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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 13741/2006

Date of decision: 7th October, 2009

METRO BEARING COMPANY Petitioner
Through Ms. Isha Khanna, Advocate.

versus

THE NEW INDIA ASSURANCE CO. LT Respondent
Through Mr. Pankaj Seth, Advocate.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not ?
3. Whether the judgment should be reported in the Digest ?

ORDER

1. The petitioner had made a claim under an insurance policy on account of burglary in their godown at Lal Kuan, Delhi on 4th March, 2001. The respondent- insurance company appointed Atul Kapur and Company as surveyors, who initially submitted their survey report dated 24th August, 2002. On the basis of quantities mentioned in the stock register and the quantities found at the time of physical inspection, in the survey report the loss was assessed at Rs.3,38,038/- and after adjustment as the insurance policy pertain to both stock at the godown and the shop at Rs.2,39,747.28.
2. The said survey report was examined by the respondent-insurance

company, who came across a list of stocks furnished by the petitioner dated 27th March, 2003. The said list is captioned as "valuation of remaining stock at godown and shop as on 6.3.2001".

3. Discrepancies were noticed in the said list and the list as per stock register maintained by the petitioner on the basis of which the surveyor had computed loss of Rs.2,39,747.28.

4. The surveyor thereupon called upon the petitioner to explain their position. By their letter dated 27th March, 2003, the petitioner explained the list dated 6th March, 2001 as under:-

" The list provided earlier for remaining stock at godown & shop as on 6.3.01 was wrongly submitted giving full stocks and not the remaining stock at godown & shop as on 6.3.2001 without deleting the stolen items."

5. After considering the reply furnished by the petitioner, the surveyor submitted their addendum dated 30th March, 2003 and based on the valuation of the remaining stock at godown and shop as on 6th March, 2001 certified the total loss as Rs.18,432/-. While doing so, the surveyors have recorded as under:-

"Subsequently the insured has reverted by only clarifying that the list of stocks remaining after the loss had been prepared by his accountant, who had apparently made some errors therein and the quantities shown therein are incorrect. He stated that the quantities shown there in respect of the stolen items seem to be the quantities before the loss. However, it was observed that this explanation of the insured did

not seem to be justified since the quantities in that list did not even tally with the quantities in stock before the loss, as was being clarified by the insured.

In view of the above, we as well as the insurers explained to the insured that he was required to clarify the exact basis on which the quantities were mentioned in the said list and in case they were in-correct then he should reasonably establish that the quantities therein were due to an apparent mistake. It was explained that in case he failed to clarify the above, the quantities mentioned and certified by the insured to be in stock with them after the loss would have to be considered for the purpose of calculating their loss. It was clarified that this would have to be done even though these may be inconsistent with their records, our verifications or the FIR/recovery/investigations made by the police, as the quantities remaining after the loss had been duly certified by the insured themselves.”

6. The writ petition raises disputed questions of fact. It cannot be said that the stand of the insurance company per se is arbitrary and unfair. The insurance company and the surveyors have relied upon a list which was submitted by the petitioner himself and captioned as list of stock which was found on physical verification after the burglary. It is the contention of the petitioner that the caption given to the said list is incorrect. This is a disputed question of fact, which will require oral evidence and cross-examination of the petitioner, his employees as well as the surveyors and verification of the physical inventory of the stock before and after the burglary. It will not be appropriate for this Court to go into

these aspects in a contractual dispute relating to an insurance policy. Accordingly, the writ petition is not entertained. Liberty is granted to the petitioner to file a civil suit. The petitioner will be also at liberty to move an application under Section 14 of the Limitation Act, 1963. If any such application is filed, the same will be considered and decided by the civil court on merits. It is clarified that the observations made by this Court in this order are for the purpose of deciding the present writ petition and will not influence the civil court.

SANJIV KHANNA, J.

OCTOBER 07, 2009
VKR