

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8575 of 2015

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1. Winsome International Limited, a company incorporated under the Companies Act, 1956 and carrying on business from its registered office at 16A, Brabourne Road, 5th Floor, Kolkata 700001 as sole proprietor of Rameshwar Jute Mill, which is situated at Muktapur, P.O. Navranga-848102 and District Samastipur (Bihar) through its one of the Directors Sri Prakash Chand Choraria.
2. Sri Prakash Chand Choraria S/o Late Hanuman Mal Choraria Resident of 5, Lowdon Street, Kolkata-700017.

.... Petitioners

Versus

1. The New India Assurance Company Limited, a company incorporated under the Companies Act, 1956 and carrying on business from its registered office at New India Assurance Building, 87, M.G. Road, Fort, Mumbai 400001 and having its one of the Branch Offices at Magardahi Ghat, Samastipur-848101 (Bihar).
2. Shri G. Srinivasan CMD, New India Assurance Company Ltd., New India Assurance Building 87, Mahatma Gandhi Road, Fort Mumbai-400001.
3. The Deputy General Manager, New India Assurance Company Limited, New India Assurance Building, 87, M.G. Road Fort, Mumbai-400001.
4. The Chief manager, Fire Technical Department, New India Assurance Company Limited, New India Assurance Building 87, M.G. Road Fort, Mumbai-400001.
5. The Chief Regional Manager, New India Assurance Company Limited having its Regional Office at BSFC Building, 6th and 7th Floor, Frazer Road, patna-800001.
6. The Divisional Manager, New India Assurance Company Limited, having his office at Poddar Complex, Club Road, Muzaffarpur.
7. The Branch Manager, New India Assurance Company Limited, having his office at Magardahi Ghat, Samastipur 848101, Bihar.
8. Sri Alok Shankar, Investigator, C/o Alok Shankar & Company, 303, Vishwanank, Opposite Hindustan Lever, Chakla, Signal, Andheri (East), Mumbai-400099.
9. Sri P.K. Chakraborti, Surveyor and Loss Assessor, carrying on business in the name and style of P.K. Chakraborti & Associates, at J1/9, Labony Estate, Salt Lake City, Kolkata 700064.

.... Respondents

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Appearance :

For the Petitioners : Mr. Ramesh Kumar Agrawal, Advocate
For the Respondents : Mr. Durgesh Kumar Singh, Advocate

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CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN
ORAL ORDER

2 30-06-2015

I have heard learned counsel for the petitioners and learned counsel for the New India Assurance Company Limited.

This writ petition was filed by the petitioners seeking quashing of the surveyor report/ Draft Basis of Assessment and Adjustment of loss, as contained in Annexure-10 to the writ petition.

Ground was taken that even after a lapse of three years no final amount could be paid to the petitioners.

After filing the writ petition, certain developments have taken place and the petitioners have filed a supplementary affidavit stating that the Insurance Company has settled the claim of the petitioners for an amount of Rs. 5, 82, 93,446/- as full and final settlement of the fire claim, which occurred on 22.03.2012-24.03.2012 and is much lesser an amount than the expectation of the petitioners.

It is contended that in view of the fact that the amount is at lesser side than the expectation of the petitioners, they wanted to accept the amount under protest without prejudice to their rights to contest the same.

In spite of such acceptance having been filed, the Insurance Company did not release the amount and had written a letter on 05.06.2015 that the discharge voucher sent by the

petitioners was not unconditional thus, the amount could not be released. The petitioners have been directed to again file the unconditional discharge voucher for the aforesaid amount.

Learned counsel for the petitioners submits that the discharge voucher was again sent on 08.06.2015 along with letter dated 08.06.2015, which has been annexed as Annexure-16 to the supplementary affidavit. However, the amount has not been released.

In my considered opinion, the petitioners have a right to accept the amount without prejudice to their rights to pursue the matter further and as such the Insurance Company was required to release the admitted amount even if the petitioners intend to contest the claim by moving further before any competent forum, which may be available to them.

Accordingly, I direct the respondents- Insurance Company to release such admitted amount upon submission of discharge voucher by the petitioners reserving their right to contest the amount in accordance with law within a period of one week from the date of receipt/ production of a copy of this order. The petitioners shall accept the concerned amount on protest and without prejudice to their rights. If the petitioners intend to challenge the same they would at liberty

to approach the competent forum which would be available to them as the law has already been settled by a Division Bench Judgement of this court in this regard in ***M/s Messina Beej Pvt. Ltd. v. New India Insurance Company Ltd. (2011 (1) PLJR 646.***

With the aforesaid direction, this writ application stands disposed of.

(Dr. Ravi Ranjan, J)

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