**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Civil Revision No.3895 of 2016
Date of Decision: 21.11.2017

New India Assurance Co. Ltd.
......Petitioner

Vs

Resorts Hotel
....Respondent

CORAM: ***HON'BLE MR. JUSTICE RAJ MOHAN SINGH***

Present: Mr. R.C. Gupta, Advocate
for the petitioner.

Mr. Ajay Bhardwaj, Advocate and
Mr. Pardeep Gupta, Advocate
for the respondent.

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RAJ MOHAN SINGH, J.

[1]. Petitioner-Insurance Company has preferred this revision petition against the award dated 01.03.2016 and interim order dated 13.01.2016 passed by the Permanent Lok Adalat (Public Utility Service), Gurgaon.

[2]. Brief facts are that the respondent/claimant filed an application under Section 22-C of the Legal Services Authority Act, 1987 (hereinafter to be referred as 'the Act') before the Permanent Lok Adalat (Public Utility Service), Gurgaon. The

respondent was insured with the petitioner-company for a sum of Rs.4.70 crore for building, plant and machinery etc. There was a fire incident in the hotel on 08.02.2013 wherein house keeping store and adjoining hotel caught fire. Intimation was given to the police as well as to the petitioner-company. A Surveyor was appointed by the petitioner-Company, who investigated the matter and submitted a report dated 18.06.2013 assessing the actual loss sustained by the claimant/respondent.

[3]. The respondent submitted its claim vide letter dated 18.04.2013 claiming the loss to the tune of of Rs.19,02,998/-. It was further intimated vide letter dated 25.04.2013 that the loss suffered by the respondent was to the tune of Rs.20,07,594/-. The Surveyor submitted his report to the petitioner-Company intimating the loss of the claimant to the tune of Rs.11,65,292/-, but the petitioner-Company allowed the payment of Rs.3,30,000/- which was not accepted by the respondent-claimant. The respondent-claimant claimed that 30% of the loss assessed on account of depreciation and 54% of the loss on account of under valuation was wrongly deducted by the petitioner-Company because the depreciation was not permissible, when the insurance was made on the basis of market value of the goods and those goods were totally damaged in the fire. Under valuation was done by the Surveyor

by taking into consideration the total value of Raghav Farms and Resorts Pvt. Ltd comprised of M/s Resorts Hotel and Resorts Country Club which were separately insured for a total sum of Rs.10,60,00,000/-. Feeling aggrieved with the offer made by the petitioner-Company, the respondent-claimant filed the application under Section 22-C of the Act seeking payment to the tune f Rs.11,65,292/-.

[4]. Petitioner-Company contested the claim of the respondent-claimant. According to the petitioner-Company M/s ABM Engineers and Consultants was appointed as Surveyor for making assessment of loss and the Company assessed the net loss to the tune of Rs.3,30,000/- subject to terms and conditions of the policy. The petitioner-Company alleged that the Surveyor has applied the under valuation clause at 55% whereas it should have been applied at 58.22% because the claimant got insured his property for an amount of Rs.4.70 crore, whereas the value of the insured items came to Rs.9,89,10,000/-. Petitioner-Company also alleged that the exact loss did not exceed Rs.95,124/- and, therefore, the respondent-claimant was not entitled to any amount of Rs.11,65,292/-.

[5]. The efforts for striking reconciliation between the parties ultimately failed before the Permanent Lok Adalat,

therefore, the provisions of Section 22-C (B) of the Act were invoked.

[6]. Learned counsel for the petitioner-Company submitted that the claimant-respondent is a unit of Raghav Farms and Resorts Pvt. Ltd. The other unit is Resorts Country Club. Both the units were insured with the petitioner-Company. M/s Resorts Hotel was insured for a sum of Rs.4.70 crore, whereas the M/s Resorts Country Club was insured for a sum of Rs.5.90 crore. Some of the properties in these two insurance policies were common i.e. building including boundary walls, electric installations and refrigerators etc. Both the units were insured for a total sum of Rs.10,60,00,000/-. In the fire incident, house keeping store and adjoining hotel room of M/s Resorts Hotel were damaged during currency of the policy period on 08.09.2013. The Surveyor, who was appointed by the petitioner-Company investigated the matter and submitted his report on 18.06.2013, thereby assessing the value of house keeping store and room at Rs.12,50,324/-. After deducing the cost of obsolete, paint work and civil work assessed the claim amount at Rs.11,65,292/-. Thereafter he made deduction of 30% of the total claim towards depreciation and 55% on account of under valuation clause. The amount of Rs.3,49,588/- was deducted on account of 55% under valuation clause and amount of

Rs.18,353/- was deducted for salvage. The deduction under the salvage clause was not disputed by the claimant.

[7]. Learned counsel by relying upon order dated 11.03.2016 passed by the High Court in ***Civil Revision No.13 of 2013*** titled '***Shriram General Insurance Co. Ltd. vs. Permanent Lok Adalat and another'*** contended that where the disputed questions of law and facts are involved inter se between the parties, then the Permanent Lok Adalat cannot assume the role of adjudicatory mechanism.

[8]. Learned counsel for the respondent-claimant submitted that the dispute was only with regard to the deductions made under the heading of depreciation and under valuation clause. The under valuation @ 55% was applied on the insured value of the Resort at Rs.4.70 crore. While the market value of the Resort was assessed at Rs.10,30,31,250/-. While assessing the market value, the Surveyor included the cost of restaurant, club, recreation ground, children fun fair, play ground, meeting halls, reception, office and animals ride etc. The fire took place in the house keeping store and the adjoining hotel room forming part of M/s Resorts Hotel and not of M/s Resorts Country Club, but the Surveyor while assessing loss took into consideration the property of M/s Resorts Country Club which was separately

insured for an amount of Rs.5.90 crore.

[9]. Learned counsel further submitted that both the aforesaid properties were separately insured with the petitioner-Company for a total sum of Rs.10,60,00,000/-. In this way the properties cannot be said to be under valuation while the net value of the properties was assessed by the Surveyor @ Rs.10,30,31,000/- which was in any case not less than the insured value of both the properties. The Surveyor was wrong in deducting 55% of the total claimed amount of Rs.11,65,292/- on account of under valuation.

[10]. Learned counsel further submitted that the the house keeping store and adjoining room of M/s Resorts Hotel were damaged in the fire, therefore, the petitioner-Company was required either to replace the damaged property or to pay the insured amount to the claimant. The property of the M/s Resorts Hotel was insured against the market value, therefore, the petitioner-Company was bound to pay the complete market value of the damaged property. The deductions to the tune of 30% made under the heading of depreciation by the Surveyor was totally unjustified. M/s Resorts Hotel was the relevant property in which fire took place. The Surveyor was required to make assessment *qua* the properties of the M/s Resorts Hotel.

The policy of insurance started from 26.05.2012 to 25.05.2013 and the fire incident took place during currency of the policy. M/s Resorts Country Club was separately insured and only the boundary wall, electric installations and refrigerators etc. were common between the aforesaid two establishments. The Surveyor could not have assessed the properties of M/s Resorts Country Club for the purposes of assessing the valuation of the property. Once both the properties were separately insured, there was no question of assessing the property of M/s Resorts Country Club in which no such fire incident took place.

[11]. I have heard learned counsel for the parties.

[12]. Admittedly both the establishments i.e. M/s Resorts Hotel and M/s Resorts Country Club are two different identities which were separately insured with the petitioner-Company. Admittedly the fire incident took place in the premises of M/s Resorts Hotel for which even the Surveyor made the assessment towards value of the house keeping store and hotel room at Rs.12,50,324/- and after deducting cost of obsolete, paint work and civil work, the Surveyor assessed an amount of Rs.11,65,292/-. The dispute was only with regard to the deductions made towards depreciation and under valuation clause.

[13]. In my considered opinion, when the properties were distinctly situated and only electric installations, boundary wall and refrigerators were common, the same would not create any impediment in assessing the property separately by the Surveyor. It appears that the Surveyor has applied the depreciation and under valuation clause by presuming the properties of both the establishments to be inseparable in nature. In fact that was not the real position. The fire incident which took place was confined to specific properties belonging to M/s Resorts Hotel. The fire incident did not have any connectivity with the properties of M/s Resorts Country Club.

[14]. In view of observations made in ***Shriram General Insurance Co. Ltd.,'s case (supra)*** It is true that when intricated questions of law and facts are involved in the *lis* placed before the Permanent Lok Adalat, the Permanent Lok Adalat cannot decide such controversy on merits. In the present case there is no involvement of such intricated and complicated questions. Both the properties are identifiable and the loss could have been assessed by the Surveyor with reference to the damaged property.

[15]. In view of aforesaid, I do not see any illegality in the impugned award dated 01.03.2016 and the interim order dated

13.01.2016 passed by the Permanent Lok Adalat (Public Utility Service), Gurgaon. Consequently, this revision petition is found to be totally devoid of merits and the same is accordingly dismissed.

November 21, 2017 **(RAJ MOHAN SINGH)**
Atik **JUDGE**

Whether speaking/reasoned Yes/No

Whether reportable Yes/No