IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07/03/2017

CORAM

THE HONOURABLE MR.JUSTICE **K.KALYANASUNDARAM**

C.S.No.233 of 2016

Capt. Vinod K.S.Raghavan,
S/o.T.Srinivasaraghavan,
No.1-A, Malles, Anantya,
New No.1, Old No.2, Tanjore Street,
T.Nagar, Chennai-600 017.
(The plaintiff previously was residing at
B-2, Gayathri Apartments,
No.56, Warren Road, Mylapore,
Chennai-600 004) ... Plaintiff

Vs

1.M/s.Aviva Life Insurance Company India Ltd.,
Having its registered Office at the 2nd Floor,
Prakash Deep Building,
No.7, Tolstoy Marg,
New Delhi - 110 001.

and having its Corporate Office at
Aviva Tower, Sector Road,
Opp. to Golf Course, DLF-Phase-V,
Sector-43, Gurgaon - 122 003.

(The first respondent is having its Branch Offices at Chennai)

2.M/s.Aviva Life Insurance Company India Limited,
Through its Branch Manager,
Anna Nagar West,
Chennai-600 040. ... Defendants

The Civil Suit is filed under Order VII Rule 1 of CPC read with Order IV Rule 1 of H.C.O.S. Rules, (a) to declare that the proposal dated 17.02.2010 and the AVIVA NEW LIFE SAVER PLUS insurance policy bearing No.ALE2897272, dated 08.03.2010 and the insurance contract therein are void ab initio and not binding on the plaintiff (b) to direct the defendant company to pay to the plaintiff a sum of Rs.15,00,000/- extracted from the plaintiff by the defendant by playing fraud together with interest of Rs.7,79,193.43 p (i.e., interest calculated at the rate of 18% p.a on the respective amount) totalling Rs.22,79,193.43 paise together with future interest at the rate of 12% p.a on Rs.15,00,000/- from the date of suit till date of realization (c) to direct the defendants to pay to the plaintiff costs of this action.

For Plaintiff : Mr.T.Srinivasaraghavan

For Defendants : Set ex-parte

J U D G M E N T

The reliefs sought for in the suit are as follows:-

(a) to declare that the proposal dated 17.02.2010 and the AVIVA NEW LIFE SAVER PLUS insurance policy bearing No.ALE2897272, dated 08.03.2010 and the insurance contract therein are void ab initio and not binding on the plaintiff;

(b) to direct the defendant company to pay to the plaintiff a sum of Rs.15,00,000/- extracted from the plaintiff by the defendant by playing fraud together with interest of Rs.7,79,193.43 p (i.e., interest calculated at the rate of 18% p.a on the respective amount) totalling Rs.22,79,193.43 paise together with future interest at the rate of 12% p.a on Rs.15,00,000/- from the date of suit till date of realization;

(c) to direct the defendants to pay to the plaintiff costs of this action.

2. The case of the plaintiff is that he was having an account with ABN AMRO Bank, which was merged with Royal Bank of Scotland. When Mr.Srinivasaraghavan was working as Senior Manager of the Bank, he advised the plaintiff to have an insurance policy and also suggested the name of the first defendant. Thereafter, he arranged for a meeting of the plaintiff with one Mr.J.Manoj Kumar, the Manager of the first defendant-Bank.

3. The plaintiff would further state that he was persuaded by both the Managers of the Bank and the first defendant-insurance company to invest money in the insurance policy, known as, "Aviva New Life Saver Plus". Both of them represented to the plaintiff and under the said insurance scheme, the plaintiff need to pay annual premium at the rate of Rs.5,00,000/- [Rupees Five Lakhs only] for three consecutive years and thereafter, the plaintiff need not pay any money to the insurance company and at the end of 30 years, the plaintiff would get Rs.1,50,00,000/- [Rupees One Crore and Fifty Lakhs only]. It is further alleged that the plaintiff was brainwashed by both of them and he was tempted to invest money in the scheme and the said Manoj Kumar obtained signature of the plaintiff in blank forms and later, it was converted into a proposal of the first defendant.

4. The plaintiff would further state that the documents given to the plaintiff were unreadable and the first respondent did not explain about the contents of the forms. The plaintiff paid first premium on 17.02.2010 and the second and third premiums were paid in installments. On 29.04.2013, the plaintiff sent an e-mail to the defendants and enquired about the premium holiday, for which, a reply e-mail was sent on 29.04.2013, stating that the policy in favour of the plaintiff did not have any option for a premium holiday and advised the plaintiff to continue the policy. When the plaintiff contacted the second defendant, he was informed that the policy is a unit link policy and the premium paid by the plaintiff was invested in share market. The plaintiff alleges that the investment was not explained to him and he did not give any consent to invest the amount in the share market.

5. Mr.T.Srinivasaraghavan, learned counsel for the plaintiff would submit that the entire insurance contract was brought out by fraud and misrepresentation. Further, the insurance policy contains oppressive clauses and conditions. It is further submitted that the plaintiff examined himself as P.W.1 and marked the following documents as Exs.P1 to P9 as documentary evidence in order to prove the suit claim:-

1) Ex.P1 is the photocopy of the proposal Form, dated 04.02.2010

2) Ex.P2 is the photocopy of the Life Insurance Policy, dated 08.03.2010

3) Ex.P3 is the printout copy of e-mail, dated 29.04.2013

4) Ex.P4 is the print out copy of email, dated 29.04.2013

5) Ex.P5 is the office copy of the legal-notice along with postal receipt, dated 26.12.2013

6) EX.P6 is the original reply, dated 15.01.2013

7) Ex.P7 is the office copy of the legal notice dated 04.02.2014

8) Ex.P8 is the original postal acknowledgment cards (Two numbers)

9) Ex.P9 is the original reply, dated 07.03.2014.

6. The learned counsel for the plaintiff further submitted that the plaintiff has proved his case and the Suit will have to be decreed.

7. Though notice has been served and the name of the defendants have been printed in the cause list, there is no representation on behalf of the defendants. Hence, the defendants set-exparte on 04.01.2017. Taking into consideration, the pleadings, the evidence of P.W.1 and

Exs.P1 to P9, this Court is of the view that the plaintiff has proved his case and the Suit is liable to be decreed and accordingly, the Suit stands decreed with cost.

sd/.M.K.K.S.J

07.03.2017

//Certified to be a true copy//

Dated this the day of 2017.

P.M./16.06.2017 COURT OFFICER

From 25.09.2008 the Registry is issuing certified copies of the Order/Judgment Decree in this format.