IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CWP No.1172 of 2014
Date of Decision:22.04.2016

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Kotak Mahindra Old Mutual Life Insurance Ltd. and others

. . . .Petitioners

Versus

Permanent Lok Adalat and another

. . . . Respondents

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CORAM: HON'BLE MR.JUSTICE RAKESH KUMAR JAIN

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Present: Mr.Gagneshwar Walia, Advocate, for the petitioners.

Mr.G.S. Punia, Sr. Advocate, with Mr.P.S. Punia, Advocate, for the respondents.

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RAKESH KUMAR JAIN, J. (ORAL)

This order shall dispose of 8 petitions bearing ***CWP No.1172 of 2014*** titled as ***"M/s Kotak Mahindra Old Mutual Life Insurance Ltd. and others*** *Vs.* ***Permanent Lok Adalat and another", CWP No.7170 of 2014*** titled as ***"M/s Kotak Mahindra Old Mutual Life Insurance Ltd. and another*** *Vs.* ***Permanent Lok Adalat and another", CWP No.7173 of 2014*** titled as ***"M/s Kotak Mahindra Old Mutual Life Insurance Ltd. and another*** *Vs.* ***Permanent Lok Adalat and another", CWP No.7210 of 2014*** titled as ***"M/s Kotak Mahindra Old Mutual Life Insurance Ltd. and another*** *Vs.* ***Permanent Lok Adalat and another", CWP No.7219 of 2014*** titled as ***"M/s Kotak Mahindra Old Mutual Life Insurance Ltd. and others*** *Vs.* ***Permanent Lok Adalat and another", CWP No.14615 of 2015*** titled as ***"M/s Kotak Mahindra Old Mutual Life Insurance Ltd. and another*** *Vs.* ***Permanent Lok***

Adalat and another", CWP No.14617 of 2015 titled as ***"M/s Kotak Mahindra Old Mutual Life Insurance Ltd. and another*** *Vs.* ***Permanent Lok Adalat and another"*** and ***CWP No.14661 of 2015*** titled as ***"M/s Kotak Mahindra Old Mutual Life Insurance Ltd. and another*** *Vs.* ***Permanent Lok Adalat and another"*** as the question involved in all these cases is common. However, for the sake of convenience, the facts are being extracted from ***CWP No.1172 of 2014*** titled as ***"M/s Kotak Mahindra Old Mutual Life Insurance Ltd. and others*** *Vs.* ***Permanent Lok Adalat and another"***.

The petitioner-Company, registered under Section 3 of the Insurance Act, 1938, received different proposals of life insurance regarding Kotak Retirement Income Plan from respondent No.2 and its relatives. The proposals were accepted by the petitioner-Company at standard rates of premium and three different policies were issued to the respondent in the year 2009. All the said policies were Kotak Retirement Income Plan Policies, which were for a period of 10 years and the premium was to be paid on yearly basis by the insured. The policies were unit linked policies in which the entire amount was allocated in Kotak Pension Plan Funds and the valuation of the same was dependent upon the stock market conditions and was to be determined on the basis of Net Assets Value (NAV) of the concerned fund in which the proceeds were invested by the company. Respondent No.2 filed an application under Section 22C of the Legal Services Authority Act, 1987 [for short 'the Act'] against the petitioners for recovery of ₹3,50,000/-, paid as premium for three different policies, on the ground that he was misled to invest the money in the said policies and was never told that the amount was to be locked for a period of three years. The petitioner-Company contested the application, *inter alia,* on the ground of jurisdiction of the Permanent Lok Adalat (PUS), alleging that the application was hopelessly timed barred and that respondent No.2 had not paid the regular premium as per the terms and conditions of the policy.

On 18.11.2011, the Permanent Lok Adalat (PUS) recorded the following order: -

> *"Terms offered are not acceptable. Case be decided on merits.*
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> *Heard. Conciliation proceedings as required under the law have been conducted. We have assisted the parties so that they may reach at an amicable settlement of the dispute in this case. They are sticking to their versions in their pleadings. Despite this we are of the view that there exists an element of settlement of the dispute. Accordingly we formulate the following terms of settlement of the dispute as no other terms of settlement is possible. "Whether the applicant is entitled to the relief prayed for or not". Copy of this order be issued to the parties.*
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> *Copy of the order issued. Parties have not reached at an arrangement and they have made statements that case be decided on merits. Come up on 6.12.2011 for applicant evidence. Dated 18.11.2011."*

Thereafter, several opportunities were given to the parties for settlement but all efforts were failed because the terms and conditions offered by the Court was not acceptable to the petitioner-Company though respondent No.2 made a statement that he is ready and willing to accept the principle amount of ₹3,50,000/- after deduction, if any, as per the instructions issued by the Insurance Regulatory and Development Authority (Treatment of Discontinued Linked Insurance Policies), Regulations 2010 [for short 'the Regulations'], which may be awarded with interest, damages and costs. Thereafter the application filed by respondent No.2 was taken up under Section 22C (8) of the Act and after recording evidence of both the parties, the award was announced in favour of respondent No.2 on 30.8.2013, directing the Insurance Company/petitioner to pay a sum of 3,35,000/- with interest @ 9% per annum on the amount of ₹2,88,000/- w.e.f. 2.1.2012 and ₹47,000/- w.e.f. 4.2.2012 and damages costs of ₹15,000/-.

Aggrieved against the said order dated 30.8.2013, the present petition has been filed in which at the time of issuance of notice, this Court had directed the petitioners to deposit the amount in question i.e. ₹2.5 lacs before the Registry of this Court and stayed the execution proceedings of the impugned order.

Learned counsel for the petitioner-Company has submitted that the order dated 28.1.2014 was duly complied with and hence, the stay continues thereafter.

Learned counsel for the petitioner-Company has vehemently argued that the Permanent Lok Adalat (PUS) had no jurisdiction to decide the application filed by respondent No.2 after the failure of conciliation proceedings as according to him it had the jurisdiction to decide the *lis* between the parties only in case the controversy between the parties had narrowed down. In this regard, he has relied upon the following judgments: -

1. Reliance General Insurance Company Limited Vs. Vijay Kumar, 2012(1) PLR 794

2. CR No.2606 of 2005 Uttar Haryana Bijli Vitran Nigam and another Vs. Kusum Jain decided on 19.5.2015

3. United India Insurance Company Ltd. Vs. Ranjit Singh and another, 2013(2) PLR 478

He has also submitted that the Regulations are also not applicable to the case of the petitioner-Company as it was notified on 1.7.2010 whereas the policies were obtained by respondent No.2 before that date and as per Clause 1(2) of the Regulations, the Regulations would apply to the policy, which is obtained after the date of notification.

In reply, learned counsel for the respondents has submitted that as per Section 22C of the Act, the Permanent Lok Adalat (PUS) has to make an attempt to reconcile the *lis* between the parties by making reference of the terms and conditions for amicable solution and in case it is not accepted only then the Permanent Lok Adalat (PUS) has the jurisdiction to decide the *lis* between the parties on merits in terms of the Section 22C(8) of the Act. It is further submitted that the Permanent Lok Adalat (PUS) had tried to settle the dispute by way of negotiations much less conciliation, which is so recorded in the order dated 18.11.2011 and also in para No.4 of the impugned order that several opportunities were given to the petitioner-Company for settlement of the dispute, who did not accept the terms and conditions and only thereafter the matter was taken up on merits and decided after obtaining the consent from both the parties.

It is further submitted that even the controversy was narrowed down by respondent No.2, who made the statement that he is ready and willing to accept the principle amount of ₹3,50,000/- after deduction, if any, as per the instructions issued by the IRDA, the petitioner-Company conceded before the Permanent Lok Adalat (PUS) that the lock-in period has already been elapsed and the petitioner-Company would be entitled to refund the premium after deductions as per Regulation No.7 of the notification dated 1.7.2010. It is thus submitted that now after having lost before the Permanent Lok Adalat (PUS), the petitioner-Company cannot turn-around and say that the Regulations are not applicable. In support of his submissions, learned counsel for the respondents has relied upon the following judgments: -

1. *Punjab State Electricity Board etc. Vs. Union of India and others, 2014(2) PLR 303*
2. *M/s Paras Holidays Pvt. Limited and others Vs. State of Haryana and others, 2008(4) RCR (Civil) 367.*
3. *Punjab National Bank and another Vs. Suresh Kumar Nagpal, 2014(3) PLR 856.*

4. *Bar Council of India Vs. Union of India, 2012(4) Recent Apex Judgments (R.A.J.) 309.*

In support of the applicability of the Regulations, it is submitted that beside the fact that the petitioner-Company has conceded the applicability of the Regulations, so recorded in the impugned order, the Regulations are applicable because it does not talk of its non-applicability on the policies, which have already been taken.

I have heard learned counsel for the parties and perused the record with their able assistance.

There are two issues raised in this petition by learned counsel for the petitioner-Company i.e. (i) Whether the Permanent Lok Adalat (PUS) has the jurisdiction to decide the *lis* between the parties on merits even after obtaining consents until and unless the controversy between the parties has been narrowed down? (ii) Whether the Regulations, notified on 1.7.2010, are applicable to the case of the petitioner-Company?

In order to search the answer to the Ist question, raised by learned counsel for the petitioner-Company, it would be relevant to refer to the provisions of Chapter VIA of the Act, which deals with the 'Pre-Litigation Conciliation and Settlement'. Section 22C of the Act deals with the 'Cognizance of cases by Permanent Lok Adalat' in which upto Section 22C(7) of the Act, the Legislature has talked of conciliation between the parties on the basis of possible terms and conditions of the settlement framed by the Permanent Lok Adalat (PUS). However, Section 22C(8) of the Act provides that where the parties fail to reach to an agreement under sub-Section (7), the Permanent Lok Adalat shall, if the dispute does not relate to any offence, decide the issue on merits.

The argument of learned counsel for the petitioner-Company that the Permanent Lok Adalat (PUS) can only decide the *lis* between the parties on merits when the controversy has been narrowed down cannot be accepted because it is not so provided in Section 22C (8) of the Act that only when the controversy is narrowed down, the matter can be decided by the Permanent Lok Adalat (PUS) on merits. However, in the present case, even the controversy has been narrowed down by respondent No.2 himself, who has made an offer before the Permanent Lok Adalat that he would be satisfied with the principle amount of ₹3,50,000/- after deduction, if any, as per the instructions issued by the IRDA, which means that he had narrowed down the controversy for the purpose of payment of the amount by the petitioner-company.

Be that as it may, after taking into consideration the judgments relied upon by learned counsel for the respondents, I am of the considered opinion that the Permanent Lok Adalat (PUS) has the jurisdiction to decide the dispute between the parties, if the conciliation proceedings fail as the power has been given to it by the Legislature in terms of Section 22C (8) of the Act. The Ist question is thus decided accordingly.

Insofar as the IInd question is concerned, not only the petitioner has conceded in para No.9 of the impugned order, which has not been challenged, wherein it has been mentioned that the lock-in period was of three years and after it elapsed, respondent

No.2 has become entitled to refund of the premium after deduction as per Regulation No.7 of the Regulations, but the Regulations have come after the policies were obtained.

Thus, in view of the aforesaid discussion, IInd question is also decided against the petitioner-Company. The cumulative effect of the entire discussion on the issues involved in this case takes this Court to the irresistible conclusion that the petitioner-Company has no case on merits in all the petitions and hence, all the petitions are hereby dismissed.

Before parting, it is ordered that the amount deposited by the petitioner at the time of granting of stay be disbursed to respondent No.2 after being satisfied with their identity.

(RAKESH KUMAR JAIN)
JUDGE

22.04.2016
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