$~36

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

Date of decision: 19th November, 2019

\+ **CM(M) 1646/2019 and CM APPL. 49853/2019, 49854/2019**

SAHARA INDIA COMMERICAL CORPORATION LTD ..... Petitioner

Through: Mr. Ashish Dholakia, Mr. Simranjeet Singh, Ms. Neha Gupta, Ms. Rhea Dube and Mr. Aadhar Nautiyal, Advocates.

versus

VIJAY KUMAR AGARWAL & ANR ..... Respondents

Through: None.

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J(oral)

1. The present petition challenges the impugned order of the NCDRC dated 29th August, 2019 by which the Petitioner has been directed to make a deposit of the entire decretal amount. Mr. Ashish Dholakia, ld. counsel for the Petitioner submits that strangely, the NCDRC has neither decided the admission of the petition, nor issued notice, and there has been no stay of the operation of order of the State Commission. He further submits that while the Petitioner is willing to deposit the decretal amount as a condition for maintaining the Revision Petition, a direction to release the amount, would in effect mean that the decree has been executed without there having been any adjudication or terms and conditions being fixed. It is further submitted by Ld. Counsel that the liability to pay to the depositor is that of the National Insurance Company Ltd and not the petitioner.

2. It is urged that the NCDRC ought to have taken a view as to whether or not it was admitting the Revision Petition. However, a perusal of the order shows that no view has been taken by the NCDRC. The background of the decree which has been passed is that one Late Shri Nitesh Kumar Agarwal had paid a sum of Rs. 7,000/- as part of the Sahara Rajat Labh Yojna, where the insured amount was Rs. 1,50,000/-. Mr Nitesh Kumar Agarwal had appointed his father – Mr. Vijay Kumar Agarwal, Respondent No. 1/Complainant (*hereinafter, "Complainant*") as his nominee. This payment was made way back on 31st December, 2003, and the District Forum has accepted the case of the Complainant directed the payment of the said amount. The operative portion of the District Forum's order dated 27th July, 2016 reads as under:-

> *"The complaint of complainant is partly accepted. The opposite party No. 1 and 3 are directed that they shall pay Rs. 1,50,000/- (one lakh fifty thousand only) within one month to complainant with simple interest at the rate of 6% per annum from the date of filing complaint i.e. 07.07.2010 till the date of actual payment together with Rs. 1500/- (one thousand five hundred) as costs of litigation. The opposite parties NO. 1 to 3 are at liberty to do appropriate proceeding against the opposite party No. 1 regarding insurance compensation amount. Let one-one copy of this judgment be supplied to parties free of costs."*

3. The appeal of the Petitioner has been dismissed by the State Commission on 22nd November, 2018, and the Revision Petition, is now pending before the NCDRC and is stated to be listed on 20th November, 2019.

4. The NCDRC has, in the impugned order directed as under:

> *"8. The short limited point raised in this revision*

*petition is whether the liability to pay the complainant i.e. the father – nominee of the deceased – investor – insured is of the petitioner company or of the insurance company or of both (joint and several). It is **not** the petitioner company's case that the complainant-rather-nominee of the deceased—investor-insured has not to be paid the assured amount.*

The case professed by the petitioner company is that the liability qua the complainant—father—nominee of the deceased—investor—insured is only of the insurance company and not of the petitioner company.

9. The death of the deceased-investor-insured occurred in 2007. The complaint was filed before the District Forum in 2010. The District Forum decided the case in 2016. The appeal was filed before the State Commission in 2016. The State Commission decided the appeal in 2019. The revision petition has been filed before this Commission in 2019. About 12 years have elapsed from the death of the deceased-investor-insured.

10. During arguments, no answer was provided to a question from the bench as to why the respondent no. 1-complainant-father—nominee of the deceased investor-insured has to wait, further, even after 12 years of the death of the deceased—investor—insured, for the dispute between the petitioner company and the insurance company to be resolved, as to which of the two or both are liable to pay the complainant-father-nominee of the deceased-investor-insured, moreso when it is admitted by the petitioner company that it does not dispute that the payment to the complainant-father-nominee has to be duly made.

Learned counsel for the petitioner company submits, on instructions, that, even without prejudice to its right to agitate its dispute with the insurance company and to raise all its issues and contentions against the insurance company, the petitioner company *is not prepared to pay the complainant-father-nominee of the deceased-investor-insured.*

11. We are, but, of the considered view that it would albeit be a travesty of justice if the ordinary common consumer i.e. the complainant-father—nominee of the deceased—investor-insured has to, now, after 12 years of the death of the deceased-investor-insured, and after agitating (successfully) in two consumer protection fora, stand arrayed in a third consumer protection forum as respondent no. 1 and wait and watch for the petitioner company and the respondent no. 2-insurance company to settle their dispute apropos their respective liability towards him.

We fail to readily understand what prevents the petitioner company to settle the amount due to the father-nominee of its deceased investor-insured, without prejudice to its right to agitate its dispute with the insurance company and to raise all its issues and contentions against the insurance company.

We also fail to readily understand what prevents the petitioner company to independently and separately agitate its case with its insurance company, without troubling and prejudicing the father-nominee of its deceased investor-insured.

12. Perusal of the various Orders of this Commission referred to during arguments by learned counsel for the petitioner company shows that neither this bench and nor any coordinate bench of this Commission has examined these aspects and perspective.

13. We would, thus, like to hear this matter at length, in all its aspects, and in its entire perspective, while deciding on admission.

14. In the facts and unusual specificities of the case, we deem it appropriate and necessary that, in the first instance, the entire decretal amount shall be deposited *by the petitioner company with the District Forum as soon as possible for it to do so, before we take up further arguments on admission.*

On a question from the bench, learned counsel for the petitioner company submits that it would require six weeks from today to make the deposit of the entire decretal amount with the District Forum, without prejudice to its right to challenge the instant Order of this Commission.

15. That being so, the entire decretal amount shall be deposited by the petitioner company with the District Forum within six weeks from today.

16. After the said decretal amount is deposited, within the stipulated period, we would also require a responsible authorized functionary of the petitioner company to be present on the next date to conclude the arguments of learned counsel on admission.

17. List on 20.11.2019 for concluding the arguments on admission.

18. It is made explicit that [a] we have as yet to decide on admission, [b] on date notice has not been issued to the respondents and [c] on date there is no stay from this Commission on the operation of the impugned Order of the State Commission.

19. The Registry is directed to send a copy of this Order to the respondent no. 1-- complainant-father-nominee within three days from today."

A reading of the above shows that the NCDRC is conscious of the death of the depositor in 2007, and how his nominee is awaiting payment since 2010 when the complaint was filed. Further, the NCDRC notes that the Petitioner does not dispute that the payment is to be made – the only question is, who is to make the payment?

5. The NCDRC has directed the deposit of the entire decretal amount with the District Forum, before hearing the arguments on admission. It is further argued that since there is no stay granted by the NCDRC, the deposited amount may be released to the Complainant.

6. It is submitted that while the Petitioner is willing to deposit the money before the NCDRC, the same ought not to be released before issuing notice to the National Insurance Company Ltd. and to the Complainant, or taking a decision as to whether the Revision Petition is admitted or not.

7. The NCDRC is yet to take a view as to whether it is admitting the Revision Petition or not. It has directed that a copy of the order to be sent to the Complainant. While the Court is of the opinion that the direction to deposit the entire decretal amount is justified in these facts, the same would have to be on some terms.

8. Accordingly, the following directions are issued:-

(1) The Petitioner shall appear before the NCDRC tomorrow i.e. 20th November, 2019 and shall undertake to deposit the money before the NCDRC within a period of one week, as the time fixed by NCDRC for deposit of the amount has already lapsed.

(2) The NCDRC would take a decision as to whether or not it is admitting the revision petition.

(3) The NCDRC shall also pass appropriate orders in respect of release of the amount to the Complainant and if so on what terms;

9. The Petitioner is directed to appear before the NCDRC tomorrow i.e.

20th November, 2019.

10. The petition with all pending applications is disposed of.

11. Order *Dasti* under signature of the Court Master.

PRATHIBA M. SINGH
JUDGE

NOVEMBER 19, 2019/MR