

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO.1400 OF 2016

Indo Ram Synthetics (I) Limited : Petitioner.
versus
The Oriental Insurance Company Limited : Respondent.

**Mr. J P Cama, Senior Advocate a/w Mr. K A Kharawala i/by Lex Juris for
the Petitioner.**

**CORAM : R. M. SAVANT &
SMT. SADHANA S JADHAV, JJ.**
DATE : 19th JUNE 2017

P.C.

1 The above Petition was heard on 12/06/2017, after which hearing, the learned counsel for the Petitioner Mr. Kharawala, considering the challenge raised in the above Petition, was put a query by us as to whether the Petitioner would withdraw the above Petition to file a suit considering the reliefs sought in the above Petition. The above Writ Petition was therefore proposed to be kept at 3.00 pm on the same day. However, the learned counsel for the Petitioner stated that he would not be in a position to obtain instructions by 3.00 pm considering the fact that the Petitioner is Delhi based. Hence at his instance, the Petition was adjourned for today.

2 Today when the Petition is called out the learned Senior Counsel Shri J P Cama appears for the Petitioner and seeks to make submissions, when

only a statement was required to be made on behalf of the Petitioner as to whether the Petitioner would withdraw the Petition to file a suit. However, the learned Senior Counsel for the Petitioner Shri J P Cama in his usual persuasive way prevailed upon us to hear the matter for sometime, during the course of which hearing, the learned Senior Counsel drew our attention to the two judgments of the Apex Court reported in 2001 (1) UJ 456 in the matter of Life Insurance Corporation of India & ors. v/s. Smt. Asha Goel & Anr. and, (2005) 10 SCC 495 in the matter of ABL International Ltd. and Anr. v/s. Export Credit Guarantee Corporation of India Ltd. and ors. The said judgments can be said to be the exposition of the Apex Court as regards the exercise of Writ Jurisdiction under Article 226 of the Constitution of India in contractual matters and more especially involving insurance contracts.

3 Having considered the said judgments, the said judgments do not in any way persuade us to change the view which we had taken and which we had expressed to the learned counsel for the Petitioner on 12/06/2017. It is well settled that relegation of a party to an alternate remedy is a rule of prudence which the Court is required to follow in the facts and circumstances of a case. In the facts of the present case where the Petitioner seeks to enforce the contract of insurance so as to claim insurance amount for the alleged damage caused on account of the fire which took place in the factory premises of the Petitioner. We are of the view that the exercise of writ jurisdiction to

enforce such a contract is not warranted. The above Writ Petition is accordingly dismissed. However, we grant liberty to the Petitioner to file a suit for the reliefs claimed in the above Petition, which suit, if filed, would be tried on its own merits and in accordance with law.

[SMT. SADHANA S JADHAV, J]

[R.M.SAVANT, J]