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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CS(OS) No.1812/2006 and IA No.2384/2017 (of the defendants no.1&2 under Order XVI Rule 4 read with Order XVII Rule 3(A) CPC) & IA No.10549/2006 (u/O XXXIX R-1&2 CPC), IA No.10550/2006 (u/S 80(2) CPC), IA No.820/2007 (u/S 151 CPC) & CrI.M.A. No.14692/2009 (of plaintiff)
THE NORTHERN ZONE RAILWAY EMPLOYEES
CO-OPERATIVE THRIFT & CREDIT SOCIETY. Plaintiff
Through: Mr. Madan Bora, Adv.
versus

THE LIFE INSURANCE CORP. OF INDIA AND ORS.. Defendants
Through: Mr. Kamal Mehta and Mr. Sudeep Singh, Adv. for LIC of India.
Mr. Ravinder Singh, Adv. for D-3&4
AND

CS(OS) No.798/2009
MAMTA BHATNAGAR Plaintiff
Through: Mr. Ravinder Singh, Adv.
versus

LIFE INSURANCE CORPORATION OF INDIA
& ANR Defendants
Through: Mr. Kamal Mehta and Mr. Sudeep Singh, Adv. for LIC of India.

CORAM:
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER
% **29.03.2017**

CS(OS) No.1812/2006 and IA No.2384/2017 (of the defendants no.1&2 under Order XVI Rule 4 read with Order XVII Rule 3(A) CPC).

1. The plaintiff instituted this suit (i) for declaration that the letter dated 16th August, 2006 of the defendants no.1&2 Life Insurance Corporation of India (LIC) intimating the plaintiff of the lapse of Master Policy bearing No.OGI/311434 is illegal; (ii) for declaration that the said Master Policy is

subsisting and continuing and the defendants no.1&2 LIC are bound by the terms thereof; (iii) for declaration that the action of the defendants no.1&2 LIC of giving commission to the defendants no.3&4 i.e. Ms. Preeti Bhatnagar and Ms. Mamta Bhatnagar in respect of policies of the members of the plaintiff Society is illegal; (iv) for recovery of Rs.1,18,66,132/- with interest; (v) for mandatory injunction directing the defendants no.1&2 LIC to settle claims of members of the plaintiff Society; and, (vi) for permanent injunction restraining the defendants no.1&2 LIC from remitting or disbursing any commission to the defendants no.3&4 or any other person in respect of policies of the members of the plaintiff Society.

2. The defendants no.1&2 LIC as well as defendants no.3&4 contested the suit by filing their written statements.

3. No replication is found to have been filed to the said written statements.

4. On 4th May, 2010, on the pleading of the parties the following issues were framed:-

- “ (i) *Whether the suit is barred by limitation? OPD.*
- (ii) *Whether the suit is properly valued for the purpose of court fees and jurisdiction? OPD.*
- (iii) *Whether the plaintiff has locus standi to file the present suit? OPD.*
- (iv) *Whether the plaint is liable to be rejected under Order VII Rule 11(a) CPC? OPD.*
- (v) *Whether the plaintiff is entitled to a decree of declaration, as prayed for? OPP.*
- (vi) *Whether the defendant Nos.3 and 4 are entitled to receive the commission from defendant Nos.1 and 2 in view of the letter dated 20th November 1998 issued by defendants No.1 and 2. If so, to what effect? OPP.*

- (vii) *Whether the plaintiff is entitled to recovery of an amount of Rs.1,18,66,132 from the defendants? If so, from which defendant? OPP*
- (viii) *Whether the defendant Nos.1 and 2 are liable to settle the claim of the Members of the Society mentioned at Annexure 'A'? OPD*
- (ix) *Whether the plaintiff is entitled to a decree of permanent injunction, as prayed for? OPP*
- (x) *Relief."*

5. Though the burden of a number of issues was on the defendants, but the plaintiff was ordered to adduce evidence first.

6. The plaintiff, inspite of repeated opportunities and grant of last opportunity, failed to lead any evidence and also did not pay the costs imposed on the plaintiff for grant of such opportunities.

7. Resultantly, vide order dated 19th December, 2016 evidence of the plaintiff was closed and the suit posted for evidence of the defendants.

8. The defendants, after taking one opportunity, on 21st February, 2017 stated that since the plaintiff has not led any evidence the defendants also did not feel the need to lead any evidence.

9. The Joint Registrar accordingly posted the suit before this Bench for final arguments for today i.e. 29th March, 2017.

10. The defendants no.1&2 filed IA No.2384/2017 under Order XVI Rule 4 read with Order XVII Rule 3(A) of the Code of Civil Procedure, 1908 (CPC) for dismissal of the suit averring that the plaintiff having failed to lead any evidence, the suit is liable to be dismissed.

11. The counsel for the plaintiff failed to appear when IA No.2384/2017 came up before this Court first on 28th February, 2017 and notice of the application was issued to the plaintiff for today's date.

12. The counsel for the plaintiff states that opportunity be given to file reply to the application being IA No.2384/2017.

13. Considering the nature of the application, need for reply is not felt. In any case, the suit is listed today as per order dated 21st February, 2017 of the Joint Registrar for final arguments and the counsel for the plaintiff has been asked to address arguments.

14. Mr. Madan Bora, Advocate appearing for the plaintiff however states that Mr. Rajeev Mishra, Advocate is the main counsel and is not available.

15. Considering that the suit is listed for final arguments owing to the plaintiff having failed to lead evidence and the defendants no.1&2 LIC had also filed the application aforesaid, there is no reason for Mr. Rajeev Mishra, Advocate to not appear.

16. Mr. Madan Bora, Advocate has not argued anything.

17. The counsel for the defendants no.1&2 LIC states that all the other reliefs claimed by the plaintiff are consequential to the relief of declaration of lapse of the policy as illegal. He has further argued that the reason given in the letter dated 16th August, 2006 for lapsing of the policy is non-payment of premium since 2nd December, 2002 and it was essential for the plaintiff, to be entitled to the said declaration, to prove payment of the premium and which onus the plaintiff has failed to discharge. It is further contended that there have been criminal complaints *inter se* amongst the office bearers of the plaintiff with respect to misappropriation of funds and it was owing to the said facts that the policy was permitted to lapse. Reliance is placed on ***Naresh Chand Gupta Vs. Braham Prakash & Smt. Dayawati*** 2007 (97) DRJ 193 (DB) where the Division Bench of this Court deprecated the *CS(OS) No.1812/2006 & CS(OS) No.798/2009*

tendency of the litigants to delay trial and upheld the order of dismissal of the suit on the plaintiff not leading any evidence.

18. Though as aforesaid, the onus of some of the issues framed is on the defendants but without the plaintiff proving that the premiums were paid and on which ground the policy has lapsed, the plaintiff cannot be entitled to any of the reliefs. The plaintiff as aforesaid has failed to prove the same.

19. The plaintiff has thus failed to prove its case.

20. The suit is dismissed.

21. No costs.

22. Decree sheet be prepared.

CS(OS) No.798/2009.

23. This suit has been filed by Ms. Mamta Bhatnagar aforesaid for recovery of her commission from LIC.

24. The counsel for Ms. Mamta Bhatnagar states that LIC was withholding the commission, owing to the suit aforesaid filed by The Northern Zone Railway Employees Co-operative Thrift & Credit Society and now that the suit has been dismissed, the defendants LIC should pay the commission.

25. This suit is for recovery of Rs.32,00,000/- and as per the Office Order dated 24th November, 2015 of Hon'ble the Chief Justice in exercise of powers under Section 4 of the Delhi High Court (Amendment) Act, 2015, is liable to be transferred to the subordinate court.

26. The suit is accordingly transferred to the District Judge, New Delhi, Patiala House Courts, New Delhi within whose jurisdiction the head office of the defendant LIC is situated.

27. The parties to appear before the Additional District Judge/District Judge, New Delhi, Patiala House Courts on 15th May, 2017.

RAJIV SAHAI ENDLAW, J

MARCH 29, 2017

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