IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Regular Second Appeal No.2793 of 2011 (O&M)
Date of decision: 27.3.2015

M/s Amar Traders and others

... Appellants

Versus

The New India Assurance Company Limited and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr.K.S.Bassi, Advocate,
for the appellant.

Mr.Paul S. Saini, Advocate,
for the respondents

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1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RAJIV NARAIN RAINA, J.

This is an appeal against the judgment of reversal dated 29th March, 2011 from the judgment and decree of the learned trial Court dated 15th April, 2009 passed by the learned Civil Judge (Senior Division), Patiala dismissing the suit for declaration and mandatory injunction claiming monetary compensation from the respondent insurance company on account of loss sustained by the appellant during the flash floods which ravaged Patiala and neighbouring villages including village Hianakala, Tehsil Nabha on 10th July, 1993. It was alleged in the suit that the brick-kiln of the plaintiffs was insured with the respondent New India Assurance Company

Limited on 28th April, 1993 by paying a premium of ₹ 7530/- valid upto 27th April, 1994. It was stated that the brick-kiln was insured for ₹ 4.10 lacs i.e. for bricks, coal and wood, stock was ravaged by floods. When the insurance claim was lodged the insurance company deputed a Surveyor to make a on the spot assessment and also to take photographs of the site and to submit report of alleged loss. The loss was assessed on a survey conducted on 20/22nd July, 1993.

2. When the claim was repudiated by the respondent, the plaintiffs filed a complaint No.416 dated 6th June, 1996 with the District Consumer Disputes Redressal Forum, Patiala. The Forum decided the complaint on 1st March, 1997 relegating the parties to the remedy in the civil court for an effective adjudication on disputed facts. Aggrieved, the plaintiff filed an appeal No.481 of 1999 before the State Consumer Disputes Redressal Commission, Punjab, Chandigarh. The State Commission upheld the order of the District Forum on 2nd June, 2000 thereby again directing the parties to resort to remedy before the civil court. Accordingly, plaintiffs instituted the suit. It was contested by the defendants. After exchange of pleadings and framing of issues parties went to trial on 9 issues. Evidence was adduced by the parties. Issues No.1, 2 and 6 were decided together by the learned trial Court. It is worthy of note that after the dismissal of the appeal by the State Commission showing the way to the civil court, the suit was brought on 5th August, 2003. After instituting the suit, the plaintiff is said to have preferred a revision petition before the National Consumer Disputes Redressal Commission, New Delhi by post. The revision petition was dismissed by the National Commission on 4th December, 2003 exparte since no one appeared for M/s Amar Traders, the present appellant No 1. The order of the National

Commission is exhibited as P16 on the trial file, the fact pleaded in the replication. In the light of this, it is apparent that the suit was premature on the date it was instituted since the final remedy under the Act had not been exhausted before filing suit. Then filing the revision by post during the pendency of the suit and abandoning the proceedings.

3. Learned lower appellate Court re-examined the evidence on the issues and findings of fact and law recorded by the trial Judge as the final court of facts and law enjoined him to. The defence of the insurance company was noticed when it asserted that as per investigation report, the plaintiff-firm had no stock in hand in July, 1993 and the plaintiff-firm might have created false and fictitious stock statement in which there is no truth found. Defendant-respondent No.4 Bank had also initiated recovery proceedings against the defaulter firm for loan advanced. The defendant insurance company had wisely repudiated the claim of the plaintiff-firm after going through the detailed investigation report and other documents on record the concluded that the claim was a bogus one and no loss was occasioned to the plaintiff firm during the floods. Since the defendant had taken the plea of limitation, the first appellate Court found that the claim of the plaintiff was repudiated by defendant No.1-Insurance Company on 6th April, 1994 vide letter Ex.D1. The District Forum was moved which was of the view that evidence would be required to be adduced which was not within its jurisdiction to receive and adjudicate. In doing so, the benefit of the relaxations in the Limitation Act, 1963 under section 14 was granted to the plaintiff for exclusion of time spent in pursuing the proceedings before the Forum. The appeal failed on 2nd June, 2000 before the State Commission. Ultimately, the suit was instituted on 5th August, 2002. There

can be no dispute that the prescribed period of limitation as per article 44(b) of the Limitation Act which governs suits based on policy of insurance when sum insured is payable after proof of loss has been given or received by the insurer then the prescribed period of limitation of three years is to be computed from the date of occurrence causing loss or where the claim on the policy is denied either partly or wholly, the date of such denial. When the claim was repudiated on 6th April, 1994, the suit was required to have been brought by about April, 1997.

4. In the present case, the suit was instituted on 5th August, 2002. learned lower appellate court has correctly noticed that for the provisions of Section 14 of the Limitation Act to apply in order to exclude the period of limitation there must be materials on record to indicate that prior proceedings have been prosecuted with due diligence and in good faith. Learned Additional District Judge, Patiala while computing limitation for performance of Section 14 of the Limitation Act correctly excluded the period from 6th June, 1995, the date when the Forum was approached, to 2nd June, 2000 when the State Commission dismissed the appeal, is liable to be excluded but even so the suit was instituted on 5th August, 2002 after almost 2 years and 2 months. Learned Additional District Judge has noted that from the date of reputation i.e. 6th June, 1994, the plaintiff lost one year before the District Forum, Patiala was moved and thereafter, there was a delay of more than 2 years and 2 months from the date of dismissal of the appeal by the State Commission. Therefore, in calculating limitation from running, the prescribed period is to be computed from the date when the claim was repudiated giving rise to Article 44 (b). Limitation would stop running from the date the District Forum was approached and would then stop till the

Forum disposed of the matter on 1st March, 1999 after which it was continue to run till such time as the State Commission was approached on 14th May, 1999 which appeal was dismissed after one year and one month on 2nd June, 2000 only for the suit to be instituted on 5th August, 2000 and simultaneously filing of revision petition before the National Commission which was decided on 4th December, 2003 and, therefore, the benefit of section 14 of the Act should be given to the plaintiffs, is not an argument which has been accepted by the learned Additional District Judge and to my mind, rightly so. Having instituted the suit, the National Commission was approached thereafter. The presentation of the revision petition subsequent to the institution of the suit, as reasoned by the learned lower appellate court is indicative of the fact that the proceedings before the National Commission were not prosecuted in good faith. The Court found not a mention in the plaint of the institution of the revision petition before the National Commission. However, in the replication, the fact was introduced for the first time and because of it the suit is within time.

5. Viewing the matter from another angle, the learned Additional District Judge, Patiala has held while mentioning that the filing of the revision petition before the National Commission after a lapse of more than 2 and a ½ years from the date of the decision of the State Commission and that too during the pendency of the suit, will not provide fresh lease of limitation to the plaintiffs to institute suit. In this manner, the first appellate court has held that the suit has been instituted after expiry of more than 3 years and 2 months from the date of accrual of cause of action i.e. 6th April, 1994 the date when the claim of the plaintiff was repudiated by the insurance company. Thus the suit was barred by effluxion of time. The

decree of the learned trial Court has thus been rightly reversed. I have no reason to disagree with the view taken by the learned Additional District Judge, Patiala which is endorsed and this appeal, as not giving rise to any substantial question of law in limited jurisdiction under Section 100 of the Code as explained by the Supreme Court in **Santosh Hazari** v. **Purushottam Tiwari (D) through LRs,** AIR 2001 SC 965 is dismissed.

(RAJIV NARAIN RAINA)
JUDGE

March 27, 2015
Paritosh Kumar