IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.3594 of 2010 (O&M)
Date of decision : 29.03.2016

United India Insurance Co. Ltd. and ors.

...Appellants

Versus

M/s Zamindara Cold Storage and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

1. Whether reporters of local newspapers may be allowed to see judgment ?
2. To be referred to reporters or not ?
3. Whether the judgment should be reported in the Digest ?

Present: Mr. D.R. Bansal, Advocate for the appellant.

Mr. Ashwani Kumar Chopra, Sr. Advocate with
Mr. G.S. Bhandal, Advocate for the respondents.

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AMIT RAWAL, J. (Oral)

The appellant-defendant is aggrieved of the judgment and decree rendered by the lower Appellate Court, whereby findings on issue No.4 rendered against the respondent-plaintiff has been reversed, in essence, suit filed for recovery of the alleged amount, has been decreed.

Mr. D.R. Bansal, learned counsel appearing on behalf of appellant-defendant submits that no cover note of even date i.e. 24.07.1984 were issued vis-a-vis potatoes and thus fraud has been played. The same was cancelled and premium received in lieu thereof was returned. The trial

Court though rendered findings on issue No.4 in favour of appellant-defendant holding that cover note Ex.P29 was obtained by fraud and dismissed the suit. Lower Appellate Court has committed illegality and perversity, much less, there is misdirection. The lower Appellate Court erred in law in not noticing the fact that it was for the first time potatoes was got insured though respondent-plaintiff being owner of the Cold Storage had been getting the machinery insured from time to time and urges this Court to formulate substantial question of law as culled out in the memorandum of appeal.

Mr. Ashwani Kumar Chopra, learned Senior counsel assisted by Mr. G.S. Bhandal, appearing on behalf of respondents submits that findings vis-a-vis fraud of issuance of cover note is with regard to the potatoes and not with regard to the machinery. No evidence has been led by the Insurance Company with regard to the non-insurance as incident had taken place on 28.07.1984. By that time, the premium qua insurance policy has been encashed, thus potatoes were insured at the relevant period of time. Insurance Company did not appoint the surveyor for inspection of the alleged loss. Plea that the cover notes were issued in undue haste is just a camouflage whereas there is no clause in the cover note with regard to conducting inspection of the goods by the agent and urges this Court for dismissal of the appeal.

I have heard learned counsel for the parties and appraised the paper book and of the view that there is no merit in the submission of Mr. Bansal, for the reasons that time of the alleged loss i.e. of 28.07.1984, insurance cover was invogue as premium obtained was by cheque. In my view the appellant-Insurance Company failed to discharge the onus as per provision of Order 6 Rule 4 of the Code of Civil Procedure, much less, evidence. No action has been taken against the agent who allegedly issued cover notes. The findings rendered by the lower Appellate Court on issue no.4 in appeal filed by the plaintiff, there are no cross-objection even if there is no decree against it.

Keeping in view the aforementioned facts and circumstances, I am of the view that no ground for interference is made out in the judgment and decree of the lower Appellate Court being the last Court of fact and law as per provision of Section 96 of the Code of Civil Procedure.

No substantial question of law arises for determination by this Court.

Appeal is dismissed.

29.03.2016 **(AMIT RAWAL)**
pawan **JUDGE**