Supreme Court of India
Central Bank Of India Ltd. vs Hartford Fire Insurance Co. Ltd. on 11 September, 1964
Equivalent citations: AIR 1965 SC 1288, 1965 35 CompCas 378 SC
Author: Sarkar
Bench: A Sarkar, R Dayal, J Mudholkar
JUDGMENT Sarkar, J.

1. By a policy dated May 1, 1947, the respondent insured the appellant as the mortgagee and a firm of the name of Bombay Import and Export Agency as the owners against loss suffered by the destruction of or damage to certain goods by fire between March 20, 1947, and March 20, 1948. For the period covered by the policy prior to its date presumably there existed provisional policies but with these, if any, we shall not be concerned. The insurance was subject to various conditions and stipulations printed in the policy of which Clause 10 was in the following terms :

" 10. This insurance may be terminated at any time at the request of the insured, in which case the company will retain the customary short period rate for the time the policy has been in force. This insurance may also at any time be terminated at the option of the company, on notice to that effect being given to the insured, in which case the company shall be liable to repay on demand a rateable proportion on the premium for the unexpired term from the date of the cancelment. "

2. The word " company " in this clause refers to the insurer, the respondent. Originally the policy did not afford any insurance against loss caused by persons taking part in riot or civil commotion but by subsequent agreements made from time to time it was extended to cover these riot risks. One of such agreements covered the riot risks occurring between July 18, 1947, and August 17, 1947.

3. It is not in dispute that from early 1947, the whole of Punjab including the town of Amritsar was disturbed by the serious riots and civil commotion which preceded the partition of India. On or about July 23, 1947, the godown at Bakarwana Bazar in Amritsar, in which the insured goods were stored, was looted and some of the goods were removed. Information of this loss was given by the appellant to the respondent and thereafter, on August 7, 1947, the respondent wrote to the owners of the goods as follows :

"... please remove the goods . . . lying in godown at Bazar Bakarwana, Amritsar, to a safe locality. These stocks may be removed to any safe place in Amritsar before the 10th August, 1947, and on receipt of your information we will issue our necessary endorsement but under any circumstances we would not be on risk after the 10th instant by 4 p. m. which please note."

4. A copy of this letter was on the same day sent to the appellant along with an endorsement reading, " please take necessary action and inform accordingly, otherwise we would not be on risk after the 10th (tenth) August, 1947, by 4 p.m." The letter also stated that in case the goods were removed to a safe locality, the respondent would be prepared to sanction the removal without which sanction the benefit of the policy would on such removal have been forfeited under Clause 8 of the policy. In fact, however the goods were not removed from the Bakarwana Bazar godown and were lost as the godown was burnt down by rioters on August 15, 1947.

5. The appellant filed a suit against the respondent on the policy making a claim in respect of the loss suffered by it by the looting of the goods on July 23, 1947, and the destruction of the goods by fire through the action of rioters on August 15, 1947. The respondent denied liability altogether, contending that there had been no looting of the goods by rioters but there was an ordinary theft which was not covered by the policy and that as it had terminated the policy with effect from August 10, 1947, by its letter of August 7, 1947, it was not liable for any subsequent loss of the goods by fire caused by rioters. The claim in respect of the looted goods was decreed by the trial court and the decree was upheld by the High Court of Punjab on appeal and is no longer in dispute. The trial court also decreed the claim in respect of the loss by fire but that decree was set aside by the High Court. The appellant has now appealed from the judgment of the High Court.

6. The main question in this appeal is whether the policy had been terminated. The respondent contends that it had power under Clause 10 of the policy to terminate the contract at will and it had duly exercised that power by the letter of August 7, 1947. The appellant denies both these contentions. It states that a term must be implied in Clause 10 that the termination could only be for a reasonable cause which the termination in the present case was not. It then said that if the rules of interpretation do not permit of the term suggested being implied, Clause 10 must be treated as void and ignored.

7. The contention of the appellant is based on the interpretation of Clause 10. Now it is commonplace that it is the court's duty to give effect to the bargain of the parties according to their intention and when that bargain is in writing the intention is to be looked for in the words used unless they are such that one may suspect that they do not convey the intention correctly. If those words are clear, there is very little that the court has to do. The court must give effect to the plain meaning of the words, however it may dislike the result. We have earlier set out Clause 10 and we find no difficulty or doubt as to the meaning of the language there used.

Indeed the language is the plainest. The clause says " This insurance may be terminated at any time at the request of the insured ", and " the insurance may also at any time be terminated at the instance of the company. " These are all the words of the clause that matter for the present purpose. The words " at any time " can only mean " at any time the party concerned likes. " Shortly put, Clause 10 says "either party may at its will terminate the policy. " No other meaning of the words used is conceivable. None the less learned counsel for the appellant referred us to various authorities .which, according to him, showed that it was a fit case for implying a term in the clause and to these we now turn. We were first referred to Halsbury's Laws of England, 3rd edition, volume II, paragraph 640, page 391, where it is said that " In order to give effect to a contract according to what appears to have been the intention of the parties, the court may imply a term or condition or a qualification of a clause which is not inconsistent with the general tenor of the document." It was said that it was the intention of the parties that the policy would be liable to termination only for a reasonable cause and that this appeared when the contract, as it had to be, was, " read in the light of the material circumstances of the parties in view of which the contract is made," The quotation is from the judgment of Lord Wright in Luxor v. Cooper, [1941] A.C. 108, 130. and as to the correctness of the proposition contained in it there is no question. The learned counsel then said that here the insurance was effected and undertaken at a time when riot was raging and, therefore,

the parties must have intended that the policy could be terminated only for a reasonable cause. We are unable to agree. The prevailing riots do not indicate what the intention of the parties, that is, of both of them, was. There is no question of reading the policy in the riotous conditions for they throw no certain light. Further, the riot risk cover agreement expressly provided that " all the conditions of the policy shall apply " to it and this agreement had been made in the light of the prevailing riot conditions. Obviously, the parties intended that Clause 10 of the conditions of the policy would be applicable to the riot risk cover also. We also think that plain and categorical language cannot be radically changed by relying upon the surrounding circumstances ; a right to terminate at will cannot, by reason of the circumstances, be read as a right to terminate for a reasonable cause.

8. The rule read from Halsbury does not assist the appellant either, for it does not permit a court to speculate. The court must be able to say with certainty what the intention was, in order that it may add something to the language used by the parties. We venture to think that it would be difficult to imagine what would be a reasonable cause for terminating the policy.

9. Obviously the parties would be poles apart on that question and could not, therefore, have both intended, as suggested, that the policy would be terminable for a reasonable cause only. There is nothing here to show that the parties did not intend what they said.

10. Another passage from the same paragraph in Halsbury's Laws of England was read which stated that if the intention of the parties could be ascertained from the written instrument, the court would give effect to that intention notwithstanding ambiguities in the words used or defects in the operation of the instrument. This statement of the law is based on the principle that a deed shall never be void where the words may be applied to any intent to make it good. This rule also affords no assistance to the appellant for here, as we have already stated, there is no ambiguity in the words used or defect in the operation of the instrument. It is also plain to us that the policy is by no means void.

11. Next we were referred to Halsbury's Laws of England, volume 22, and the proposition from that book on which reliance was placed appears in paragraph 424 at page 225 where it has been said, " It has been suggested that a stipulation in a policy may be so capricious or unreasonable as to be unenforceable as a fundamental term of a contract." The learned counsel said that we should, therefore, treat Clause 10 as unenforceable. This principle of law, whatever its merits, has no application to the present case for it was stated in connection with the ascertainment of a fundamental condition of the policy, that is, a condition a breach of which entitled the insurer to repudiate his liability under it. We have nothing to do with the interpretation of such a clause and the principle would have no application to the present case. Clause 10 sanctions no repudiation of liability already incurred but only terminates a contract as to the future; it prevents liability arising in future which is not a fundamental term of the variety to which the rule was applied in the passage read from Halsbury.

12. We are besides of opinion that there is nothing capricious or unreasonable in Clause 10. The insurer was free at the beginning to decide whether he would agree to indemnify the assured against the risk or not, and if he decided to indemnify, for how long he would indemnify. If the assured

cannot compel an insurer to take up a risk, he cannot complain of unreasonableness, caprice or even abuse of power if the insurer is prepared to take it up only on a condition that he would be free at any time to change his mind as to the future. Furthermore, Clause 10 gives the assured the same liberty to terminate the policy. Besides a term in the form contained in Clause 10 is a common term in policies and must, therefore, have been accepted as reasonable: see MacGillivray on Insurance Law, 5th edition, volume 2, page 963. The Privy Council in Sun Fire Office v. Hart, (1889) 14 App. Cas. 98. held of a clause similar to Clause 10 in the present case that it gave an insurer the right to terminate the contract at will and that there was nothing absurd in such a term. Learned counsel for the appellant sought to distinguish this case from the present on the ground that there previous fires had occurred and anonymous letters had been written threatening continuance of the incendiarism and this made it reasonable for the insurer to terminate the policy. This attempted distinction however is wholly beside the point. The question before the Judicial Committee was not whether a particular termination of a policy was reasonable but of the interpretation of a clause in it. For that question only we have referred to that decision and on it we find that the view taken by us receives full support from the decision of the Judicial Committee. In that respect the two cases are indistinguishable.

13. Then it was said that what is called the contra proferentem rule should be applied and as the policy was in a standard form contract prepared by the insurer alone, it should be interpreted in a way that would be favourable to the assured. It is well known however that the rule has no application where there is no ambiguity in the words in the standard form contract: London and Lancashire Fire Insurance Company v. Bolands, [1924] A.C. 836, 848.. We have already stated that the words in Clause 10 give rise to no doubt as to their meaning. There is, therefore, no scope for applying that rule here.

14. Learned counsel next contended that in a deed where two clauses are repugnant to each other the earlier prevails and in support of that he referred us to Forbes v. Git, [1922] 1 A.C. 256, 259.. There is no doubt about this rule but it applies only when the latter clause wholly destroys the earlier. Here that is not the position. The earlier clause, on which learned counsel relies for this purpose, is a clause fixing the term of the policy for one year. There is nothing repugnant to that in Clause 10. Both can stand together. Read together they produce the result that if nothing was done, then the policy would continue for a year, but either party was at liberty to bring it to an earlier termination. As the policy was expressly made subject to Clause 10, that clause was in effect a proviso to the term fixing the tenure of the policy at one year. It would be absurd to apply the rule of repugnancy to such a proviso. We might add that this argument, if correct, would lead to the conclusion that Hart's case, (1889) 14 App. Cas. 98. was wrongly decided, but counsel for the appellant did not so contend. This argument was not even raised in Hart's case.

15. Then we were referred to Maddala Thathiah v. Union of India, I.L.R. [1957] Mad. 315, 321. in which a railway administration had accepted a tender submitted by a trader for the supply of jaggery by instalments. The contract so formed provided that the railway would place formal orders for the supply under the accepted tender after certain conditions had been fulfilled by the trader and that the railway reserved its right to cancel the contract at any stage during its tenure. The railway later placed an order with the trader for the supply of the entire quantity in four instalments. The first

instalment was supplied and thereafter, the railway cancelled the contract under the provision earlier mentioned. The trader sued for damages for breach of contract and it was held that the railway was liable as the clause was void and did not give it the right to cancel the contract. The decision was put on the basis that where liability has already been incurred under a contract the law does not permit one of the parties to say that there is no contract subsisting. This case, even if right, has no application to the facts now before us. Clause 10 does not purport to annul a liability already incurred ; its only effect is to prevent liability in future accruing. It gives a right to put an end to the contract only as to the future, and affects no liability incurred. From the judgment of the Madras High Court an appeal was preferred to this court and it held that the clause giving power to cancel the contract applied only when after the acceptance the railway had not placed any formal order for the supply of the goods at which stage no legal contract can be said to have been made and so the cancellation in question was not covered by that clause. This court, however, expressly reserved its opinion on the contention urged for the railway that the stipulation in the tender amounted to a term in the contract itself for the discharge of the contract and, therefore, was valid : see Union of India v. Maddala Thathiah, Civil Appeal No. 53 of 1961 decided on May 9, 1963 (unreported).. It would therefore appear that the court expressly left open the question whether the judgment of the Madras High Court was right. We may at this stage also notice Chotelal Lallubhai v. Champsay Umersey, A.I.R. 1923 Bom. 75., where it was held that a contract for sale of goods which provided that " to cancel or not to cancel the sale for any reason depended on the seller ", should be interpreted as if implying in that clause a term that the cancellation could only be for a good reason. That was because it was felt that unless it was so read the contract would be void. This case has to be read subject to what this court said in Union of India v. Maddala Thalhiah. It does not in any case help as the present contract, as we have earlier stated, does not become void unless a term is implied,

16. It remains now to refer to two cases, the precise effect of which on the case in hand was not clear to us. The first was Nelson v. James Nelson, [1914] 2 K.B.770.. There the directors of a company had appointed a managing director on the term that he would hold office as long as he should remain a director but subsequently dismissed him from his office while he was still continuing as director. It was held that the dismissal was wrongful and it made no difference that the articles gave the directors the power to appoint a managing director for such period as they thought fit and to revoke the appointment. The real decision was that the agreement appointing the managing director was not ultra vires the power of the directors under the aforesaid articles, and, as in the letter of appointment, dismissal at will had not been provided for, the dismissal in the case was wrongful. The question there decided has no relevance to the present case. The contract there considered did not provide for the termination of the employment except on the one condition mentioned, that is, ceasing to be director ; here the contract provides for a termination at will. The other case is Shindler v. Northern Raincoat Co., 1960] 1 W.L.R. 1038 ; [1961] 31 Comp. Cas. 22., which referred at page 1043 to Stirling v. Maitland, (1865) 5 B. & S, 840, for the proposition that if a party enters into an arrangement which can only take effect by the continuance of a certain existing state of circumstances, there is an implied agreement on his part that he shall do nothing on his own motion to put an end to that state of circumstances under which alone the arrangement can be operative. The principle is of course very well known. But there is no scope for it to operate on the facts of the case in hand. It cannot operate where a proper reading of the contract is, as it is in the present case,

that the contract will exist only till such time as either party has not chosen to bring it to an end. It was said that the principle applied because the respondent in its letter of August 7, 1947, imposed a condition of the shifting of the goods by the defendant company which condition if carried out would under the terms of the policy have brought it to an end. This term provided that the goods could not be shifted from the place where they were stated in the policy to be insured without the previous consent of the insurer. Assuming that the principle is applicable to the present case, as to which grave doubts may legitimately be entertained, it is in any case wrong to say that the condition if carried out would have brought the policy to an end for along with the condition about the shifting of the goods from the godown where they were stated in the policy to be insured, the respondent has offered to make an endorsement agreeing to the shifting which would have prevented the policy from lapsing. The insurer was doing no violence to the principle read from Stirling v. Maitland.

17. The next argument was that Clause 10 was bad as it gave more option to the insurer than to the assured. We express no opinion as to whether the clause would be bad if it did so, for we are clear in our minds that it did not. The argument that it did was based on the use of the word " request " in the case of a termination by the assured and " option " in the case of a termination by the insurer. It was said that the word "request" implied that the request had to be accepted by the insurer before there was a termination whereas the word " option " indicated that the termination would be by an act of the insurer alone. We are unable to agree that such is the meaning of the word " request ". In our view, the clause means that the intimation by the assured to terminate the policy would bring it to an end without more, for the clause does not say that the termination shall take effect only when the assured's request has been accepted by the insurer.

18. Lastly, it was said that the termination of the contract by the letter of August 7, 1947, was a conditional termination and as the condition was impossible of performance in the circumstances prevailing, there was in fact no termination. That condition, it was said, was the removal of the goods from Bakarwana Bazar, Amritsar, to a safer locality. We have nothing to show that the condition, if it was such, was impossible of performance. However that may be, there is no question of any condition. The letter clearly terminated the policy. It gave an option to the assured to keep the policy on its feet if it did something. Further we do not think that it can be said that if a party has a right at will to terminate a contract, the imposition by him of a condition, however hard, on failure to fulfil which the termination was to take effect, would make the termination illegal, for the party affected was not entitled even to the benefit of a difficult condition. The agreement was that the power to terminate could be exercised without more and that is what we think was done in this case.

19. It remains now to deal with the point about interest on judgment. This interest is claimed by the appellant on that part of the decree which awarded damages for the goods looted. The trial court had allowed this interest but the High Court set aside the order allowing interest. The High Court first observed that interest on judgment had not been claimed in the plaint but in this the High Court was clearly in error. The High Court however also pointed out that soon after the judgment of the trial court the respondent deposited the amount of the decree in court. After the date of the deposit, of course, the appellant would not be entitled to any interest. There is also nothing to show that the deposit was made long after the decree of the trial court. It was however said that the deposit was of no use to the appellant because it could not withdraw the money without furnishing

security. There is no material on record to show that that was so. In view of these circumstances, we do not think this to be a fit case for interfering with the High Court's order as to interest on judgment.

20. The result is that the appeal fails and is dismissed with costs.