

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 1329 OF 2014
A/W.
CIVIL APPLICATION NO. 3720 OF 2014
IN
FIRST APPEAL NO. 1329 OF 2014

United India Insurance Co. Ltd. ... Appellant/Applicant
Vs.
Parees Offset Private Ltd. ... Respondent

Mrs. Pervin D. Contractor, Advocate for the appellant/applicant.
Ms. Bhakti Barve, Advocate for the respondent.

CORAM: MRS.MRIDULA BHATKAR, J.
DATE: 9th December, 2015

P.C.:

This Appeal is directed against the judgment and order dated 17th February, 2014 passed by the learned Judge of the City Civil Court, Greater Bombay thereby H.C. Suit No. 3296 of 1995 is decreed and the appellant/defendant is directed to pay an amount of Rs.39,55,000/- with interest @ 10% to the plaintiff/respondent from the date of the suit.

2. The main contention of the learned counsel for the appellant is that the suit was filed in the High Court initially and thereafter due to enhancement of pecuniary jurisdiction, the suit was transferred to City Civil Court in December, 2012. Advocate on record Mr. U. Ramdas. who was looking after the suit, expired on 16th May, 2011 and thereafter the suit was

transferred. So, the appellant/insurance company was not aware of the proceedings which took place before the City Civil Court. She submitted that this issue was taken up earlier before the National Consumer Forum by the respondent/plaintiff and there the defendant/appellant contested the issue. It is further submitted by the learned counsel that after the decree was passed, the insurance company had knowledge of the decree and immediate steps were taken to file this Appeal. The learned counsel submitted that the appellant has good case on merits. She submitted that written statement is filed by the appellant/defendant. The learned counsel for the appellant submitted that at the time of filing this Appeal, this Court by an order dated 12th November, 2014 at the time of granting stay to the judgment, has directed the appellant/insurance company to deposit Rs. 20,00,000/- and accordingly, the appellant/insurance company has deposited Rs.20,00,000/-. She submitted that appellant may be allowed to withdraw the said amount.

3. The learned counsel for the respondent denied the submissions made by the learned counsel for the appellant and submitted that the appellant/insurance company was aware of the proceedings transferred to the City Civil Court. The learned counsel submitted that on 2nd December, 2013 the matter appeared and thereafter the Suit was posted on 21st December, 2013, 28th December, 2013 and 12th February, 2014. She

submitted that earlier to that, the insurance company was served with the evidence of plaintiff along with list of the documents by the party, However, the insurance company chose not to appear before the Court and contested the suit. She submitted that the insurance company was negligent to go head with the matter and there was a joint Vakalatnama filed by the counsel.

4. On hearing the submissions made by the learned counsel for the parties and after going through the impugned judgment and order and after considering the order passed by the National Consumer Redressal Commission, New Delhi in Petition No. 97 of 1993, the issue in the suit needs to be adjudicated on merit by the learned Judge of the City Civil Court. Considering the submissions of the learned counsel for the respondent, the insurance company was served with the documents and evidence-in-chief of the plaintiff in November, 2013. It was the duty of the counsel to keep the track of the matter. However, in the present case, Advocate U. Ramdas, who was mainly looking after the case, expired on 16th May, 2011 and thereafter the matter was transferred, however, written statement is filed by the appellant/defendant. It shows that the appellant is serious in contesting the matter. Moreover, the defendant/appellant is directed to pay Rs.39,55,000/- towards damages and therefore, it is to be adjudicated properly. Hence, the order of the City Civil Court needs to be

set aside and the matter is remanded back with the following order:

- (i) The order dated 17th February, 2014 is hereby set aside subject to cost of Rs.10,000/- to the respondent on or before 9th January, 2016.
- (ii) The trial Court to proceed with the matter and endeavour to complete the trial on or before 30th June, 2016.
- (iii) As the impugned judgment and order of the City Civil Court is hereby set aside and matter is remanded, the appellant is allowed to withdraw an amount of Rs.20,00,000/- which is deposited in the High Court only on verification of the receipt of depositing the said amount.

5. The First Appeal and Civil Application are disposed of accordingly.

(MRIDULA BHATKAR, J.)