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

Date of Decision: 29.08.2017

+ LPA 354/2016

TWENTY FIRST CENTURY MEDIA PRIVATE LIMITED

..... Appellant

Through: Mr. Amit Sibal, Senior Advocate
with Ms. Meghna Mishra, Mr. Rohan Sharma,
Mr. Dheeraj P. Deo and Mr. Tahir Ashraf
Siddiqui, Advocates

versus

NEW INDIA ASSURANCE COMPANY LTD (NIA)

..... Respondent

Through: Mr. Pankaj Seth, Advocate

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE R.K. GAUBA

MR. JUSTICE S. RAVINDRA BHAT

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Facts

1. The appellant is aggrieved by the decision of the learned Single Judge dated 30.03.2016, by which its writ petition was dismissed. Its claim in the writ petition was that the refusal to cover an event, which had been insured, is arbitrary and unreasonable.
2. The appellant, a private company is engaged in event management business. On 13.09.2010, a letter was issued to one M/s. Prerana International by the Goa Cricket Association in pursuance of a tender floated

by it, granting “instadia” advertising rights for the cricket match to be played between India and Australia on 24.10.2010. On 24.09.2010 itself, M/s. Prerana entered into an Instadia Advertising Agreement with the appellant by sub-contracting its rights as a successful bidder, to the appellant. The appellant, on 15.10.2010 entered into an insurance contract agreement policy with New India Assurance Company Limited (hereafter “insurer”) to cover for the loss of revenue for the matches to be played during the India versus Australia One Day International (ODI) series from 17.10.2010 till 24.10.2010 (this included both the match at Goa to be played on 24.10.2010 as well as the match to be played at Kochi on 17.10.2010).

3. The petitioner paid the premium amount of ₹3,24,284/-. The insurer thereafter provided the appellant with the terms and conditions of the policy. On 17.10.2010, the ODI to be held at Kochi was called off due to heavy rain. The appellant accordingly claimed insurance cover with the insurer invoking the clause of the insurance document, which covered the standard fire and special perils, including cover for rain causing cancellation of the match. It appears that this claim was duly settled between the parties and the insurer paid the appellant the sum that was due as the insurance amount. At the same time however, on 18.10.2010, the insurer sent an endorsement to the petitioner which stated:

“Notwithstanding anything herein contained to the contrary, it is hereby declared and agreed that the perils of storm, cyclone, typhoon, tempest, hurricane, tornado, flood, inundation, rains, bad pitch conditions and wet ground conditions are hereby deleted from the scope of within mentioned policy for Goa ODI match to be played on 24.10.2010.”

On 24.10.2010, the ODI at Goa also got cancelled due to heavy rain. The petitioner on 25.10.2010 wrote a letter to the insurer requesting it to settle the claim under the policy. The insurer vide letter dated 27.10.2010 rejected the claim of the appellant by referring to the earlier endorsement it had sent on 18.10.2010, by which cover for cancellation of the match due to rain was deleted from the scope of the insurance policy.

Contentions

4. The appellant's grievance is that the impugned order, is erroneous. Learned senior counsel Mr. Amit Sibal appearing for the appellant contends, that the insurer is an instrumentality of the State under Article 12 of the Constitution and has to act reasonably and *bona fide*. It is contended that deleting the rain cover from the insurance policy, after the insurer had paid the premium amount, was illegal and arbitrary. The insurer's actions, says Mr. Sibal, were *mala fide* since after the Kochi ODI was cancelled due to rain, and it had to pay the insurance amount to the appellant, it decided to unilaterally revoke the rain cover from the insurance policy so as to escape the rain cover liability for the Goa event. It is contended that such arbitrary and unilateral action on the part of the insurer violates Article 14 of the Constitution and makes out a fit case for exercise of jurisdiction of this Court under Article 226.

5. The impugned judgment, as it holds that the dispute is primarily a money claim and therefore not subject matter of Article 226, is questioned. It is argued that the primary relief sought was the quashing of the arbitrary and unilateral endorsement schedule dated 17.10.2010 issued by the insurer and the subsequent letters dated 27.10.2010 and 04.10.2011. The writ

petition was not instituted as a money claim *per se* but was merely a consequential relief to the primary prayer of the appellant for issuance of writ or a direction/order in the nature of writ quashing the Endorsement Schedule dated 20.10.2010 and which did not involve any complex/disputed questions of fact or require evidence in trial.

6. The finding of the impugned judgment as to the absence of public law character of the dispute is questioned. It is contended that condoning the actions of the insurer would create a wrong precedent and discourage companies like the appellant from providing services essential for generating revenues from international public sport matches such as cricket, which in turn would hamper the growth of sports. Especially, in the context of a game like cricket, allowing such actions by the insurer affects the larger public interest. Reliance was placed on behalf of the appellant on the Division Bench decision of this Court in *Rahul Mehra v. Union of India*, (2004) 114 DLT 323:

“To say that cricket is a great game would be a value judgment for there may be people who regard it as an abomination. But, to say that cricket is a craze in India, would not be far from the truth. Indeed, it is a passion, an obsession. A victory by the Indian team sends a thrill of exhilaration amongst the masses. Equally, a defeat brings despair and gloom. And, in extreme cases, anger, violence and riots. Every nuance of the game is debated, every umpiring decision is dissected and every ball bowled and run taken is watched by millions with rapt attention. To say that the Indian public is vitally interested in the game and the fate of its team would be an understatement.”

7. The appellant placed reliance on the decision in *ABL International v. Export Credit Guarantee Corporation of India*, (2004) 3 SCC 553 to contend that writ jurisdiction under Article 226 can be exercised even in

contractual matters. Reliance is also placed on *Joshi Technologies International Inc. v. Union of India*, (2015) 7 SCC 728, specifically on the following part of the decision-

“[....] No doubt, there is no absolute bar to the maintainability of the writ petition even in contractual matters or where there are disputed questions of fact or even when monetary claim is raised.”

The appellant contends that in the present case, there are no disputed questions of fact and the insurance policy has been placed on record. Moreover, in cases of a concluded contract such as the present one, it would not be open to the insurer to plead mistake as a ground to preclude exercise of writ jurisdiction. It is also argued that in the insurance sector, the government has not entirely opened the playing field to private players and in such a situation, there is a higher duty of fairness and a higher burden of acting reasonably, that is placed on the public authority. In the present case, on the strength of the insurance cover, the appellant entered into a number of contracts with other agencies and companies in relation to the event management of the cricket match that was to be held in Goa and incurred significant expenditure in respect of the same. Finally, it is urged that relegation of the appellant to civil courts would cause serious prejudice on account of delay and that in any case, the availability of an alternative remedy would not preclude writ jurisdiction when it is evident that the acts of the public agency were arbitrary, unreasonable and *mala fide*.

8. The respondent urges that this appeal is not maintainable as the matter essentially is a contractual dispute. The insurers deny that there was any *mala fides* on their part in the deletion of the clause from the insurance

policy. It is urged that at the request of the appellant with the concerned branch office of the insurer company for obtaining Standard Fire and Special Perils Policy covering the Kochi and Goa ODI matches, the said branch office forwarded the proposal to the regional office of the company. On examination of the proposal, the competent authority at the regional office informed the branch office that cover is to be given as per Standard Fire and Special Perils Policy, but the said branch misconstrued the cover and they also allowed rain cover along with perils as per the policy. The insurer realized the mistake when it received an intimation of claim from the appellant after the cancellation of the Kochi ODI match due to rain. While the insurer settled the claim of the appellant for that match, having realized its mistake it immediately notified the appellant of the same and by an endorsement notice dated 18.10.2010, clarified that the inclusion of rain cover was done mistakenly and the same was accordingly withdrawn. It is contended that the same was done much before the Goa ODI match, which was scheduled on 24.10.2010.

9. The learned counsel contends therefore that the single judge's order does not call for any interference. It is contended that the claim of the appellant is essentially a contractual one and is a money claim that has been dressed up as a writ petition merely because the insurance provider is an instrumentality of the State. It is further submitted that withdrawal of a particular coverage from the policy, much prior to the commencement of the risk does not amount to an act that is in violation of the tenors of Article 14 of the Constitution. Since the relief claimed by the appellant is essentially one of damages for breach of contract, it is argued that the appellant must be relegated to pursue civil proceedings in respect of the same. If the court

were to entertain writ proceedings in such matters, it would open the floodgates to frivolous litigations whereby parties in order to avoid trial and circumvent the delays inherent in normal civil proceedings, would invoke the extraordinary writ jurisdiction of this court and claim what are essentially contractual remedies.

Decision and Reasoning

10. The law relating to the exercise of writ jurisdiction in case of contractual matters, where one of the contracting parties is an instrumentality of the State within the meaning of Article 12 of the Constitution, has received extensive judicial scrutiny. Before proceeding to the merits of this case, it would therefore be appropriate and necessary to recount some of the principles that have emerged from various decisions of the Supreme Court on this aspect. In *Life Insurance Corporation of India v. Escorts Limited*, AIR 1986 SC 1370, the Supreme Court held:

“Broadly speaking, the Court will examine actions of State if they pertain to the public law domain and refrain from examining them if they pertain to the private law field. The difficulty will lie in demarcating the frontier between the public law domain and the private law field. It is impossible to draw the line with precision and we do not want to attempt it. The question must be decided in each case with reference to the particular action, the activity in which the State or the instrumentality of the State is engaged when performing the action, the public law or private law character of the action and a host of other relevant circumstances.”

Similarly, in *Bareilly Development Authority v. Ajay Pal Singh*, (1989) 1 SCR 743, the Court noted:

“20. This finding, in our view, is not correct in the light of the facts and circumstances of this case because in Ramana Dayaram Shetty's case there was no concluded contract as in this case. Even conceding that the BDA has the trappings of a State or would be comprehended in 'other authority' for the purpose of Article 12 of the Constitution, while determining price of the houses/flats constructed by it and the rate of monthly installments to be paid, the 'authority' or its agent after entering into the field of ordinary contract acts purely in its executive capacity. Thereafter the relations are no longer governed by the constitutional provisions but by the legally valid contract which determines the rights and obligations of the parties inter-se. In this sphere, they can only claim rights conferred upon them by the contract in the absence of any statutory obligations on the part of the authority (i.e. BDA in this case) in the said contractual field.

21. There is a line of decisions where the contract entered into between the State and the persons aggrieved is non-statutory and purely contractual and the rights are governed only by the terms of the contract, no writ or order can be issued under Article 226 of the Constitution of India so as to compel the authorities to remedy a breach of contract pure and simple : Radhakrishna Agarwal v. State of Bihar (1977) 3 SCR 249; Premji Bhai Parmar v. Delhi Development Authority (1980) 2 SCR 704 and D. F. O. v. Biswanath Tea Company Ltd. (1981) 3 SCR 662.”

In *National Highways Authority of India v. Ganga Enterprises*, (2003) 7 SCC 410, it was held:

“It is settled law that disputes relating to contracts cannot be agitated under Article 226 of the Constitution of India. It has been so held in the cases of Kerala SEB v. Kurien E. Kalathil (2000) 6 SCC 293, State of U.P. v. Bridge and Roof Company (India) Ltd. (1996) 6 SCC 22 and Bareilly Development Authority v. Ajai Pal Singh (1989) 2 SCC 116. This is settled law. The dispute in this case was regarding the terms of offer.

They were thus contractual disputes in respect of which a writ court was not the proper forum. Mr. Dave, however, relied upon the cases of Verigamto Naveen v. Govt. of A.P.(2001) 8 SCC 344 and Harminder Singh Arora v. Union of India (1986) 3 SCC 247. These, however, are cases where the writ court was enforcing a statutory right or duty. These cases do not lay down that a writ court can interfere in a matter of contract only. Thus on the ground of maintainability the petition should have been dismissed.”

11. These decisions evidence the initial trend of the Courts to not exercise their power of judicial review in writ jurisdiction to examine what are essentially contractual disputes. The scope of writ jurisdiction in contractual matters was somewhat expanded - and on behalf of the appellant significant emphasis was placed on this decision - in the case of *ABL International (supra)*. In this case, the Court held:

“19. Therefore, it is clear from the above enunciation of law that merely because one of the parties to the litigation raises a dispute in regard to the facts of the case, the court entertaining such petition under Article 226 of the Constitution is not always bound to relegate the parties to a suit. In the above case of Smt. Gunwant Kaur (supra), this Court even went to the extent of holding that in a writ petition, if facts required, even oral evidence can be taken. This clearly shows that in an appropriate case, the writ court has the jurisdiction to entertain a writ petition involving disputed questions of fact and there is no absolute bar for entertaining a writ petition even if the same arises out of a contractual obligation and or involves some disputed questions of fact.

29. From the above discussion of ours, following legal principles emerge as to the maintainability of a writ petition:-

(a) In an appropriate case, a writ petition as against a State or an instrumentality of a State arising out of a contractual obligation is maintainable.

(b) Merely because some disputed questions of facts arise for consideration, same cannot be a ground to refuse to entertain a writ petition in all cases as a matter of rule.

(c) A writ petition involving a consequential relief of monetary claim is also maintainable.”

12. The decision in *ABL (supra)* however was later considered by the Supreme Court in *Noble Resources Ltd. v. State of Orissa*, (2006) 10 SCC 236 and it was held:

“Although the scope of judicial review or the development of law in this field has been noticed hereinbefore particularly in the light of the decision of this Court in ABL International Ltd. (supra), each case, however, must be decided on its own facts. Public interest as noticed hereinbefore, may be one of the factors to exercise power of judicial review. In a case where a public law element is involved, judicial review may be permissible.”

The law on this question was again comprehensively reviewed by the Supreme Court in *State of Kerala v. M.K. Jose*, (2015) 9 SCC 433. After citing a catena of previous decisions of the Apex Court, the Court held:

“We have referred to the aforesaid authorities to highlight under what circumstances in respect of contractual claim or challenge to violation of contract can be entertained by a writ court. It depends upon facts of each case. The issue that had arisen in ABL International (supra) was that an instrumentality of a State was placing a different construction on the clauses of the contract of insurance and the insured was interpreting the contract differently. The Court thought it apt merely because something is disputed by the insurer, it should not enter into the

realm of disputed questions of fact. In fact, there was no disputed question of fact, but it required interpretation of the terms of the contract of insurance. Similarly, if the materials that come on record from which it is clearly evincible, the writ court may exercise the power of judicial review but, a pregnant one, in the case at hand, the High Court has appointed a Commission to collect the evidence, accepted the same without calling for objections from the Respondent and quashed the order of termination of contract. The procedure adopted by the High Court, if we permit ourselves to say so, is quite unknown to exercise of powers under Article 226 in a contractual matter. We can well appreciate a Committee being appointed in a Public Interest Litigation to assist the Court or to find out certain facts. Such an exercise is meant for public good and in public interest. For example, when an issue arises whether in a particular State there are toilets for school children and there is an assertion by the State that there are good toilets, definitely the Court can appoint a Committee to verify the same. It is because the lis is not adversarial in nature. The same principle cannot be taken recourse to in respect of a contractual controversy. It is also surprising that the High Court has been entertaining series of writ petitions at the instance of the Respondent, which is nothing but abuse of the process of extraordinary jurisdiction of the High Court. The Appellate Bench should have applied more restraint and proceeded in accordance with law instead of making a roving enquiry. Such a step is impermissible and by no stretch of imagination subserves any public interest.”

13. Therefore, it is clear that subsequent decisions have restricted the holding in *ABL International (supra)* to the peculiar facts in that case and have reiterated the limited nature of writ jurisdiction- specifically, how it should not be exercised in contractual matters even if an instrumentality of the State is involved. For instance, in *Rajasthan State Industrial Development and Investment Corporation v. Diamond and Gem*

Development Corporation, (2013) 5 SCC 470, the Court after reviewing a number of its previous decisions starting from *Bareilly Development Authority* (*supra*) held:

“14. It is evident from the above, that generally the court should not exercise its writ jurisdiction to enforce the contractual obligation. The primary purpose of a writ of mandamus, is to protect and establish rights and to impose a corresponding imperative duty existing in law. It is designed to promote justice (ex debito justiceiae). The grant or refusal of the writ is at the discretion of the court. The writ cannot be granted unless it is established that there is an existing legal right of the applicant, or an existing duty of the Respondent. Thus, the writ does not lie to create or to establish a legal right, but to enforce one that is already established. While dealing with a writ petition, the court must exercise discretion, taking into consideration a wide variety of circumstances, inter-alia, the facts of the case, the exigency that warrants such exercise of discretion, the consequences of grant or refusal of the writ, and the nature and extent of injury that is likely to ensue by such grant or refusal.

15. Hence, discretion must be exercised by the court on grounds of public policy, public interest and public good. The writ is equitable in nature and thus, its issuance is governed by equitable principles. Refusal of relief must be for reasons which would lead to injustice. The prime consideration for the issuance of the said writ is, whether or not substantial justice will be promoted. Furthermore, while granting such a writ, the court must make every effort to ensure from the averments of the writ petition, whether there exist proper pleadings. In order to maintain the writ of mandamus, the first and foremost requirement is that the petition must not be frivolous, and must be filed in good faith. Additionally, the applicant must make a demand which is clear, plain and unambiguous. It must be made to an officer having the requisite authority to perform the act demanded. Furthermore, the authority against whom mandamus is issued, should have rejected the demand earlier. Therefore, a demand and its subsequent refusal, either by

words, or by conduct, are necessary to satisfy the court that the opposite party is determined to ignore the demand of the applicant with respect to the enforcement of his legal right. However, a demand may not be necessary when the same is manifest from the facts of the case, that is, when it is an empty formality, or when it is obvious that the opposite party would not consider the demand.”

In a recent decision in *Joshi Technologies (supra)*, the Supreme Court laid down the following principles in relation to exercise of writ jurisdiction in contractual matters:

“Further legal position which emerges from various judgments of this Court dealing with different situations/aspects relating to the contracts entered into by the State/public Authority with private parties, can be summarized as under:

(i) At the stage of entering into a contract, the State acts purely in its executive capacity and is bound by the obligations of fairness.

(ii) State in its executive capacity, even in the contractual field, is under obligation to act fairly and cannot practice some discrimination.

(iii) Even in cases where question is of choice or consideration of competing claims before entering into the field of contract, facts have to be investigated and found before the question of a violation of Article 14 could arise. If those facts are disputed and require assessment of evidence the correctness of which can only be tested satisfactorily by taking detailed evidence, involving examination and cross-examination of witnesses, the case could not be conveniently or satisfactorily decided in proceedings under Article 226 of the Constitution. In such cases court can direct the aggrieved party to resort to alternate remedy of civil suit etc.

(iv) Writ jurisdiction of High Court under Article 226 was not intended to facilitate avoidance of obligation voluntarily incurred.

(v) Writ petition was not maintainable to avoid contractual obligation. Occurrence of commercial difficulty, inconvenience or hardship in performance of the conditions agreed to in the contract can provide no justification in not complying with the terms of contract which the parties had accepted with open eyes. It cannot ever be that a licensee can work out the license if he finds it profitable to do so; and he can challenge the conditions under which he agreed to take the license, if he finds it commercially inexpedient to conduct his business.

(vi) Ordinarily, where a breach of contract is complained of, the party complaining of such breach may sue for specific performance of the contract, if contract is capable of being specifically performed. Otherwise, the party may sue for damages.

(vii) Writ can be issued where there is executive action unsupported by law or even in respect of a corporation there is denial of equality before law or equal protection of law or if can be shown that action of the public authorities was without giving any hearing and violation of principles of natural justice after holding that action could not have been taken without observing principles of natural justice.

(viii) If the contract between private party and the State/instrumentality and/or agency of State is under the realm of a private law and there is no element of public law, the normal course for the aggrieved party, is to invoke the remedies provided under ordinary civil law rather than approaching the High Court Under Article

226 of the Constitutional of India and invoking its extraordinary jurisdiction.

(ix) The distinction between public law and private law element in the contract with State is getting blurred. However, it has not been totally obliterated and where the matter falls purely in private field of contract. This Court has maintained the position that writ petition is not maintainable. Dichotomy between public law and private law, rights and remedies would depend on the factual matrix of each case and the distinction between public law remedies and private law, field cannot be demarcated with precision. In fact, each case has to be examined, on its facts whether the contractual relations between the parties bear insignia of public element. Once on the facts of a particular case it is found that nature of the activity or controversy involves public law element, then the matter can be examined by the High Court in writ petitions Under Article 226 of the Constitution of India to see whether action of the State and/or instrumentality or agency of the State is fair, just and equitable or that relevant factors are taken into consideration and irrelevant factors have not gone into the decision making process or that the decision is not arbitrary.

(x) Mere reasonable or legitimate expectation of a citizen, in such a situation, may not by itself be a distinct enforceable right, but failure to consider and give due weight to it may render the decision arbitrary, and this is how the requirements of due consideration of a legitimate expectation forms part of the principle of non-arbitrariness.

(xi) The scope of judicial review in respect of disputes falling within the domain of contractual obligations may be more limited and in doubtful cases the parties may be relegated to adjudication of their rights by resort to

remedies provided for adjudication of purely contractual disputes.”

It is clear from these decisions of the Supreme Court is that the Court should rarely, if ever, exercise its writ jurisdiction in contractual matters, even though it may involve an instrumentality of the State. Contractual disputes, especially where they involve complicated questions of fact, are best left to civil courts to adjudicate in their jurisdiction.

14. In the present case, the appellant contends that the insurer's actions in deleting a particular clause from the insurance policy were arbitrary and unreasonable within the meaning of Article 14 of the Constitution. In reply to this, the insurer contends that there was an inadvertent error on the part of the concerned branch office of the insurer and they mistakenly allowed rain cover along with perils as per Standard Fire and Special Perils Policy. On discovering this mistake however, the insurer contends that it immediately corrected the same and thereafter notified the petitioner about this change. Moreover, the insurer contends that the petitioner did not object to this at the time but subsequently, once the match at Goa was cancelled because of heavy rain, brought this claim regarding arbitrary and *mala fide* deletion of the particular clause in the insurance policy. The appellant, however contends that it immediately protested regarding the deletion of the clause. What is clear therefore, is that this is a purely contractual dispute; an insurance policy is ultimately a private contract between two parties. Moreover, there are disputed facts in the present case, i.e. the parties differ on certain crucial questions of fact as well. In such a situation, it would not be appropriate for the Court to exercise its writ jurisdiction to decide

questions of fact and provide remedies to the appellant that are essentially contractual in nature.

15. The learned single judge in his order noted that the insurer had pleaded mistake and in line with the decision of the Supreme Court in *LIC of India v. Asha Goel*, (2001) 2 SCC 160, where the Court had refused to entertain writ proceedings on grounds that the insurer had pleaded fraud, jurisdiction under Article 226 had to be rejected. The relevant portion of the single judge's order reads:

*“The petitioner herein has not placed the insurance policy on record. It is thus not known whether the same provides for arbitration. There is also a material factual dispute whether the petitioner protested against the Endorsement dated 17th October, 2010 prior to the cancellation of the match scheduled on 24th October, 2010; while the petitioner claims to have done so the respondent strongly refutes. We also do not know what were the other terms and conditions of the policy and whether the same permitted deletion of a peril prior to occurrence of loss attributable thereto. The effect if any of the instructions alleged to have been issued by the Competent Authority of the respondent at the Regional Office and in contravention where to the policy is stated to have been issued can also not be considered and adjudicated without examination and cross examination of witnesses and which is not the domain of writ jurisdiction. Not only so, the assessment of monetary claim if any to which the petitioner may be entitled to also requires trial and neither does the claim has any public law character nor is any exceptional case for entertaining contractual claim in writ jurisdiction made out. Supreme Court, in *LIC of India vs. Asha Goel* (2001) 2 SCC 160 also held that where plea of fraud is pleaded by Insurer, writ should not be entertained; here the respondent has pleaded mistake.”*

The Single Judge therefore relied on the decision in *Asha Goel* (*supra*), to dismiss the writ petition as questions of fact were involved and

the claim was not of a public law character. The relevant portion of the decision in *Asha Goel* is extracted below:

“10. Article 226 of the Constitution confers extraordinary jurisdiction on the High Court to issue high prerogative writs for enforcement of the Fundamental Rights or for any other purpose. It is wide and expansive. The Constitution does not place any fetter on exercise of the extraordinary jurisdiction. It is left to the discretion of the High Court. Therefore, it cannot be laid down as a general proposition of law that in no case the High Court can entertain a writ petition under Article 226 of the Constitution to enforce a claim under a life insurance policy. It is neither possible nor proper to enumerate exhaustively the circumstances in which such a claim can or cannot be enforced by filing a writ petition. The determination of the question depends on consideration of several factors, like, whether a writ petitioner is merely attempting to enforce his/her contractual rights or the case raises important questions of law and constitutional issues; the nature of the dispute raised; the nature of inquiry necessary for determination of the dispute etc. The matter is to be considered in the facts and circumstances of each case. While the jurisdiction of the High Court to entertain a writ petition under Article 226 of the Constitution cannot be denied altogether, Courts must bear in mind the self-imposed restriction consistently followed by High Courts all these years after the constitutional power came into existence in not entertaining writ petitions filed for enforcement of purely contractual rights and obligations which involve disputed questions of facts. The Courts have consistently taken the view that in a case where for determination of the dispute raised, it is necessary to inquire into facts for determination of which it may become necessary to record oral evidence a proceeding under Article 226 of the Constitution is not the appropriate forum. The position is also well settled that if the contract entered between the parties provides an alternate forum for resolution of disputes arising from the contract, then the parties should approach the forum agreed by them and the High Court in writ jurisdiction should

not permit them to bypass the agreed forum of dispute resolution. At the cost of repetition it may be stated that in the above discussions we have only indicated some of the circumstances in which the High Courts have declined to entertain petitions filed under Article 226 of the Constitution for enforcement of contractual rights and obligation; the discussions are not intended to be exhaustive. This Court from time to time disapproved of a High Court entertaining a petition under Article 226 of the Constitution in matters of enforcement of contractual rights and obligation particularly where the claim by one party is contested by the other and adjudication of the dispute requires inquiry into facts. We may notice a few such cases; Mohammed Hanif v. The State of Assam (1970) 2 SCR 197; Banchhanidhi Rath v. The State of Orissa and Ors. AIR 1972 SC 843 ; Smt. Rukmanibai Gupta v. Collector, Jabalpur and Ors. AIR 1981 SC 479; Food Corporation of India and Ors. v. Jagannath Dutta and Ors. (1993) 2 SCR 497; and State of H.P. v. Raja Mahendra Pal and Ors. (1999) 2 SCR 323.

11. The position that emerges from the discussions in the decided cases is that ordinarily the High Court should not entertain a writ petition filed under Article 226 of the Constitution for mere enforcement of a claim under a contract of insurance. Where an insurer has repudiated the claim, in case such a writ petition is filed the High Court has to consider the facts and circumstances of the case, the nature of the dispute raised and the nature of the inquiry necessary to be made for determination of the questions raised and other relevant factors before taking a decision whether it should entertain the writ petition or reject it as not maintainable. It has also to be kept in mind that in case an insured or nominee of the deceased insured is refused relief merely on the ground that the claim relates to contractual rights and obligations and he/she is driven to a long drawn litigation in the civil court, it will cause serious prejudice to the claimant/other beneficiaries of the policy. The pros and cons of the matter in the context of the fact situation of the case should be carefully weighed and

appropriate decision should be taken. In a case where claim by an insured or a nominee is repudiated raising a serious dispute and the Court finds the dispute to be a bona fide one which requires oral and documentary evidence for its determination then the appropriate remedy is a civil suit and not a writ petition under Article 226 of the Constitution. Similarly, where a plea of fraud is pleaded by the insurer and on examination is found prima facie to have merit and oral and documentary evidence may become necessary for determination of the issue raised then a writ petition is not an appropriate remedy.”

16. Therefore, when a contractual dispute does not have an overriding public law character or where public interest is not involved, or where complicated questions of fact must be gone into- such as in that case where the insurer had pleaded fraud, the Court must not exercise its writ jurisdiction in deciding insurance claims and such cases must be relegated to the civil courts. The appellant has urged that the single judge fell into error in relying on *Asha Goel (supra)* as it dealt with the allegations of fraud whereas in the present case, the insurer says there was an inadvertent mistake on its part. There is no merit in the submission of the insurer. No doubt *Asha Goel (supra)* concerned the allegation of fraud; nonetheless, the principle that emerges from the decision is not restricted to allegations of fraud only. In fact, the Court clearly noted that where questions of fact are needed to be gone into and there is a dispute between the parties as to the essential facts, then writ jurisdiction would be inappropriate. In the present case, the insurer has pleaded mistake; the ruling in *Asha Goel (supra)* would apply. There is a dispute on facts as well; in the circumstances even though the appellant has produced the copy of the insurance policy document, that is insufficient for the Court in exercise of its writ jurisdiction to decide the

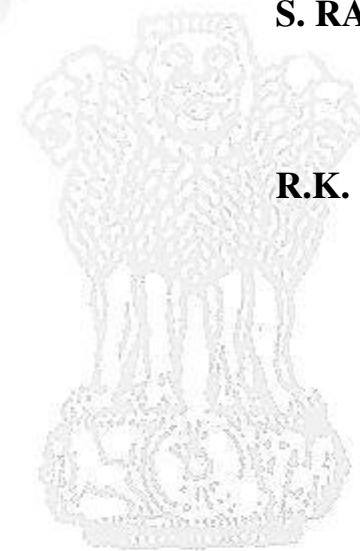
present dispute. To agitate such a claim, the appellant has to be left to pursue civil proceedings in the appropriate court of law.

17. In the circumstances, the appeal has to fail. It is therefore, dismissed, without order as to costs. It is of course open to the appellant to bring a claim before the appropriate court in civil proceedings. This judgment does not in any manner affect the merits of those proceedings and all rights and contentions of the parties are reserved.

S. RAVINDRA BHAT, J

R.K. GAUBA, J

AUGUST 29, 2017



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