* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **<u>RSA No. 177/2017</u>**

% **14th July, 2017**

RAM PYARI ..... Appellant

Through: Mr. Kashif Khan, Adv.

versus

THE BRANCH MANAGER LIC AND ORS. ..... Respondents

Through: Mr. Kamal Mehta, Adv. for R-1 and 2.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

<u>VALMIKI J. MEHTA, J (ORAL)</u>

<u>CM No.24262/2017 (Exemption)</u>

Exemption allowed subject to just exceptions.

CM stands disposed of.

<u>CM Nos. 24261/2017 (delay of 25 days in filing) & 24263/2017 (delay of 50 days in re-filing)</u>

For the reasons stated in the applications, delays in filing and re-filing are condoned as there is no opposition to the same.

CMs stand disposed of.

RSA No. 177/2017

1. This Regular Second Appeal under Section 100 of the Code of Civil Procedure, 1908 (CPC) is filed by the appellant/plaintiff against the concurrent judgments of the courts below; of the trial Court dated 1.10.2011 and the first appellate court dated 4.11.2016; by which the courts below have dismissed the suit for recovery filed by the appellant/plaintiff against Life Insurance Corporation of India (LIC)/respondent for recovery of an amount of LIC policy on the ground that the suit for recovery filed for Rs.1,10,000/- (of which Rs.50,000/- was the principal amount), was barred by limitation.

2. It is an undisputed fact that the husband of the plaintiff expired on 12.5.1994 and he had taken out an LIC policy bearing no. S-1105884419 dated 28.11.1991 for Rs. 50,000/-. Though initially there were disputes between the parties as to whether the policy had or had not lapsed, trial court by relying upon the judgment in the case of ***Delhi Electric Supply Undertaking Vs. Basanti Devi AIR 2000 SC 43*** held that if in case there is failure to pay insurance premium, that failure will not cause lapsing of the policy because the employer who had to pay insurance premium is an agent of the respondent/Life

Insurance Corporation of India and not of the employee who takes out a policy. The suit however was dismissed by applying Article 44 of the Limitation Act, 1963 and as per which once an insurance claim is denied, the suit had to be filed within three years of denial of the claim.

3. Article 44 of the Limitation Act reads as under:-

44.	(a) On a policy of insurance when the sum insured is payable after proof of the death has been given to or received by the insurers.	Three years	The date of the death of the deceased, or where the claim on the policy is denied, either partly or wholly, the date of such denial.
	(b) On a policy of insurance when the sum insured is payable after proof of the loss has been given to or received by the insurers.	Three years	The date of the occurrence causing the loss, or where the claim on the policy is denied, either partly or wholly, the date of such denial.

4. The admitted facts are that when the appellant/plaintiff after the death of her husband in the year 1994 sought for reimbursement under the LIC policy, this claim of the appellant/plaintiff was denied by the respondent/LIC vide its letter

dated 3.9.1996. This letter of the respondent/LIC is Ex.PW5/14. The subject suit was however filed on 5.8.2003 i.e much beyond the period of three years limitation which commenced on 3.9.1996.

5. The suit therefore has rightly been held to be barred by limitation by both the courts below.

6. No substantial question of law arises. Dismissed.

JULY 14, 2017/ib **VALMIKI J. MEHTA, J**