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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **WRIT PETITION(CIVIL) No. 2524/2018**

Date of decision: 16th March, 2018

TITUS ABRAHAM ... Petitioner
Through Mr. Wills Mathews, Mr. Ginesh P and
Mr. Paul John Edison, Advocates.

versus

UNION OF INDIA & ORS. Respondents
Through Mr. Waize Ali Noor, Mr. Prateek Dhanda
and Mr. Saeed Qadri, Advocates for R-1 and 2.
Ms. Suman Bagga, Advocate for R-5.
Mr. H.S. Parihar, Advocate for RBI.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE CHANDER SHEKHAR

SANJIV KHANNA, J. (ORAL):

Titus Abrham in the present writ petition has challenged *vires* of Notification dated 3rd August, 2000, issued by the Central Government in exercise of power under Section 6(1)(O) of the Banking Regulation Act, 1949, whereby it is lawful for the banking company to engage in insurance as a form of business.

Impugned Notification reads:-

“MINISTRY OF FINANCE
(Department of Economic Affairs)
(Banking Division)

NOTIFICATION

New Delhi, the 3rd August, 2000

S.O. 724 (E).- In exercise of the powers under Section 6 (1) (O) of the Banking Regulation Act, 1949, the Central Government hereby specifies 'Insurance' as a form of business in which it is lawful for a banking company to engage.

[No.7/24/97-BOA]

M. DAMODARAN, Jt. Secy."

2. Contention is that the aforesaid Notification in nature of delegated legislation violates and is in conflict with the mandate of Section 2C of the Insurance Act, 1938, which stipulates that no person shall carry on insurance business in India unless it is a public company; a society registered under the Cooperative Societies Act, 1912 or under any other law for the time being in force in any State relating to cooperative societies; or a body incorporated under the law of any other country outside India not being in nature of private company. Reference is made to the third proviso to Section 2C, which reads:-

"Provided also that no insurer other than an Indian insurance company shall begin to carry on any class of insurance business in India under this Act on or after the commencement of the Insurance Regulatory and Development Authority Act, 1999."

The aforesaid proviso was inserted by Insurance Regulatory and Development Authority Act, 1999 with effect from 19th April, 2000.

3. We do not find any merit in the contention raised and argued, for we do not accept that there is any conflict between the Notification dated 3rd August, 2000 and Section 2C of the Insurance Act, 1938. The Insurance Act

under Section 2(4-A) referring to banking company states that they shall have meaning respectively assigned to them in clauses (c) and (d) of sub-Section (1) of Section 5 of the Banking Companies Act, 1949. A banking company vide the impugned Notification can lawfully carry on business of insurance. However, to carry on the said business, they would have to, like all other entities, comply with the provisions of the Insurance Act including Section 2C. Notification in question permits a banking company to undertake insurance business and does not interfere or make the provisions of the Insurance Act inapplicable. All mandated compliances with the Insurance Act are required and necessary. Petitioner has not been able to establish that the impugned notification interferes with the statutory requirements, mandates and compliances under the Insurance Act.

4. ICICI bank, the sixth respondent, is a shareholder and promoter of ICICI Lombard General Insurance Company Limited, the fifth respondent. It is accepted and admitted that the fifth respondent is a separate legal entity being a company. Fifth respondent on compliance with all statutory requirements has been authorized to carry on business of insurance under the Insurance Act.

5. In view of the aforesaid discussion, challenge to the *vires* of the Notification dated 3rd August, 2000 has to be rejected.

6. The second prayer made in the writ petition relates to Loan Suraksha Policy No. 4065/ICICIAL/11285926/00/000 with coverage period from 29th December, 2015 to 28th December, 2020, issued by the fifth respondent.

7. Petitioner seeks refund of Rs.1,28,618/- paid as the premium along with the interest @ 18 %. This insurance policy was taken by the wife of

the petitioner, who has died after battling cancer. Allegations have been made against officers of the fifth and sixth respondent. It is asserted that the petitioner's wife was compelled to take the insurance policy as a pre condition for grant of loan for purchase of car. Respondent No. 5 subsequently has refused to pay the claim on the ground of suppression of material facts as the ailment was not disclosed.

8. Second issue raised in the writ petition raises several disputed questions of facts pertaining to the insurance contract. The petitioner is at liberty to initiate civil proceedings and to approach appropriate forum in accordance with law. We are not inclined to examine disputed contractual aspects in the present writ petition.

9. With the aforesaid observations, we reject the first prayer of the petitioner challenging the vires of the Notification and with regard to the second prayer, leave it open to the petitioner to take recourse to any other remedy available to him in law. On the second aspect, the writ petition is not entertained. We clarify that we have not expressed any opinion on merits on the said aspect.

SANJIV KHANNA, J.

CHANDER SHEKHAR, J.

MARCH 16, 2018

Mr/NA