IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 12340 OF 2019

DILIP MOHANDAS TEJWANI AND ANOTHER
VERSUS
THE UNITED INDIA INSURANCE COMPANY THROUGH THE DIVISIONAL MANAGER AND OTHERS
...
Advocate for the Petitioners : Shri R. S. Deshmukh
...

CORAM : RAVINDRA V. GHUGE, J.

DATED : 09th OCTOBER, 2019.
...

PER COURT :

1. The petitioners who are original respondent Nos. 2 and 3 in MACP No. 233/2018, are aggrieved by the impugned order dated 16/07/2019 passed by the Tribunal, by which, application Exhibit 35 filed by the original respondent No.1 Insurance Company seeking amendment to its W.S., has been allowed.

2. The grievance of the petitioners is that the amendment changes the complete nature of the defence taken by the Insurance Company. The ten grounds formulated in the memo of the petition are cited to contend that the impugned order is

perverse, erroneous and, therefore, deserves to be quashed and set aside.

3. Reliance is placed on a compilation of the bank statement issued by the Union Bank of India, Manmad City and certain documents annexed thereto.

4. Reliance is also placed on the judgment delivered by the Honourable Apex Court in the matter of ***Modi Spinning and Weaving Mills Company Limited Vs. Ladha Ram and Company 1977 AIR (SC) 680***, to support the contention that inconsistent pleas can be taken in the written statement, but substitution of a paragraph by introducing an inconsistent paragraph to displace the plaintiff from the admissions made, cannot be allowed.

5. The record reveals that the issue before the Tribunal is as regards an accident claim. The Insurance Company claims that the Insurance scheme was affected by the dishonouring of a cheque bearing No. 020806 dated 18/12/2017 by the Union Bank of India on the ground that the cheque was outdated.

6. It is, in the above backdrop, that the Insurance Company moved Exhibit 35 contending that it was inadvertently stated in paragraph 2 of the written statement as "cheque No. 020806 dated 18/12/2017". The words "given on" were missing in between the cheque number and the date. It is stated that the sentence "cheque No. 020806 dated 18/12/2017" should actually read as "cheque No. 020806 given on 18/12/2017".

7. The contention of the petitioners, who have issued the said cheque is that the cheque is indeed dated 18/12/2017 and its number is "020806". Now with the amendment that is permitted, the Insurance Company desires to say that the cheque No. 020806 was tendered by the petitioners on 18/12/2017.

8. In the backdrop of the said cheque being dated 18/12/2017, the amendment which is allowed actually is in favour of the petitioners because it is the case of the petitioners that they had tendered the cheque within time and strangely the cheque was dishonoured on the ground that it was

outdated. In my view, this would, therefore, put the entire onus and burden on the Insurance Company to prove that if they received the said cheque on 18/12/2017, when did they tender it to the bank for being credited, in the backdrop that the bank has stated that the cheque was presented beyond the expiry date.

9. In view of the above, I do not find that the impugned order could be termed as being perverse or likely to cause grave injustice to the petitioners. This petition, being devoid of merit is, therefore, dismissed.

(RAVINDRA V. GHUGE, J.)

shp/-