

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

+ **RFA No.10/2018**

% **5th January, 2018**

UNITED INDIA INSURANCE CO. LTD. Appellant

Through: Mr. Sameer Nandwani,
Advocate with Mr. Junaidullah,
Advocate.

versus

M/S. GRACURE PHARMACEUTICALS LTD. & ANR.

..... Respondents

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not? **YES**

VALMIKI J. MEHTA, J (ORAL)

C.M. No.184/2018 (exemption)

1. Exemption allowed subject to just exceptions.

C.M. stands disposed of.

RFA No.10/2018 and C.M. No.183/2018 (stay)

2. This Regular First Appeal under Section 96 of Code of Civil Procedure, 1908 (CPC) is filed by the defendant no.1/United India Insurance Co. Ltd. impugning the judgment of the Trial Court dated 16.10.2017 by which the trial court has decreed the suit filed by

the respondent no.1/plaintiff no.1 for an amount of Rs.16,02,379/- along with interest at 9% per annum simple. Suit has been decreed for the loss being caused to the respondent no.1/plaintiff no.1 on account of the theft of raw material from the respondent no.1/plaintiff no.1's factory premises and which was covered by an insurance policy issued by the appellant/defendant no.1.

3. The facts of the case are that respondent no.1/plaintiff no.1 took an insurance policy no. 041603/003/000/46/03/176/93-94 dated 22.11.1993 from the appellant/insurance company for a sum of Rs.90 lacs with respect to the properties of the respondent no.1/plaintiff no.1 at 71/5, Nazafgarh Road, New Delhi. There were two plaintiffs in the suit namely the respondent no.1/plaintiff no.1 who was the owner of the factory and the respondent no.2/plaintiff no.2 in the suit was the entity/bank to whom the stocks of the respondent no.1/plaintiff no.1 were charged. During the night of 7.11.1994/8.11.1994 a burglary took place in the insured premises resulting in theft of the stocks of the value of Rs.17,42,681/-. An FIR in this regard was lodged on 8.11.1994 with the police station Moti Nagar, New Delhi. On intimation being given to the

appellant/defendant no.1 it appointed M/s Mehta and Padmsey Surveyors (P) Limited as the surveyor for verification and assessment of loss. The loss was assessed by the surveyor for a sum of Rs.16,02,379/-. The appellant/insurance company however repudiated the loss claiming benefit of Exception Clause (ii) of the insurance policy which provided that in case the theft is committed by an employee of the respondent no.1/plaintiff no.1 or by any person lawfully in the insured premises or such person is concerned with the actual theft then the appellant/insurance company would be exempted from paying the loss and the case of the appellant/insurance company was that theft had occasioned with connivance of the guard of the security employed by the respondent no.1/plaintiff no.1/owner of the factory. Accordingly since the appellant/insurance company failed to pay the loss caused on account of theft in the premises of the respondent no.1/plaintiff no.1, therefore, the subject suit was filed.

4. The appellant/defendant no.1 appeared in the suit and filed its written statement. Two main defences were taken. The first defence was that the suit was barred by limitation because the respondent no.1/plaintiff no.1 was not entitled to benefit of Section 14

of the Limitation Act, 1963 for the period between 20.12.1996 to 2.8.1999 which was spent before the National Consumer Redressal Commission in the proceedings initiated by the respondent no.1/plaintiff no.1. The second defence was that appellant/defendant no.1 was entitled to the benefit of Exception Clause (ii) as the guard of the premises of the respondent no.1/plaintiff no.1, namely one Sh. Satyawar Singh was a party to the theft committed and consequently Exception Clause (ii) of the insurance policy exempted the insurance company from any liability under the policy.

5. Trial court by the impugned judgment dated 16.10.2017 has granted benefit of Section 14 of the Limitation Act to the respondent no.1/plaintiff no.1 for the period spent before the National Consumer Redressal Commission. Trial court has as regard the Exception Clause (ii) held that this clause will not apply because theft took place inside the premises whereas the guard was not working within the premises but outside the premises.

6. At the outset I may note that admittedly no evidence whatsoever was led by the appellant/defendant no.1 and evidence in the suit was led only by the respondent no.1/plaintiff no.1.

7. The first issue which is argued before this Court on behalf of the appellant/insurance company is that the respondent no.1/plaintiff no.1 is not entitled to benefit of Section 14 of the Limitation Act with respect to the period spent in the proceedings under the Consumer Protection Act, 1986. In my opinion the trial court has rightly rejected this argument by holding that National Consumer Redressal Commission dismissed the case by holding that it would be the civil court which would have jurisdiction because disputed questions of fact arose and consequently the respondent no.1/plaintiff no.1 was *bonafidely* pursuing the complaint before the National Consumer Redressal Commission. Since in my opinion trial court has exhaustively and correctly dealt with this issue and given the correct reasoning, instead of giving my reasoning, I adopt the discussion and reasoning of the trial court whereby the trial court has rightly held the respondent no.1/plaintiff no.1 was entitled to the benefit of Section 14 of the Limitation Act. The relevant paras of the impugned judgment in this regard are paras 30 to 35 and these paras read as under:-

“30. Ld. Counsel for the defendants has vehemently argued that the present suit is barred by limitation as the time period which was consumed by the plaintiff No.1 in prosecuting the matter before the National

Consumer Redressal Commission cannot be excluded. It has been further argued that the National Consumer Redressal Commission is not a Civil Court.

31. Whereas on the other hand, it has been argued by the Ld. Counsel for the plaintiffs that the plaintiffs were bonafidely prosecuting the complaint before the National Consumer Redressal Commission w.e.f. 20.12.1996 to 02.08.1999 and the said time period has to be excluded as per Section 14 of the Limitation Act 1963.

32. It has been further argued that the claim of the plaintiffs was repudiated/rejected vide letter dated 29.12.1995 and the present suit has been filed on 02.02.2000 which is within the period of limitation.

33. Ld. Counsel for the plaintiffs has relied upon an authority cited as Manu/DE/6857/2011 titled as Jugal Kishore vs. Bank of India RFA No. 750/2002 decided on 28.11.2011 wherein the Hon'ble High Court of Delhi in paras No. 8 & 10 thereof has held as under:-

“8. In my opinion, therefore, the Trial Court was not justified in declining the benefit of Section 14 of the Limitation Act, 1963 to the appellant/plaintiff inasmuch as the appellant/plaintiff was bonafidely pursuing his remedy in a wrong Court/forum i.e. the Consumer Forum, instead of the appellant/plaintiff having approached the Civil Court. A plaintiff should not be thrown out from the court, unless his case and the averments made by him are looked into after proper trial in the case. This is, more so required in the present case because of the fraud pleaded by the appellant/plaintiff and the respondent/Bank pleading very surprisingly that the subject cheque was lost and no longer available with it.

10. In view of the above, appeal is allowed. Impugned judgment dated 28.02.2002 is set aside. Appellant/plaintiff is granted benefit of Section 14 of the Limitation Act, 1963 by excluding the period/time taken in pursuing the litigation before the Consumer Forum. The suit is, therefore, held to be within limitation. The Trial Court will now, hear and dispose of the suit in accordance with law and give findings on the merits of the matter, except the issue of limitation. Parties are left to bear their own costs. Trial Court records be sent back.”

34. Ld. Counsel for the plaintiffs has further relied upon an authority cited as Manu/DE/0781/2012 titled as Anil Bhambri vs. North Delhi Power Ltd. in RFA No. 567/2011 decided on 01.03.2012 wherein the Hon'ble High Court of Delhi in paras No. 4 & 6 has held as under:-

“4. Surely, an impression with respect to definition of a person being or not being a consumer is a legal issue and if there is a particular opinion of a legal issue there cannot be said to be any lack of bonafides for denying the benefit of Section 14 of the Limitation Act, 1963 to the appellant/plaintiff. Once a plaintiff pursues, in

bonafide manner, a claim in wrong forum which did not have jurisdiction, such a plaintiff is entitled to the benefit of exclusion of the period under Section 14 of the Limitation Act, 1963 spent in the wrong forum.

6. In view of the above, the appeal is accepted. Impugned judgment dated 15.11.2011 is set aside. The appellant/plaintiff will be entitled to exclusion of the period spent before the Consumer Forum, Delhi under Section 14 of the Limitation Act, 1963. As admitted by both the counsel before me, once this period is excluded, the suit then will be within the limitation. It is, therefore, held that the suit filed by the appellant/plaintiff is within limitation.”

35. To my mind, the ratio of the above stated two authorities is squarely applicable. It has not disputed by the defendants that the plaintiff No.1 has instituted the consumer complaint case before the National Consumer Redressal Commission. The copy of the complaint case in the form of Ex. PW1/F is there on record. It is not in dispute that the time period w.e.f. 20.12.1996 to 02.08.1999 was spent by the plaintiffs before the National Consumer Redressal Commission. Keeping in view the ratio of the abovestated authorities, to my mind, the aforesaid period of time w.e.f. 20.12.1996 to 02.08.1999 has to be excluded under Section 14 of Limitation Act. As such, to my mind, the plaintiffs have been able to prove that the present suit has been instituted within the period of limitation, Issue no.2, therefore stands decided in favour of the plaintiffs and against the defendants.”
(underlining added)

8. Accordingly I hold that the trial court rightly held that the respondent no.1/plaintiff no.1 was entitled to the benefit of Section 14 of the Limitation Act with respect to the period spent in pursuing the proceedings under the Consumer Protection Act before the National Consumer Disputes Redressal Commission. Once benefit of Section 14 of the Limitation Act is given there is no dispute that suit filed on 29.2.2000 would be within limitation. Accordingly, it is held that suit filed by the respondent no.1/plaintiff no.1 was within limitation.

9. The second issue to be examined is as to whether the appellant/insurance company could deny its liability in terms of Exception Clause (ii) of the insurance policy. This Exception Clause (ii) reads as under:-

“(ii) Loss or damage where any inmate or member of the insured’s household or his business staff or any other person lawfully in the premises in the business is concerned in the actual theft or damage of any of the articles or premises on where such loss or damage have been expedited or any way assisted or brought about by any such person or persons.”

10. In this regard in my opinion the trial court has rightly that the appellant/insurance company cannot take benefit of the Exception Clause (ii) because the theft took place within the premises whereas the security guard was a person of the security agency employed by the respondent no.1/plaintiff no.1 and who was only working outside the insured premises and not within the insured premises. I may note that since the insurance policy is drafted on a printed form of the appellant/insurance company, these printed clauses would have to be read strictly against the insurance company so that basic purpose of taking the insurance policy is not lost, and when it is found that in many cases insurance companies happily accept premium under policies but they take up all sort of excuses to deny reimbursement of

loss covered under the policy. It is undisputed that respondent no.1/plaintiff no.1 led evidence of its witness PW-1 Sh. A.S. Bhargava and as per his deposition the security guard namely Sh. Satyawan Singh was only employed for not with respect to the functioning within the factory premises but outside the factory premises. Once respondent no.1/plaintiff no.1 has led evidence in this regard, and no evidence is led by the appellant/insurance company, then there is no reason to disbelieve the evidence led by the respondent no.1/plaintiff no.1 that the guard employed was not a guard within the insured premises but outside the insured premises and consequently the appellant/insurance company cannot take benefit of the Exception Clause (ii) of the insurance policy. Once again trial court has in my opinion correctly given the necessary reasoning and conclusions in the impugned judgment and I adopt the same by reproducing the relevant paras of the impugned judgment as under:-

“22. The Exception Clause no. (ii) of the insurance policy Ex.PW1/D reads as under:-

“Loss or damage where any inmate or member of the insured's household or his business staff or any other person lawfully in the premises in the business is concerned in the actual theft or damage of any of the articles or premises on where such loss or damage have been expedited or any way assisted or brought about by any such person or persons.”

23. In the case in hand, finally, the police filed the closure report as the culprits were not apprehended as is the admitted position. But, the

question, which arises for consideration is as to whether the findings of the criminal court are binding upon the civil court or not. The answer to this question has been given in the authority cited as (2009) 13 SCC 729 and also cited as MANU/SC/1101/2009 titled as Sh. Vishnu Dutt Sharma Vs. Smt. Daya Sapra, wherein in Paras no. 26 and 27 thereof, the Hon'ble Supreme Court of India has observed as under:-

“Para no. 26 “Any finding in a criminal proceedings by no stretch of imagination would be binding in a civil proceeding.”

Para no. 27 “If a primacy is given to a criminal proceeding, indisputably, the civil suit must be determined on its own keeping in view the evidence which has been brought on record before it and not in terms of the evidence brought in the criminal proceedings.”

24. A perusal of the ratio of the above stated authority categorically brings home the point that any findings in a criminal proceedings by no stretch of imagination would be binding in a civil proceedings.

25. To my mind, merely the presence of the security guard in the cabin of guard outside the premises cannot be treated as the presence of a person inside the premises. It has to be seen that PW1, is the sole witness on behalf of the plaintiff. In the cross-examination, PW1 has stated that the security guard to used to have the keys of the main gate of the factory but he was not given the keys of the factory even for entering the factory.

26. I have no hesitation to hold that the burden squarely lies upon the insurance company to prove on record that the case of the plaintiffs was squarely covered under Exception Clause(ii) and they were required to prove their stand by way of cogent and reliable evidence but no evidence has been led at all by the defendants.

27. As such, I am of the opinion that merely because the police had recorded some statement of Sh. Satyawan and merely because Sh. Satyawan was arrested by the police, the same does not mean that the defendants can invoke the Exception Clause (ii) of the insurance policy.

28. The report of the surveyors has also been filed on record by the plaintiffs in the form of Ex.PW1/DD and the copy of the letter dated 29.12.1995 whereby the claim of the plaintiff was repudiated has been filed on record in the form of Ex.PW1/D. A bare perusal of Ex.PW1/DD ie the report of the surveyor categorically reveals that the loss was assessed by the surveyor appointed by the defendants as Rs.16,02,379/-. The defendants, in the entire written statement have not denied the entire survey report of the surveyor, which was appointed by none other but by the defendants themselves. As such, I am of the opinion that the plaintiffs have been able to prove that they are entitled to Rs. 16,02,379/- as the principal amount.” (underlining added)

11. In my opinion therefore no fault can be found with the impugned judgment holding that the appellant/insurance company was not entitled to benefit of Exception Clause (ii) of the insurance policy.

12. Finally learned counsel for the appellant /insurance company argued that the rate of interest granted at 9% per annum is excessive, however, I fail to understand as to how the reasonable rate of interest granted of 9% per annum is in any manner excessive.

13. There is no merit in the appeal. Dismissed.

JANUARY 05, 2018
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VALMIKI J. MEHTA, J

