

Court No. - 6

Case :- WRIT - C No. - 397 of 2018

Petitioner :- Reliance Nippon Life Insurance Co.Ltd. Thru Authorized Off.

Respondent :- Permanent Lok Adalat Thru President Family Court Lko And Anr

Counsel for Petitioner :- Abhishek Bhatnagar

Counsel for Respondent :- Arvind Tilhari,Om Prakash Nag

Hon'ble Alok Mathur,J.

1. Heard Sri Abhishek Bhatnagar, learned counsel for the petitioner. No one has put in appearance on behalf of respondent no. 2, though counter affidavit has been filed to the present writ petition.

2. By means of present writ petition the Insurance Company namely Reliance Nippon Life Insurance Company Ltd. having its registered office in Mumbai has approached this Court challenging the order dated 09.06.2017, passed by the Permanent Lok Adalat thereby allowing the claim preferred by respondent no. 2 - claimant.

3. The facts of the case in brief are that the respondent no. 2 had applied for various insurance policies for his life and life of his wife by submitting a proposal form obtaining a insurance policy and by paying the proposal deposit amount. In all respondent no. 2 had applied for four policies and had cumulatively deposited premium of Rs.2,49,994/- towards the said policies. All the policies were duly dispatched to respondent no. 2 and had been received by him.

4. Subsequent to receipt of the said policies respondent no. 4 was aggrieved by the terms and conditions mentioned in the said policies which according to him were contrary to the statements made by the Agent of the petitioner insurance company who had approached him for selling the said policies and consequently the policies being at variance with what was promised to him, he informed the Insurance Company that he wanted to repudiate the said policies and duly informed the petitioner also about the same. He also asked for refund of the premium deposited by him.

5. The petitioner by means of letter dated 04.10.2013, which was received by respondent no. 2, declined to accept the request

made by respondent no. 2. In the aforesaid circumstances respondent no. 2 approached the Insurance Ombudsman with regard to his grievance. The Ombudsman by means of order dated 29.05.2015, directed the petitioner to cancel all the policies and adjust the premium into a new single premium policy in the name of respondent no. 2 or any of his family member and subjected the award to the completion of formalities by the complainant-respondent no. 2.

6. It seems that respondent no. 2 was not satisfied by the order dated 29.05.2015, passed by the Ombudsman and approached the Permanent Lok Adalat by filing an application raising all grievance against petitioner. Notices were issued to the petitioner, who had put in appearance and opposed the claim made by respondent no. 2. In their opposition they have submitted that 15 days free-look period has been granted to the insured and it is within those 15 days that the insured had discretion to repudiate or rescind from the conditions of the policies. He submitted that after expiry of 15 days the insured as well as the Insurance Company are bound by the terms and conditions of the Policies.

7. The Permanent Lok Adalat looked into all the evidence and documents filed by the petitioner and respondent no. 2. Dispute was also raised with regard to receipt of Policies and the date from which the 15 day free look period would commence. On behalf of claimant-respondent no. 2, it was stated that from 07.09.2013 the insured and his wife had gone to Bellur (Tamilnadu) in connection with their treatment as they were not well and there they had undergone eye surgery at Shanker Netralaya, Chennai on 16.09.2013 and on the said date they were at Chennai. Then subsequent to the above surgery their check up took place and respondent no. 2 returned back to Lucknow on 22.09.2013. It is only on 24.09.2013 that respondent no. 2 received four policy bonds from the servant of his neighbor who had received the same on 19.09.2013, when he was away in Tamil Nadu.

8. In support of his submissions, respondent no. 2 had filed medical papers issued by the Shanker Netralaya, Chennai from which the Permanent Lok Adalat was satisfied that respondent no. 2 was under treatment from 16.09.2013 to 29.09.2013 and then subsequently on 20.09.2013 he had gone to Chennai for further check up. Respondent no. 2 had also filed leave papers before the Permanent Lok Adalat which indicated that he was on leave from 09.09.2013 to 31.10.2013 and joined his duties only on 01.11.2013. The Permanent Lok Adalat has also stated that no evidence was filed by the petitioner to so as to dispute the contention raised by the complainant-insured.

9. The Permanent Lok Adalat also looked into the delivery reports filed by the petitioner to consider the case that the policies have been sent by registered post to the insured. From the perusal of delivery reports it cannot be verified that the said delivery reports pertain to the petitioner and as to whether the insurance policies had been sent alongwith the same. Neither name nor address of the insured was recorded in any of the papers produced by the petitioner nor could the delivery reports could be linked to the claimant and consequently the Permanent Lok Adalat was of the view that the said delivery reports do not further the case and contentions raised by the petitioner with regard to the delivery of the insurance policies to the insured.

10. It was further considered that the insured on coming to know about the contents of the policies issued in his favour had been purchased through the Agent of the petitioner and repeated request for cancelling the policies were made. In pursuance to the requests made by the insured, it seems that certain policies which were yet to be issued were cancelled and the amount of premium was received back by the respondent no. 2. The four policies in question which were issued were not canceled and accordingly letter dated 14.10.2013 was issued by the petitioner declining to cancel the said policies. It is only when the premium was not refunded to the insured that he communicated to the officials of the petitioner on telephone from where he had been informed by the officials of the petitioner that his request for cancellation of the policies has been declined.

11. It was contended by the insured that 15 day period would commence from 19.09.2013 when the documents were alleged to have been received by the servant of the neighbor of respondent no. 2 from the date till the request for cancellation was made on 14.10.2013. The claim of respondent no. 2 was allowed by the Permanent Lok Adalat holding that repudiation was made by the insured within the prescribed period of 15 days which was computed from 19.09.2013 to 04.10.2013 and consequently on this ground claim was allowed and the petitioner was directed to refund the amount of premium alongwith interest which amount comes to Rs.323869/- alongwith interest which was computed to Rs.5000/-.

12. Learned counsel for the petitioner while assailing the impugned order has reiterated the contentions raised before the Permanent Lok Adalat. It has been submitted that 15 day period should be computed from the date of receipt of policy i.e. 19.09.2013 till 04.10.2013. There is no dispute with regard to aforesaid dates but learned counsel for the petitioner submits that from 19.09.2013 till 04.10.2013, it is sixteen days and not 15 days as computed by the Permanent Lok Adalat. In this

regard learned counsel for the petitioner has sought to rely upon the Insurance Regulatory and Development Authority of India notification dated 22.06.2017 whereby Clause 10 provides that the free look period will be of 15 days from the date of receipt of policy documents. Apart from assailing the time period petitioner does not assail the impugned order on any other ground.

13. Heard learned counsel for the parties and perused the record.

14. The facts of the present case are undisputed. Respondent no. 2 had made proposal for taking four policies for which he had paid premium of Rs.24994/-. The Policies were delivered to the servant of the neighbor of respondent no. 2 on 19.09.2013 and when respondent no. 2 returned from Chennai after his treatment he looked into the policy documents and found that the same were at variance from the terms of the policies which were informed to him through the Agent of the petitioner and consequently, made efforts for cancellation of the said policies. Certain policies were infact cancelled which had not been issued, but the four policies which are disputed in the present case were declined to be cancelled and a letter to this effect was issued by the petitioner on 14.10.2013.

15. The dispute in the present case only pertains to the fact as to whether cancellation was done by respondent no. 2 within fifteen days period of free look as provided under the Insurance Regulatory and Development Authority of India notification dated 22.06.2017. The Permanent Lok Adalat has computed the time period from 19.09.2013 to 04.10.2013 as fifteen days.

16. At this stage, reference may be made to **Saketh India Ltd. and Others Vs. India Securities Ltd., 1999 (3) SCC 1**, wherein Hon'ble Supreme Court has relied upon findings of **Haru Das Gupta Vs. State of W.B., 1972 (1) SCC 693**, has held as under :-

"6. Similar contention was considered by this Court in the case of Haru Das Gupta v. State of W.B. wherein it was held that the rule is well established that where a particular time is given from a certain date within which an act is to be done, the day on that date is to be excluded; the effect of defining the period from such a day until such a day within which an act is to be done is to exclude the first day and to include the last day. In the context of that case, the Court held that in computing the period of three months from the date of detention, which was 5-2-1971, before the expiration of which the order or decision for confirming the detention order and continuing the detention thereunder had to be made, the date of the commencement of detention, namely, February 5th has to be excluded; so done, the order of confirmation dated 5-5-1971 was made before the expiration of the period of three months from the date of

detention. The Court held that there is no reason why the aforesaid rule of construction followed consistently and for so long should not be applied. For the aforesaid principle, the Court referred to the principle followed in English courts. The relevant discussion is hereunder:

"5. These decisions show that courts have drawn a distinction between a term created within which an act may be done and a time limited for the doing of an act. The rule is well established that where a particular time is given from a certain date within which an act is to be done, the day on that date is to be excluded. This rule was followed in *Cartwright v. MacCormack* (1963) 1 All ER 11, where the expression 'fifteen days from the date of commencement of the policy' in a cover note issued by an insurance company was construed as excluding the first date and the cover note to commence at midnight of that day, and also in *Marren v. Dowson Bentley & Co, Ltd.*, (1961) 2 QB 135, a case for compensation for injuries received in the course of employment, where for purposes of computing the period of limitation the date of the accident, being the date of the cause of action, was excluded. Thus, as a general rule the effect of defining a period from such a day until such a day within which an act is to be done is to exclude the first day and to include the last day. There is no reason why the aforesaid rule of construction followed consistently and for so long should not also be applied here."

7. The aforesaid principle of excluding the day from which the period is to be reckoned is incorporated in Section 12(1) and (2) of the Limitation Act, 1963. Section 12(1) specifically provides that in computing the period of limitation for any suit, appeal or application, the day from which such period is to be reckoned, shall be excluded. Similar provision is made in sub-section (2) for appeal, revision or review. The same principle is also incorporated in Section 9 of the General Clauses Act, 1897 which, inter alia, provides that in any Central Act made after the commencement of the General Clauses Act, it shall be sufficient, for the purpose of excluding the first in a series of days or any other period of time, to use the word "from" and for the purpose of including the last in a series of days or any other period of time, to use the word "to".

17. This Court is of the considered view that the Permanent Lok Adalat has rightly determined the period of 15 days, inasmuch as, as per Section 9 of the General Clauses Act, 1897, the first day of the series of days has to be excluded. Section 9 of the General Clauses Act, 1897 is quoted herein below :-

"9. Commencement and termination of time.- (1) In any (Central Act) or Regulation made after the commencement of this Act, it shall be sufficient, for the purpose of excluding the first in a series of days or any other period of time, to use the word "from", and, for the purpose of including the last in a series of days or any other period of time, to use the word "to".

(2) This section applies also to all (Central Acts) made after the third day of January, 1868, and to all Regulations made on or after the fourteenth day of January, 1887."

18. Though the period under consideration in the present case is

of 2013, while the Insurance Regulatory and Development Authority of India Notification was issued only on 22.06.2017 and consequently same may not be applicable to the facts of the present case as admittedly provisions of the said notification are not retrospective. Even Clause 1(i) of Section 10 of the said notification provides that free look period of 15 days from the date of receipt of the policy document has to be interpreted and as per General Clauses Act which applies to the Central Act or the regulations made after commencement of the said Act, and the first day of the series of days has to be excluded, accordingly, the first day i.e. 19.09.2013 has to be excluded.

19. Accordingly, there is no doubt that the notification issued by the Insurance Regulatory and Development Authority of India has to be interpreted as per the provisions of Section 9 of the General Clauses Act which establishes fundamental foundation for interpretation of legislation. The 15 day period as provided in Clause 10 of the Notification dated 22.06.2017 is subjected to Section 9 of the General Clauses Act and consequently the first day in the series of the days has to be excluded, as provided in Section 9 of the General Clauses Act. Undisputedly, statutory provision shall prevail over the regulations framed by the Central Government.

20. In the light of above, the Permanent Lok Adalat rightly determined the period of free look from 19.09.2013 to 04.10.2013 being of 15 days and not 16 days as canvassed by the petitioner. No other ground has been urged by the petitioner.

21. Accordingly, this Court does not find any merit in the contentions raised by learned counsel for the petitioner. The writ petition being devoid of merits is **dismissed**.

Order Date :- 1.3.2024

A. Verma

(Alok Mathur, J.)