IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.W.P. No. 11260 of 2018

Date of Decision: 15.10.2018

Usha Gupta ....Petitioner

Versus

Oriental Bank of Commerce and others

......Respondents

CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.
HON'BLE MR. JUSTICE AVNEESH JHINGAN.

Present: Mr. Kashish Garg, Advocate
for the petitioner.

Mr. Harsh Garg, Advocate
for respondents No.1 and 3.

Mr. R.C. Gupta, Advocate
for respondent No.2.

AVNEESH JHINGAN, J.

The present writ petition has been filed seeking direction to Oriental Bank of Commerce and Oriental Insurance company Limited to release the insurance claim of the petitioner as per the insurance policies along with interest.

2. The petitioner is the widow of Sh. Sanjeev Kumar and a co-borrower of loan. The Oriental Bank of Commerce, Branch Zila Parishad Complex, Bathinda; The Oriental Insurance Company Limited, Bank Street, Bathinda and Oriental Bank of Commerce, Resolution Recovery and Law, Bathinda, have been arrayed as respondents No. 1 to 3 respectively in this writ petition.

3. The facts emanating from paper book are that the petitioner and her husband took a housing loan of ₹ 10 lakhs from respondent No. 1

(hereinafter referred to as 'Bank') on 10.05.2010. The loan was availed to purchase House bearing No. 2845, B-2, Street No. 6, Ganesha Basti, Bathinda. The Bank insured the housing loan through respondent No.2 to cover up risk of non-payment in case of any casualty to the borrower. Insurance premium of ₹ 7615/- was charged from the housing loan account and was directly paid to respondent No.2 by Bank. Insurance Cover note No.233200/48/2011/1772 was issued on 10.09.2010. As per the policy, the sum insured was ₹ 13 lakhs and it gave a personal accident cover of ₹ 5 lakhs to the insured. Sanjeev Kumar, husband of the petitioner was insured under the policy. The policy was valid from 10.09.2010 to 9.9.2025. The name of the policy was 'Avasiya Rin Bima Kavach'. Thereafter, on 11.09.2015 second policy No. 233200/48/2016/1867 was taken by the Bank. The sum insured was ₹ 10 lakhs, the policy was valid from 11.09.2015 to 10.09.2025. As per the policy, there was an accident cover of ₹ 2.5 lakhs each for Sanjeev Kumar and Usha Gupta. For the said policy, a premium of ₹ 4036/- was debited from the loan account and paid to respondent No.2 by the Bank.

4. Unfortunately, Sanjeev Kumar expired on 01.12.2016 in a car accident. The petitioner wrote a letter dated 04.05.2017 to respondent No.1-Bank for getting the insurance claim disbursed as per insurance policies. The petitioner was asked that intimation be sent to respondent No.2 with a proof of death so that the matter can be processed further. It is pertinent to mention here that no insurance documents were ever given to the borrowers. It was only after the death of Sanjeev Kumar that under Right to Information (RTI) and on consistent pursuance of the matter, the petitioner got the cover note and policies.

5. There was a default in repayment of the loan. On one hand, the

Bank was insisting on repayment of outstanding amount and on the other hand, the insurance claim was not being processed. The petitioner filed an application before Permanent Lok Adalat on 19.09.2017. The matter was pending before the Permanent Lok Adalat. In the meanwhile, the Bank initiated proceedings under Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for brevity 'the Act'). Bank served a notice under Section 13(4) of the Act.

6. The petitioner filed the present writ petition being aggrieved of non-release of the insured amount and assailing the recovery proceedings.

7. Notice of motion was issued on 04.05.2018 and respondent No.2 was directed to decide the insurance claim of the loanee i.e. the husband of the petitioner. In the meanwhile, parties were directed to maintain status-quo regarding physical possession of the residential house of the petitioner.

8. Initially respondents No. 1 to 3 filed short reply. Thereafter, respondent No.2 filed a separate written statement.

9. During the pendency of the writ petition, respondent No.2 paid ₹ 2,50,000/- in the loan account of the petitioner. The amount disbursed was under the second policy taken in the year 2015.

10. Heard learned counsel for the parties.

11. Learned counsel for the petitioner argued that two insurance policies were issued to cover the risk factor of the housing loan availed by the petitioner and her husband. Premium of both the policies were debited from the loan account. He contended that insured amount was not being disbursed and the Bank was proceeding under the Act for recovering the dues by taking over the physical possession of the residential house of the petitioner.

12. Learned counsel for respondent No.2 contended that the insured amount as per second policy has been released and the writ petition has been

rendered infructuous. He further submitted that Bank committed a mistake by getting the Insurance policy in 2010 only in the name of the husband of the petitioner and the Bank on realizing the mistake after five years in 2015 got the second policy for the same loan account without disclosing about the earlier policy. He further submitted that the petitioner cannot claim the insured amount under both the policies.

13. Learned counsel for the Bank stated that the Insurance cover note of the first policy was not supplied and Bank was not aware that the initial policy has been issued only in the name of the husband of the petitioner.

14. The facts which are not being disputed by the parties are that two policies were issued, one in the name of Sanjeev Kumar and the another in the name of petitioner and Sanjeev Kumar. Both the policies were in operation and were valid upto 09.09.2025 and 10.09.2025. The premium of both the policies was debited from the loan account and paid to respondent No.2. It is a fact that neither of the policies was cancelled nor any premium was refunded by respondent No.2.

15. Bank and respondents No.2 are indulged in a blame game and thereby denying the claim of the petitioner regarding the insured amount. The argument of respondent No.2 that the Bank committed a mistake by getting the insurance in the name of husband of the petitioner and later on got the second policy without informing about the earlier policy cannot be accepted. It has been established that the deceased Sanjeev Kumar was having insurance cover of two policies at the time of his death.

16. For the inter-se dispute between Bank and respondent No.2, the remedies can be availed by respondents in accordance with law. The respondent No.2 cannot evade its liability on the excuse that two policies

were issued because of mistake of the Bank. The fact that needs to be considered is that the petitioner or her husband had no role either in getting the insurance policies or in issuance of the insurance policies.

17. Bank debited the premium from the loan account and paid directly to respondent No.2. Bank had taken a stand that policy and the cover note of initial insurance was not supplied to it. In such circumstance, the pleadings of the petitioner that she had no document of insurance and it was only after the death of her husband that she was able to get these documents, has to be accepted.

18. There is another angle to the matter. None of the respondents have attributed any mistake on the part of the petitioner or her spouse. It is not a case where the earlier policy was got amended or rectified.

19. From the perusal of the policies, it is evident that initial policy was effective from 10.09.2010 and the insured sum was ₹ 13 lakhs, whereas the second policy was effective from 11.09.2015 and the sum insured was only ₹ 10 lakhs. The insurance company having issued two valid policies and received two premium cannot deny the insured amount to be paid under both the policies as Sanjeev Kumar lost his life in a motor vehicular accident. He was having personal accident cover of ₹ 5 lakhs under the first policy and ₹ 2.5 lakhs under the second policy.

20. Respondent No.2 is liable to pay a sum of ₹ 7.5 lakhs under both the policies. Only ₹ 2.5 lakhs has been paid till now. Respondent No.2 is directed that ₹ 5 lakhs should be deposited by respondent No.2 in the loan account of the petitioner immediately.

21. There was a delay by respondent No. 2 in disbursing the insured

amount and for this reason the Bank has charged interest and even penal interest on ₹ 7.5. Lakhs from the petitioner. Keeping in view the facts and circumstances of the case, it is directed that Bank shall not charge interest or penal interest on the amount of ₹ 7.5 lakhs from the date of death of Sh. Sanjeev Kumar, till the receipt of the payment by the Bank. In other words, there would be no liability of the borrowers to pay interest on a sum of ₹ 7.5 lakhs from the date the legal heirs of the deceased Sanjeev Kumar became entitle to the insured amount till the time the said payment was received by the Bank.

22. It is, however, clarified that it shall be open for the Bank to proceed against respondent No.2 in accordance with law to claim interest on the amount of ₹ 7.5 lakhs. Similarly, respondent No.2 shall be at liberty to avail its remedy in accordance with law against the Bank.

23. Apart from the payment of ₹ 7.5. Lakhs, there are outstanding dues against the petitioner. Learned counsel for the petitioner contended that the petitioner is ready and willing to clear the same. The petitioner may approach the respondent-Bank with a proposal for clearing the balance outstanding dues. The proposal shall be made within fifteen days from today and the petitioner would mention the time schedule for clearing the balance amount. The respondent No.1-Bank shall take a decision on the representation made by the petitioner at the earliest but not later than one month from the receipt of the representation.

24. This Court vide order dated 04.05.2018 granted the interim protection of status-quo regarding physical possession of the residential house to be maintained by the parties. The interim protection shall continue till the decision is taken by the Bank on the representation of the petitioner. It is, however, clarified that extension of interim order shall not be construed as an

expression on the merits of the case by this Court.

27. The writ petition is allowed in the manner indicated above.

(AJAY KUMAR MITTAL)
JUDGE

(AVNEESH JHINGAN)
15.10.2018 **JUDGE**
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Whether speaking/reasoned Yes/No

Whether Reportable: Yes/No