is clear that there is no full and final discharge in regard to the claim, as the appellant did not give any discharge, nor agree to receive the amount paid in full and final discharge. When the appellant had made it clear that any payment less than what was claimed by it, will be accepted

only as a part payment, merely by sending a part of the claim amount with a covering letter stating that it is in full and final settlement will not put an end to the claim nor will it deny the right of the appellant to seek arbitration.

5. We, therefore, allow this appeal, set aside the order of the High Court and request the High Court to appoint an arbitrator for adjudication of the disputes between the parties.

.....J.
(R.V. RAVEENDRAN)

New Delhi;
July 09, 2010.

.....J.
(H.L. GOKHALE)