

**RSA No. 4547 of 2017 (O&M)**

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

**RSA No. 4547 of 2017 (O&M)  
Date of Decision: 22.9.2017**

United India Insurance Company Limited

.....Appellant

Vs.

Sarva Haryana Gramin Bank

.....Respondent

**CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK**

Present : Mr. Ashwani Talwar, Advocate  
for the appellant.

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**RAMESHWAR SINGH MALIK J. (ORAL)**

Unsuccessful defendant-Insurance Company is in regular second appeal against the concurrent findings of facts, recorded by both the learned courts below, whereby suit for recovery, filed by the plaintiff-respondent Bank, was decreed by the learned trial court, vide its impugned judgment and decree dated 12.10.2016 and first appeal of the defendant-Insurance Company was also dismissed by the learned first appellate court, vide its impugned judgment and decree dated 4.5.2017, upholding the judgment and decree of the learned trial court.

Brief facts of the case, as recorded by the learned first appellate court in para 2 of the impugned judgment, are that plaintiff-Bank was a body corporate constituted through Government of India notification, as detailed in para No.1 of the plaint and the plaintiff-bank was having its branch office at Imlota, Rohtak. Shri P.D. Aggarwal, the Senior Manager, was power of attorney holder and Principal Officer of the bank. He was well conversant with

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the facts of the case as well as plaintiff-bank record and he was competent to sign and verify all types of pleadings and prosecute this case. The plaintiff-bank took Bankers Indemnity Policy covering its 209 Branch Offices, including Branch Office Imlota as per policy No. 111200/46/09/00000208 from 31.3.2010 to 28.3.2011 from the defendant Insurance Company. The plaintiff-bank paid ₹1,95,867/- as premium amount for getting the aforesaid policy. On 1.10.2010, the branch office Imlota was closed with a balance of ₹21,02,382.47 paise as cash. On 2.10.2010 and 3.10.2010, it were holidays. On 4.10.2010, when the lock of the bank was opened, it was noticed that the locks of grill gate, shutter and strong room were missing. The police was called and the aforesaid amount to the tune of ₹21,02,382.47 paise was found missing from the safe. It was also noticed that data recorded of CCTV camera was also missing. The First Information Report was got lodged but the police forwarded an untraced report. During the course of investigation, one of the bank employees namely Amit was arrested on 19.3.2013 for committing theft. The plaintiff-bank requested the defendant to pay the aforesaid amount as per the Insurance Policy but in vain. Despite repeated requests when the defendant-Insurance Company did not pay the aforesaid amount, the plaintiff-bank was constrained to file this suit seeking a decree for recovery of ₹40,01,030/- along with pendent lite and future interest at the rate of 18% per annum with quarterly rests from the date of institution of the suit till its realization.

Having been put to notice, defendant-Insurance Company appeared and filed its contesting written statement, raising more than one preliminary objections. Plaintiff-Bank filed its replication. On completion of pleadings of the parties, learned trial court framed the following issues:-

- 1) Whether the plaintiff is entitled to recover a sum of

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₹40,01,030, as prayed for?OPP

2) Whether the suit is not maintainable in the present form?

OPD

3) Relief.

In order to substantiate their respective stands taken in their pleadings, both the parties brought on record their documentary as well as oral evidence. Plaintiff brought on record voluminous documentary evidence, which duly proved the pleaded case of the plaintiff-Bank. After hearing learned counsel for the parties and going through the evidence brought on record, the learned trial court came to the conclusion that plaintiff-Bank has proved its case by bringing on record cogent and sufficient evidence. Accordingly, suit of the plaintiff was partly decreed, granting an amount of ₹21,02,382.47 paise on account of recovery, along with interest @ 6%, by the learned trial court, vide its judgment and decree dated 12.10.2016. Both the parties felt aggrieved and filed their respective first appeals. First appeal filed by the defendant-Insurance Company was dismissed by the learned first appellate court whereas first appeal filed by the plaintiff-Bank was partly allowed, raising rate of interest from 6% to 7.5%. Hence this regular second appeal at the hands of unsuccessful defendants.

Heard learned counsel for the appellants.

A bare combined reading of both the impugned judgments and decrees will make it crystal clear that plaintiff has duly proved its case, by bringing on record cogent and convincing evidence. On the other hand, although defendant-appellant placed reliance on the survey report (Ex.D1), yet it failed to examine Sh. Vinod Sharma, who allegedly prepared this survey report (Ex.D1). In such a situation, it was rightly held by both the learned courts below that survey report (Ex.D1) was not *per se admissible* in evidence, as the

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same could not be proved by the defendant, in accordance with law. Having said that, this Court feels no hesitation to conclude that the learned courts below were well within their jurisdiction to pass their respective impugned judgments and decrees and the same deserve to be upheld.

Before arriving at a judicious conclusion, the learned Additional District Judge rightly examined, considered and appreciated true facts of the case as well as the evidence available on record, in correct perspective. Relevant and cogent findings recorded by the learned first appellate court in para 15 to 19 of its impugned judgment, which deserve to be noticed here, read as under:-

*“ Now the questions for determination in this appeal are:-*

*(I) Whether or not the case of the plaintiff-bank falls within the Exception (b) of Banker's Indemnity Policy Exhibit P1, is of its effect?*

*(ii) whether the suit of the original plaintiff is barred by limitation?*

*(iii) whether or not the plaintiff-bank is entitled to interest at the rate of 18% per annum with quarterly rests from the institution of the suit till its realization, if so its effect?”*

*So far as first question is concerned, in this case the burden to prove that the loss to the plaintiff-bank has been caused due to the negligent act of its employee lies on the defendant as the defendant-insurance company has asserted this fact. In order to discharge its onus to prove the aforesaid fact, defendant-Insurance Company has examined DW1 Neeraj Sekhri, Senior Divisional Manager, however, he was unable to explain how and in which manner the loss has been caused due to the negligent act of insured's employee. The defendant has also relied upon survey report Exhibit D1 which has been prepared by Shri Vinod Sharma but no effort has been made by the defendant-Insurance company to get it proved by examining the person who has prepared the*

*same. Since Exhibit D1 is not perse admissible document, so the same cannot be looked into as a proof of the aforesaid fact.*

*The leaned counsel for the defendant-Insurance Company has drawn the attention of this Court towards the cross-examination of PW2 Hukam Chand to show the negligence of the Manager but a perusal of his statement clearly reveals that he has specifically stated that the cash was kept in case safe in his presence after following the due procedure of the security of cash and cash safe was locked with the key of Manager and cashier properly. In the cross-examination, a suggestion has been given and in reply to that suggestion, this witness has stated that it is correct that he had checked the lock. Mere fact that the Manager Umed Sangwan had given the key to PW2 Hukam Chand does not lead to inference that the Manager of the bank was negligent and the case of the plaintiff-bank falls within the Exception (b) of Banker's Indemnity Policy. It was the duty of the defendant-Insurance company to lead clear and cogent evidence showing modus operandi in which the employee of the plaintiff-bank was negligence in causing loss, however, in the absence of any such evidence, the learned Additional Civil Judge (Sr. Divn.), Rohtak has rightly observed that the case of the plaintiff-bank does not fall within the Exception (b) and Banker's Indemnity Policy Exhibit P1. In these circumstances, question No.1 posed before this Court stands answered accordingly.*

*So far as the second question is concerned, in this case no doubt the incident took place on 1.10.2010 when the plaintiff-bank has suffered a loss to the tune of Rs. 21,02,382.47 paise. After this incident, the plaintiff-bank has made a representation Exhibit P2 on 5.10.2010 to the defendant-Insurance Company, however, as per letter Exhibit P9 dated 7.8.2012, the defendant had rejected the case of the plaintiff-bank on 13.1.2013 on the ground that the case is covered in Exception (b) of the policy. Thereafter, legal notice Exhibit P10 was sent by plaintiff-bank to the defendant-Insurance company on 22.1.2013 and instant suit has been filed on*

*30.5.2014. AS per schedule of Limitation Act, 1963 at point No.44 on a policy of insurance when the sum insured is payable after proof of the loss had been given to or received by the insurers, the period of filing the suit is three years and the time of three years will start to run from the date of occurrence causing the loss or where the claim of the policy is denied either partly or wholly, the date of such denial. In the instant case also, after the plaintiff-bank has filed a claim with the defendant-Insurance Company and the same was rejected on 13.1.2013, so cause of action to file the instant suit accrued to the plaintiff-bank and the same has been filed within three years, so the suit filed by the original plaintiff-bank is well within limitation. So, the question No.2 posed before this Court stand answered accordingly.*

*So far as question No.3 is concerned, in this case the learned Additional Civil Judge (Sr. Divn.), Rohtak, while passing the impugned judgment and decree has awarded interest at the rate of 6% per annum from the date of decree til its realization. No interest pendent lite has been give to the plaintiff-bank. In the case of titled as Nazir Singh Versus Life Insurance Co. Ltd., RSA No. 1620 of 2010, decided on 19.11.2012, the Hon'ble Punjab & Haryana High Court has held that it has to be observed with anguish that insurers are negating the claims of the insured on technical or frivolous grounds in many cases. While selling the insurance policy, all sorts of assurances are extended to the insured, but when the claim is to be satisfied, all sorts of objections and obstructions are created to negative the claim. This tendency of insurance companies/insurance corporations has to be disapproved. After making the aforesaid observation, the Hon'ble Punjab & Haryana High Court has decreed the suit with costs alongwith interest at the rate of 9% per annum from the filing of the suit till its realization. In the instant case also, no doubt there is no provision in the contract to pay interest. However, the money was payable to the plaintiff-bank on the day when the plaintiff-bank had put its claim and the defendant-Insurance company has*

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*unnecessarily lingered on the matter and ultimately denied the claim of the plaintiff-bank on 13.1.2013. It was the defendant-Insurance company who had forced the plaintiff-bank to approach the civil court and to prosecute the case against defendant-Insurance company to have relief from the court. In these circumstances, the plaintiff-bank is certainly entitled to interest pendent lite and future, however, the rate of interest at the rate of 6% per annum is too low and 9% per annum is too high. In these circumstances, since the bank interest rate is nearly 7 or 8% per annum, so the interest of justice will be served if the interest pendent lite and future is granted to the plaintiff-bank at the rate of 7.5% per annum from the date of filing of the suit till its realization.”*

When learned counsel for the appellant was confronted with the abovesaid categoric and cogent findings recorded by the learned first appellate court to point out any patent illegality or perversity therein, he had no answer and rightly so, it being a matter of record. In fact, appellant-Insurance Company had no case right from day one either on facts or in law. Both the learned courts below considered each and every relevant aspect of the matter, before recording their concurrent findings of facts. Under these undisputed facts and circumstances of the case, it can be safely concluded that learned courts below committed no error of law, while passing their respective impugned judgments and decrees and the same deserve to be upheld, for this reason also.

During the course of hearing, learned counsel for the appellant failed to point out any patent illegality or perversity in either of the impugned judgments passed by the learned courts below. He also could not refer to any question of law much less substantial question of law, which is sine qua non for entertaining a regular second appeal at the hands of this Court, while exercising

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its appellate jurisdiction under Section 100 of the Code of Civil Procedure. In this regard, reliance can be placed on the law laid down by the Hon'ble Supreme Court in **Naryanan Rajendran and another Vs. Lekshmy Sarojini and others, 2009 (2) RCR (civil) 286** and **Santosh Hazari Vs. Purshottam Tiwari, 2001 (3) SCC 179.**

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that the present appeal is misconceived, bereft of merit and without any substance. Thus, it must fail. No case for interference has been made out.

Resultantly, with the abovesaid observations made, instant regular second appeal stands dismissed, however, with no order as to costs.

22.9.2017  
*Ak Sharma*

**(RAMESHWAR SINGH MALIK)**  
**JUDGE**

*Whether speaking/reasoned Yes/No*  
*Whether reportable: Yes/No*