IN THE HIGH COURT AT CALCUTTA
COMMERCIAL APPELLATE DIVISION
ORIGINAL SIDE

AD-COM 9 of 2026

SAURABH GUPTA

Versus

ROYAL SUNDARAM GENERAL INSURANCE COMPANY LIMITED AND ORS.

Present:
The Hon'ble Justice Debangsu Basak
-And-
The Hon'ble Justice Ajay Kumar Gupta

For the Appellant	:	*Mr. Krishnaraj Thaker, Sr. Adv.* *Ms. Suchismita Ghosh, Adv.* *Mr. Abir Lal Singh, Adv.* *Ms. A. Banerjee, Adv.* *Mr. Malay Seal, Adv.* *Mr. Rohan Thakur, Adv.*
For the Respondent No. 1	:	*Mr. Avinash Kankani, Adv.* *Mr. Aurin Chakraborty, Adv.* *Ms. Shree Chatterjee, Adv.*
For the Respondent No. 2	:	*Mr. Sayantan Bose, Adv.* *Ms. Pooja Chakraborty, Adv.* *Ms. Arti Bhattacharyya, Adv.*
HEARING CONCLUDED ON	:	17.11.2026
JUDGMENT DELIVERED ON	:	20.11.2026
UPLOADED ON	:	20.11.2026

AJAY KUMAR GUPTA, J.:-

1. The instant appeal, at the behest of the appellant/plaintiff, is directed against the judgment and decree dated August 6, 2026 passed by the learned Single Bench in CS-COM/91/2024 (Old No.

CS/11/2018) [Saurabh Gupta Vs. Royal Sundaram General Insurance Company Limited & Anr.].

2. By the said judgment, the suit was dismissed, and it was declared that the appellant is not entitled to any claim or relief as prayed for.

3. The sum and substance of the appellant's case is that the appellant is carrying on a sole proprietorship business in the name and style of M/s Gupta Infotech within the jurisdiction of this Court and carrying on business of manufacturing compact fluorescent lamp and allied products. The respondent no. 1 is an insurance company and respondent no. 2 is a bank.

4. As per the need of the appellant, the respondent no. 2 always rendered credit facilities to the appellant for financial assistance in its business. The appellant insured his plants, machinery and stocks in process, raw materials and finished goods, including goods for which customs duty had been paid, with the respondent no. 1 in 2013 against fire and burglary. The policy was renewed from time to time upon payment of premiums. The last policy was renewed from 04.09.2015 to 03.09.2016 bearing Policy number YB00013052000102. The sum insured was Rs. 14,50,00,000/-. The premium was Rs. 1,93,285/- for the said sum insured.

5. Accidentally, on 08.06.2016, a fire occurred in the office of the appellant at location-1 SDF (G) Building, SEZ, 24 Pgs. (South), West

Bengal at about 10.20 hrs. Ultimately, the fire damaged the appellant's entire stock, raw materials and goods, resulting in severe loss and damage. The appellant lodged a complaint at Ramnagar Police Station, Falta, intimating about the incident of fire.

6. The appellant assessed his loss and damage to the tune of Rs. 10,74,79,736/- and, accordingly, lodged a claim with the respondent no. 1 being claim no. YB1040. Respondent No. 1 appointed a surveyor to conduct the statutory survey required for settlement of the claim. The appellant furnished the said surveyors with all the necessary documents, and the surveyors of Respondent no. 1 assessed the appellant's loss to the extent of Rs. 1,94,46,960/-. Two survey reports, one original and the other supplementary, both dated 12.05.2017, are on record. The appellant also assessed his loss and damage by his own auditor. The auditor's report dated 29.03.2017 assessed the appellant's loss at Rs. 10,74,79,736/- as aforesaid.

7. On 20.06.2017, a draft copy of a purported settlement agreement was handed over to the appellant from the local office of the respondent no. 1, and the appellant was also asked to contact the respondent no. 1 at the Chennai office.

8. The appellant, along with his representative, visited the Chennai office of the respondent no. 1 and, as per the appellant, he was

practically forced and induced to sign the settlement agreement for payment of Rs. 1,94,46,960/- with further assurance that payment of the balance amount would be dealt with favourably.

9. It was also promised that the claim settlement amount would be remitted via bank transfer to the appellant's account. The appellant signed the settlement agreement on 23.06.2017. According to the appellant, the settlement agreement was executed based on misrepresentation and undue influence by the respondent no. 1's representative. Since respondent no. 1 was the appellant's insurer, it was, through its employees, in a position to dominate the appellant's will.

10. After returning from Chennai, the appellant was compelled to lodge a complaint on June 27, 2017 at Ramnagar police station in Kolkata against such force and undue influence imposed upon the appellant as same is void/voidable as against the appellant and immediately instituted a suit against the respondent no. 1, *inter alia*, praying for decree of declaration, permanent injunction, recovery of money and other reliefs.

11. The settlement claim amount of the appellant amounting to Rs. 1,94,46,960/- was remitted by the respondent no. 1 to the bank account of the appellant maintained with the respondent no. 2 within the jurisdiction of this Court. It was informed that the

facilities granted to the appellant were suo-motu reduced by the respondent no. 2 and the amount of Rs. 1,94,46,960/- was adjusted against the credit facility.

12. The suit was contested by the respondent no. 1 as well as respondent No. 2 by filing written statements, thereby denying and disputing all the contentions of the appellant save and except the matter of record and further controverted the allegations as levelled against them.

13. Altogether the Learned Single Judge framed 13 issues on the basis of pleadings of the parties. Out of those, Issue nos. 1, 2, and 3 are as regards the jurisdiction, maintainability and cause of action, decided in favour of the appellant. Issue nos. 4 and 5 are with regard to the validity of the subsisting insurance policy between the appellant and respondent no. 1 and whether the appellant's goods were damaged by fire or whether the fire was attributable to any negligence or fault of the appellant. These two issues are also decided in favour of the appellant. Issue no. 10 is whether a relationship of Principal-agent between the respondents was also decided in favour of the appellant.

14. The remaining issues were thoroughly assessed and discussed by the learned Single Judge based on the evidence laid by the parties, and finally it was concluded that the appellant failed to prove that the settlement agreement was the outcome of force or undue

influence. The view of the Single Bench was very clear that the claim of the appellant regarding respondent no. 1's representative, who assured him to pay the gross loss value, was neither pleaded nor brought on record by evidence. Neither the name of the representative nor the representative of the respondent No. 1 was brought on record to satisfy the court with regard to the allegation of imposing force or undue influence upon the appellant prior to putting his signature on every page of the written settlement agreement on June 23, 2017.

15. No documentary evidence was presented to prove or establish that the respondent no. 1, at any point of time, assured the appellant to settle the claim by an amount higher than the survey report. The respondent no. 1 fully relied upon the surveyor's report, which was exhibited by the appellant after receiving the draft settlement agreement [Ext. D1(2)] and final agreement [Ext. B]. The settlement agreement has been finally discussed and signed by the parties for full and final settlement, and payment, accordingly, made by the respondent no.1, therefore, the learned Single Judge finally dismissed the claim and relief sought for by the appellant.

16. Mr. Thaker, learned Sr. Counsel representing the appellant, vehemently submitted and argued on several points. Firstly, the surveyor's reports dated May 12, 2017, claiming to be based on their

best knowledge and experience, were all along denied and refuted by the appellant. The depreciation of materials and/or goods has been deducted from the gross value of the goods are not permissible and unsustainable in law although the surveyor has accepted that the entire goods were damaged due to fire and assessed a tentatively lower value of Rs. 9,68,75,785.44/- than the actual value assessed by the appellant's auditor to the tune of Rs. 10,74,79,736/-.

17. Secondly, the agreement is void/voidable since the signature obtained in the settlement agreement in Chennai at the office of the Respondent No.1 was the outcome of force and undue influence; the same may be declared as void or voidable in accordance with law and not binding upon the appellant.

18. Thirdly, the learned Single Bench wrongly relied upon the document in connection with submission of no objection certificate of the Commissioner of Customs and the banks for clearance to obtain the said payment of Rs. 1,94,46,960/- without presentation during proceedings in evidence is contrary to law and unsustainable in law.

19. Learned senior counsel has further drawn the attention of this Court to the answer as well as evidence of P.W. 1, particularly question no. 279 to demonstrate that the first survey report did not itself contain a justification for the assessment made, and that a supplementary report became necessary. It is pointed out that, in answer to the said

question, the surveyor admitted that the supplementary report was prepared after a joint meeting between the proprietor and the head office officials of respondent no. 1, held in the surveyor's presence. The surveyor further admitted that the insurer, thereafter, advised him to look into the post-fire transactions, and that the supplementary report was submitted on that observation. Learned senior counsel submits that the assessment of Rs. 1,94,46,960/- was, thus, shaped at the instance of the insurer and was not an independent, objective assessment.

20. Therefore, it is submitted that the judgment and decree passed by the Commercial Court is based on surmises and conjectures and is liable to be set aside, and the prayer made by the appellant in the suit may be allowed.

21. Learned senior counsel has placed reliance on a decision passed in the case of ***National Insurance Company Limited Vs. Boghara Polyfab Private Limited*** [1] to fortify his submission that if the settlement agreement is based on fraud, coercion or undue influence, the same ought not to be given effect and should be declared as void and not binding upon the appellant.

22. Conversely, learned counsel appearing on behalf of the respondent no. 1 vociferously opposed the prayer of the appellant and submitted

[1] (2009) 1 SCC 267

that the appellant was well aware that the claim amount was reduced to Rs. 1,94,46,960/- after considering various relevant factors by the surveyor. Thereafter, several discussions were held between the parties. After due deliberation, they agreed to a settlement at the final amount assessed by the surveyor on the basis of the two reports. The draft settlement agreement was remitted/sent to him, and he was asked to contact the representative of respondent no. 1 at the Chennai office of respondent no. 1. The appellant, along with the representative, arrived at the Chennai office for execution after going through the terms and conditions mentioned therein. Therefore, the question of misrepresentation, force or undue influence, as alleged, does not arise. The settlement agreement had been signed in the head office of the respondent no. 1 in the presence of two witnesses.

23. The allegation made by the appellant is out and out false and concocted, subsequently, for illegal motive or gain by lodging a complaint in Kolkata, albeit the agreement was executed at Chennai. At best, even for the sake of argument, he could have lodged a complaint before the jurisdictional police station at Chennai, but that was not done. A written complaint was lodged baselessly before Ramnagar police station at Kolkata four (4) days after signing the settlement agreement, i.e., after remitting the settled amount as per

the terms of the agreement into the bank. Furthermore, the appellant failed to prove the allegations either through oral testimony or documentary evidence in connection.

24. Even during examination of witnesses, PW 1 all along narrated that the respondent no. 1's representative assured him to pay gross loss value. However, such facts were not pleaded in the pleadings nor substantiated in evidence who was the actual representative of the respondent no. 1. Therefore, the Single Judge did not rely upon any of the allegations made by the appellant, and finally, the Single Judge rightly dismissed the suit; as such, the instant appeal is liable to be dismissed with costs.

25. Learned counsel appearing on behalf of the bank also submitted and admitted that the amount as aforesaid was remitted to the bank account of the appellant and the said amount was adjusted against credit facilities given to the appellant. Nothing more is required to be submitted from the side of the said bank. The bank's role is limited to accepting money if someone remits any amount into the account of any customer, and the same can be adjusted with the credit facility, if found necessary. Therefore, no illegality arises from such action of the bank.

26. Learned counsel appearing for the bank has submitted that, the bank had acted as an agent of the respondent No. 1 so far as the

contract of insurance is concerned. In such context, therefore, he submits that, the bank cannot be held to be jointly and/or severally liable with the respondent No. 1 so far as the claim on account of insurance is concerned in view of Section 230 of the Contract Act, 1872.

27. Heard the submissions and arguments advanced by the learned counsels for the respective parties and, after careful perusal of the materials made available on record as well as the judgment relied upon by the appellant, this Court notes that the maximum issues are decided in favour of the appellant as there are undisputed facts that the appellant had insured the Plant & Machinery, stock-in-process including raw materials, finished goods as well as customs duty paid goods with the respondent No. 1 and paid insurance premium. Further, a fire occurred in the office of the appellant at location-1 SDF (G) Building, SEZ, 24 Pgs. (South), West Bengal on 08.06.2016 at about 10.20 hrs. There are also no disputes about the quantity of materials and/or goods lost and damaged due to the fire. The policy was valid on the date of incident of fire i.e. on 08.06.2016.

28. The crux of the case wholly rests on the issue whether the settlement agreement was executed on the ground of allegation of misrepresentation, force, undue influence or otherwise? To prove such contention of the appellant, the appellant requires to suffice

with sufficient oral testimony and documentary evidence, but the appellant could not prove the same by any evidence, either oral or documentary evidence. The trial court has rightly assessed the whole evidence carefully and finally rendered judgment narrating the grounds in negative in the operative portion. This Court also concurs with the same.

29. The surveyor's 1st report was disagreed with by the appellant, but subsequently, the supplementary survey report also indicated a similar amount of loss and damages. The surveyor's report was based on various factors such as site inspection, incident leading to fire, cause of fire, reason for damages to properties insured, fire brigade report, police report, newspaper report, claim lodged on third party, about claim of the appellant and finally assessed the loss of stock viz. Raw material stock, packing materials stock, PCB Components, CFL Components and finished stock. The surveyor also assessed the difference of claim after physical verification after the incident. The respondent no. 1 was stuck with the amount assessed by the surveyor's twin reports, as the insurance company had to rely upon the survey reports based on the aforesaid overall assessment. An experienced surveyor has been appointed for the purpose of assessing the loss and damages of the appellant based on various factors. The said amount was already indicated to the

appellant, and after deliberation and discussion, the appellant agreed to the said amount of Rs. 1,94,46,960/- and in view of such agreement, a draft agreement was sent/handed over. After being satisfied, the appellant went to the head office of the respondent no. 1 in Chennai, and after arrival, the appellant agreed with the terms and conditions as stipulated in the agreement. That settlement amount was contemplated in the draft settlement agreement that was made known to the appellant before reaching Chennai. After reaching Chennai, the agreement was signed between the parties, knowing each and every terms and conditions of the settlement agreement. Even after signing the said settlement agreement at Chennai, he could have lodged the complaint before the jurisdictional police station at Chennai, if he had been forced or pressured under undue influence, but he did not lodge the same, knowing the fact that the cause of action arose therein. Upon arriving at Kolkata, he lodged the complaint at Ramnagar PS after four (4) days.

30. The settlement agreement, signed between the appellant and the respondent No. 1, has been witnessed by two persons. One of the witnesses to the settlement is a person of the appellant. The settlement agreement, therefore, had been signed by the appellant in presence of his representative who also witnessed such agreement.

31. On a query from this Bench, learned senior counsel for the appellant was unable to state the present status of the complaint lodged at Ramnagar Police Station on 27.06.2017. No material has been placed on record to show that the complaint led to any investigation, report or proceeding. In any event, the mere lodging of a complaint is not proof of the allegations made in it. The appellant was required to establish force and undue influence by evidence in the suit, and the complaint does not supply that proof. The dispute arises out of a written settlement agreement executed after deliberation, in the presence of two witnesses, and at best discloses a civil dispute between the parties.

32. The learned Single Judge rejected all his contentions that once the settlement agreement was signed by and between the parties and the signatures were put on it in the presence of witnesses, without proving the same was obtained by coercion, undue influence, force or threat, the same cannot be declared void or voidable.

33. Before signing, the appellant was fully aware that the amount had been assessed by the surveyor. The same amount was reflected in the draft settlement agreement as well as in the final agreement, which was signed on every page by the parties in the presence of two witnesses. A party who has executed a written settlement is bound by it, and cannot resile from it merely by asserting that his signature

was obtained by force or undue influence, or by a party in a dominant position. It is open to him to avoid the agreement only if he establishes the vitiating circumstance. The appellant did not examine any of the witnesses who were present when he signed every page, to show that he had signed under protest or without consent. This Court is conscious that a written instrument may be avoided if it was obtained by fraud, coercion or undue influence. The appellant, however, has failed to prove any of them, and the settlement therefore binds him.

34. The appellant's challenge to the surveyor's reports on the quantum of loss, including the deduction of depreciation, does not arise for consideration. The dispute as to quantum was resolved by the written settlement agreement dated 23.06.2017, which, as held above, was voluntarily executed and binds the appellant. So long as the settlement stands, the assessment made by the surveyor cannot be re-opened.

35. Even for the sake of argument, if it is assumed that the learned Single Bench wrongly relied upon the document in connection with submission of no objection of Commissioner of Customs and the banks for clearance to obtain the said payment of Rs. 1,94,46,960/- without presentation in evidence, it also does not aid the appellant's allegation and contention to succeed his case, when the entire case

rests on consent, settlement and admitted written settlement agreement dated June 23, 2017 (Ext B).

36. Learned senior counsel appearing on behalf of the appellant has relied upon the decision in ***National Insurance Company Limited v. Boghara Polyfab Private Limited (Supra)***. It lays down that a settlement or discharge voucher must be validly and voluntarily executed. If the party who executed it alleges fraud, coercion or undue influence and is able to establish it, the discharge is rendered void and cannot be acted upon, and the position is the same before a Civil Court. The proposition is sound, but it is conditional on proof. The decision itself directs that a Civil Court shall examine the evidence and, if it finds no fraud, coercion or undue influence, accept the voucher as a discharge and reject the claim without examining the merits. Here the suit has been tried and the question is one of proofs. A draft agreement was furnished on 20.06.2017, three days before execution, for the very amount assessed by the surveyor and already known to the appellant. The agreement was signed on every page before two witnesses, none of whom was examined by the appellant. The representative, said to have exerted influence, was never identified, and the assurance of a higher payment was neither pleaded nor proved, so the allegation of being "practically forced and induced" remains bare. The alleged

assurance that the balance would be "dealt with favourably" is, in any event, an expression of hope and not a misrepresentation of fact or an act of coercion.

37. The answer to question no. 279 does not assist the appellant either. It concerns the assessment of quantum, which preceded the survey reports of 12.05.2017 and the execution at Chennai by more than five weeks. It shows that the supplementary report was submitted at the plaintiff's own request after his proprietor met the insurer's head office officials in a joint meeting and put forward his own contention, which is the conduct of a party negotiating and not of one whose will was overborne. Nor does it suggest that the assessment was shaped at the insurer's instance. The appellant, therefore, failed to establish the vitiating circumstance, and, therefore, the aforesaid decision does not advance his case.

38. The respondent No. 2 has acted as an agent of the respondent No. 1, the insurance company, so far as the contract of insurance is concerned. Under Section 230 of the Contract Act, 1872 the respondent No. 2, therefore, cannot be sued. Respondent No. 2 has acted as the agent of the disclosed principal that is the respondent No. 1. The appellant, therefore, could not have sought a decree emanating out of the contract of insurance as against the respondent No. 2 as sought to be done.

39. Under the above facts and circumstances, this Court does not find any valid or cogent reasons to interfere with the impugned judgment passed by the learned Single Judge. The appeal, thus fails. Consequentially, the impugned judgment calls for no interference.

40. Accordingly, **AD-COM 9 of 2026** is **dismissed**.

41. Connected application, if any, is also thus disposed of.

42. Interim order, if any, stands vacated.

43. Urgent certified copy of this order, if applied for be supplied to the parties upon usual undertakings.

(AJAY KUMAR GUPTA, J.)

44. I agree.

(DEBANGSU BASAK, J.)

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