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

\+ **W.P.(C) 10550/2016**

KULBHUSHAN MADAN ..... Petitioner

Through Mr Sumit Kumar, Mr Prakash Kaushik and Mr Rabindra nanda, Advocates.

versus

LIFE INSURANCE CORPORATION OF INDIA & ORS ..... Respondents

Through Mr Sanjay Rawat, Advocate

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

% **27.10.2017**

VIBHU BAKHRU, J

1. The petitioner has filed the present petition, *inter alia*, praying as under:-

> "Issue direction/order in nature of writ of Mandamus directing the respondent corporation to conduct a proper and thorough time bound investigation in the complaint Dated 19/03/2007, made by the petitioner, regarding cheating and fraud of Rupees 40 Lacs."

2. The petitioner states that he is working with respondent no.1 (hereafter 'the LIC') as a Development Officer. It is the petitioner's case that in the month of January, 2006 one Mr Anil Kumar Malik, who was then posted as a Development Officer at LIC's branch at Nehru Palace, New Delhi had approached the petitioner to subscribe to new policies. The

petitioner had thereafter taken six policies for a premium of ₹5 lakhs each through Mr Anil Kumar Malik. The petitioner claims that in May, 2006 Mr Anil Kumar Malik approached the petitioner for top-up of the policies and, accordingly, the petitioner issued a cheque of ₹40 lakhs in favour of LIC and the same was handed over to Sh Anil Kumar Malik. The said cheque was encashed from the petitioner's account on 27.05.2006.

3. Mr Anil Kumar Malik was found dead near railway tracks at Brar Square Naraina, New Delhi on 01.02.2007. The petitioner states that there were rumours that Mr Anil Kumar Malik had committed several frauds running into crores of rupees in collusion with LIC officials.

4. The petitioner thereafter approached LIC's branch at Nehru Palace and found that the cheque of ₹40 lakhs issued by the petitioner had been encashed towards a policy in the name of Mr Anil Kumar Malik, which had been en-cashed subsequently. In this manner, Mr Anil Kumar Malik had cheated the petitioner of the sum of ₹40 lakhs.

5. The petitioner claims that he made several complaints to LIC demanding payment of the said sum of ₹40 lakhs but his complaints were not addressed. It is the petitioner's case that as per LIC's practice and procedure, it does not accept third party cheques towards policies issued by it; in other words, the cheque received by LIC is required to be credited to the account (or towards the policy) of the payer and not any third party. The petitioner claims that this procedure had been subverted in the present case and, therefore, LIC is responsible to make good the loss suffered by the petitioner.

6. The learned counsel for the respondents admits that it is LIC's policy not to accept third party cheques. He, however, submits that both the petitioner and Mr Anil Kumar Malik were employees of LIC and were known to each other; they had *inter se* managed with the LIC that petitioner's cheque be deposited towards the policy taken out by Mr Anil Kumar Malik. He also referred to certain communications on record which indicates that the petitioner had acknowledged that he had lent money to Mr Anil Kumar Malik. He submits that the entire case put up by the petitioner that the sum of ₹40 lakhs was paid by him towards his policies was false and not substantiated.

7. The learned counsel for the petitioner had countered the aforesaid submissions by stating that the money lent by the petitioner to Mr Anil Kumar Malik were separate transactions. He further submitted that the petitioner had filed separate suits against heirs of Mr Anil Kumar Malik after his demise and had obtained decrees for the amounts lent by the petitioner.

8. It is clear from the narration of the facts that Mr Anil Kumar Malik would be answerable for the sum of ₹40 lakhs which were utilized by him for taking a policy. It is further material to note that although the petitioner had instituted actions against Anil Kumar Malik for recovery of the dues owed by him to the petitioner, he had not instituted any action for recovery of the sum of ₹40 lakhs.

9. It is also plainly evident that the petitioner's claim for the sum of ₹40 lakhs is hopelessly barred by limitation. The cause of action had arisen in

2006 and the present petition has been filed almost ten years thereafter. In ***State of Madhya Pradesh v. Bhailal Bhai & Ors. AIR 1964 SC 1006***, the Supreme Court held a s under:

> "21. ....the provisions of the Limitation Act do not as such apply to the granting of relief under Art. 226. It appears to us however that the maximum period fixed by the legislature as the time within which the relief by a suit in a civil court must be brought may ordinarily be taken to be a reasonable standard by which delay in seeking remedy under Art. 226 can be measured. The Court may consider the delay unreasonable even if it is less than the period of limitation prescribed for a civil action for the remedy but where the delay is more than this period, it will almost always be proper for the court to hold that it is unreasonable."

10. The learned counsel for the petitioner had submitted that the petitioner did not initiate any action against LIC at the material time as he was apprehensive that officials of LIC would not approve of such action and the petitioner would incur their wrath. He further submitted that the petitioner continued to correspond with LIC to agitate his grievance. This Court is not persuaded to accept the above explanation. The sum of ₹40 lakhs was a significantly large sum and the delay on the part of the petitioner in approaching this Court or instituting an appropriate action is not excusable.

11. In view of the fact that (i) the petitioner had refrained from initiating any action against Mr Malik (his heirs) in respect of the amount claimed to have been misappropriated by him; (ii) that the present petition involves disputed questions of fact; and (iii) that the petition is hopelessly delayed, this Court is not inclined to entertain this petition. The petition is,

accordingly, dismissed.

VIBHU BAKHRU, J

OCTOBER 27, 2017
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