

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

+ **RFA No. 421/2006**

% **5th October, 2018**

THE NEW INDIA ASSURANCE COMPANY LIMITED

..... Appellant

Through: Mr. Gaurav Mishra and Mr.
Siddharth Pandey, Advocates
(Mobile No. 7359067379).

versus

CENTRAL BANK OF INDIA AND ANR. Respondents

Through: Mr. S.P. Gairola, Advocate for
R-2 (Mobile No. 9811671021).

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This Regular First Appeal under Section 96 of the Code of the Civil Procedure, 1908 (CPC) is filed by the defendant no. 4/ insurance company, in the suit, impugning the Judgment of the Trial Court dated 02.03.2006 by which the trial court has decreed the suit filed by the respondent no. 1/plaintiff/Central Bank of India against all four defendants in the suit. Defendant nos. 1 to 3 in the suit were

partners in a partnership firm who had availed the loan from the respondent no.1/plaintiff/bank. The issue qua the appellant/defendant no. 4 was whether it was liable because the insurance policy issued by it to make payment of the loss caused by the fire in the factory premises of respondent no. 2/defendant no. 1 on 31.07.1987, although as per the appellant/defendant no. 4/insurance company there was a violation of Clause No. 6 of the Insurance Policy which required immediate intimation of loss by the respondent no. 2/defendant no. 1 to the appellant/defendant no. 4/insurance company.

2. I need not narrate in detail the cause of action pleaded in the suit by the respondent no. 1/plaintiff against the defendant nos. 1 to 3, with respondent no. 2 in this appeal being the defendant no. 1 in the suit, inasmuch as such cause of action of the respondent no. 1/plaintiff is relevant qua this appeal as the same is for claim against the defendant nos. 1 to 3 on account of loan having been taken by the respondent no. 2/defendant no. 1/partnership firm of which defendant nos. 2 and 3 were partners.

3. The facts of the case are that the respondent no. 2/defendant no. 1 took an insurance policy from the

appellant/defendant no. 4/insurance company with respect to hypothecated goods of the respondent no. 2/ defendant no. 1 lying at the premises being no. 226-268-C, Karawal Nagar, Shahdara, Delhi. There is no dispute that the insurance policy was valid when the fire broke out in the factory of the respondent no. 2/defendant no. 1 on 31.07.1987. The defence of the appellant/defendant no. 4/insurance company was that it was not liable under the policy because fire took place on 31.07.1987 and the respondent no. 2/defendant no. 1 intimated the event of fire to the appellant/defendant no. 4/insurance company only on 19.10.1987 i.e. after roughly about two and a half months. The relevant Clause No. 6 of the policy with which we are dealing, reads as under:-

“6. (i) On the happening of any loss or damage the insured shall forthwith give notice thereof to the company and shall within 15 days after the loss or damage or such further time as the company may in writing allow in that behalf, deliver to the company;

(a) A claim in writing for the loss or damage containing as particular on account as may be reasonably practicable of all the several articles or items or property damaged or destroyed, and of the amount of the loss or damage thereto respectively having regard to their value at the time of the loss or damage not including profit of any kind.

(b) Particulars of all other insurances, if any

The insured shall also at all times at his own expenses produce, procure and give to the company all such further particulars, plans, specifications, books, vouchers, invoices,

duplicates or copies thereof, documents, proofs and information with respect to the claim and the origin and cause of the insured perils and the circumstances under which the loss or damage occurred, and any matter touching the liability or the amount of the liability of the company as may be reasonably required by or on behalf of the company together with a declaration on Oath or in other legal form of the truth of the claim and of any matters connected therewith.

No claim under this policy shall be payable unless the terms of these conditions have been complied with.”

4. The Clause No. 6 which is in issue in the present case on the basis of which the appellant/defendant no. 4/insurance company has pleaded denial of its liability on account of delayed intimation to the appellant/defendant no. 4/insurance company by the respondent no.2/ defendant no.1 of the loss caused by fire in the factory of respondent no. 2/defendant no. 1, has been the subject matter of a recent decision of the Supreme Court in the case of ***Sonell Clocks and Gifts Ltd. v. The New India Assurance Co. Ltd., 2018(10)SCALE24; MANU/SC/0891/2018***, and in which judgment the Supreme Court has held that in case there is non-compliance of the requirement of immediate intimation contained in Clause No. 6 of the insurance policy, then in such a case, the insurance company can validly repudiate the claim of loss. The relevant paragraphs of the judgment

in the case of *Sonell Clocks and Gifts Ltd. (supra)* are paragraphs 1, 14, 17, 19, 20 and 22, and these paragraphs read as under:-

“1. The Appellant filed a complaint before the National Consumer Disputes Redressal Commission, New Delhi being Consumer Complaint No. 20 of 2006, asserting that it had taken an Insurance Policy from the Respondent (Insurance Company) for a period of one year from 19th July, 2004 to 18th July, 2005, in respect of its building, plant and machinery at plot No. 70/3, B.K. Textile Compound, Dan Udyog Sangh Ltd., Piparia, Silvassa, Dadra Nagar, Haveli, for a sum assured of Rs. 2,87,00,000/- (Two Crore Eighty Seven Lakh Only) on reinstatement value basis. Due to torrential rains and floods in the entire area, the water gushed into the factory premises causing damage to the machinery as well as raw material lying therein. This event occurred on 4th August, 2004. Intimation of the loss was given to the Respondent after a gap of 3 months 25 days, on 30th November, 2004. Thereafter, the Respondent appointed a surveyor to assess the loss caused due to the flooding of the factory premises. The surveyor after causing inspection submitted its report to the Respondent inter alia stating that the claim was not payable on account of the failure of the complainant to comply with the mandate of Clause 6 of the general conditions of the policy. Acting upon the said report, the Respondent vide letter dated 18th February, 2005 conveyed rejection of the claim to the Appellant on the ground that neither the intimation of the loss had been given to it immediately nor were the requisite particulars of the loss conveyed within stipulated period. Thus, there was breach of terms and conditions of Clause 6 of the general conditions of the policy.

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14. The Respondent while refuting the said assertion of the Appellant stated in the written version filed before the Commission that the Appellant was negligent in dealing with its affairs, including in the matter of informing the Respondent forthwith about the claim after the loss or damage caused on account of

flooding as was essential as per condition No. 6 of the policy.
Condition No. 6 of the policy reads thus:

6. (i) On the happening of any loss or damage the insured shall forthwith give notice thereof to the Company and shall within 15 days after the loss or damage, or such further time as the Company may in writing allow in that behalf, deliver to the Company.

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No Claim under this policy shall be payable unless the terms of this condition have been complied with.

The Respondent also urged that after the receipt of the claim intimation from the Bank, it immediately appointed M/s. Saran Engineers & Consultants to survey and assess the loss. The surveyor after visiting the premises gave a detailed report dated 29th December, 2004 including its recommendation that the loss is not payable as per the policy (B) General Conditions, Para 6. On the basis of that report and keeping in mind the terms and conditions of the policy, the Respondent repudiated the claim in terms of policy condition No. 6 and intimated the repudiation of the claim to the Appellant vide letter dated 18th February, 2005. The Respondent also asserted that the true import of the letter of repudiation is a matter of interpretation. In any case, the appointment of the surveyor was necessary, otherwise the Appellant would have complained about the non-appointment of the surveyor. The Respondent urged that the Appellant was in breach of the policy condition.

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17. In the present case, it is common ground that the letter of repudiation dated 18th February, 2005 elucidates that the claim of the Appellant was rejected on the ground that neither the intimation of the loss had been given to it immediately after the loss nor were the requisite particulars of the loss conveyed within stipulated period and there was breach of terms and conditions of Clause 6 of the general conditions of the policy. Additionally, the surveyor

report predicates that it was very difficult to estimate the damages for the reasons mentioned therein and that the claim of the Appellant was not payable on account of breach of Clause 6 of the general conditions of the policy. That recommendation commended to the Respondent. It has been so incorporated in the letter of repudiation dated 18th February, 2005.

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19. The expression "duration" is of some significance which is reflective of the existence or otherwise of the policy itself. In the present case, there is no dispute about the subsistence of the policy but is one of violation of condition No. 6 of the policy. Furthermore, in the present case the controversy will have to be answered on the basis of Standard Fire and Special Perils Policy relatable to condition No. 6 obligating the insured to give forthwith intimation of the loss to the insurer. The two clauses are materially different and relate to two different and distinct insurance policies. In other words, Clause 5 of the Marine Insurance Policy and Clause 6 of the present policy are incomparable being qualitatively different.

20. To put it differently, Galada's case (supra) was not a case which considered repudiation based on a premise or a reason similar to condition No. 6 of the present policy and a specific plea taken by the insurer in that behalf in the repudiation letter itself. Notably, Clause 5 of the Marine Insurance Policy which was the subject matter in Galada's case (supra) did not have a negative covenant as in this case in the proviso to condition No. 6 of the subject policy. The fulfillment of the stipulation in Clause 6 of the general conditions of the policy is the sine qua non to maintain a valid claim under the policy.

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22. Suffice it to observe that Galada's case (supra) will be of no avail to the facts and circumstances of the present case. In that, the event occurred on 4th August, 2004 but intimation was given to the insurer only on 30th November, 2004 after a gap of around 3

months 25 days. No explanation was offered for such a long gap muchless plausible and satisfactory explanation. The stipulation in condition No. 6 of the policy to forthwith give notice to the insurer is to facilitate the insurer to make a meaningful investigation into the cause of damage and nature of loss, if any. This Court in Parvesh Chander Chadha (supra) has held that it is the duty of insured to inform the loss forthwith after the incident.”

(Underlining Added)

5. A reading of the aforesaid paras show that the requirement of immediate intimation of the insured event as per Clause No. 6 of the insurance policy has been held to be mandatory by the Supreme Court, and which is because an insurance company is always entitled to immediate intimation for it to verify the validity of the claim and qualification of the loss. Since, in the present case, the intimation to the appellant/defendant no. 4/insurance company is not immediately after the loss caused by fire on 31.07.1987, and intimation to the appellant/defendant no. 4/insurance company was only on 19.10.1987 i.e. after around two and a half months, therefore, in accordance with the ratio of the judgment of the Supreme Court in the case of *Sonell Clocks and Gifts Ltd. (supra)*, the appellant/defendant no. 4/insurance company rightly repudiated the claim and raised such defence accordingly in the written statement.

6. In view of the aforesaid discussion, this appeal is allowed. The impugned Judgment of the trial court dated 02.03.2006 so far as appellant/defendant no. 4/insurance company is set aside. The suit as against the appellant/defendant no. 4/insurance company will stand dismissed. Parties to bear their own costs. Decree sheet be prepared.

7. The amount deposited by the appellant/defendant no. 4, in this Court, along with accrued interest, be refunded back to the appellant/defendant no. 4 by the Registry of this Court within four weeks.

OCTOBER 05, 2018

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VALMIKI J. MEHTA, J

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