IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 20.02.2020
CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P. No.8208 of 2017
and
W.P. No.8517 of 2017
and
W.M.P.No.10312 of 2017
and
W.M.P.No.8005 of 2019

1.S.Senguttuvel ... 1st petitioner in W.P. No.8208 of 2017
and
petitioner in
W.P.No.8517 of 2017

2.S.Megala
3.S.Palani Ammal
4.S.Suresh
5.A.Muniyappan
6.P.Vivek
7.T.Saravana Babu

...Petitioners
in
W.P. No.8208 of 2017

Vs

1. The Branch Manager,
United India Insurance Co., Ltd.,
No.1019, K.M.S. Complex,
Salem Main Road,
Attur Taluk,Salem District.

2.The Karur Vysiya Bank,
Rep by its Branch Manager,
Attur Town and Taluk,
Salem District.

3.National Bulk Handling Corporation Ltd.,
FT Tower, 6^{th} Floor,
CTS No.256 and 257, Suren Road,
Chakala, Andheri (East),
Mumbai - 400 093.

... Respondents
in
W.P. No.8208 of 2017

1.Bajaj Alliance General Insurance Co., Ltd.,
Door no.11, (office no: 6-A),
Peoples park 3rd floor,
Govt Arts college road,
Coimbatore – 641 018.

2.The Karur Vysiya Bank,
Rep by its Branch Manager,
Attur Town and Taluk
Salem District. ... Respondents
in
W.P. No.8517 of 2017

Prayer in W.P. No.8208 of 2017 :- Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus to direct the respondents to settle our claim for damages in respect of fire accident in my turmeric Godown insured with the first respondent under the Policy No.170781/11/14/11/00000054 for godown to a sum of Rs.75,00,000/- and for Turmeric to a sum of Rs.84,28,700/- to the first petitioner, the policy No.170781/11/14/11/00000052 to a sum of Rs.94,08,600/- to the second petitioner, the policy No.170781/11/14/11/00000053 to a sum of Rs.81,79,500/- to the third petitioner, the policy No.170781/11/14/11/00000057 to a sum of Rs.71,89,000/- to the fourth petitioner, the policy No.170781/11/14/11/00000056 to a sum of Rs.81,92,000/- to the fifth petitioner, the policy No.170781/11/14/11/00000055 to a sum of Rs.82,91,500/- to the sixth petitioner, the policy No.170781/11/14/11/00000058 to a sum of Rs.37,18,000/- to the seventh petitioner on total loss basis within a reasonable time.

Prayer in W.P. No.8517 of 2017 :-
Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus to direct the 1st respondent to settle the petitioner's claim for damages in respect of fire accident in his turmeric Godown insured with the first respondent under policy No.OG-15-1503-4001-00002044 on total loss basis within a reasonable time.
(prayer amended as per order dt. 4.8.17 by this Court in W.M.P.No.10312/17)

For petitioners in both W.P.s : M/s.A.Malath Devapriyam

For respondents in both W.P.s : Mr.S.Arun Kumar for R1
Mr.S.C.Rajesh for R2

COMMON ORDER

These writ petitions have been filed seeking for damages for the fire accident in the Turmeric godown of the respective petitioners which has been insured with the first respondent.

2. Since the issue involved in both these writ petitions are common, they are disposed of by a common order.

3. According to the respective petitioners, that they are doing Turmeric business for the past 9 years. According to them, due to the fire accident in their godowns on 09.06.2014, they have suffered a total loss. It is their case that they had taken a fire policy with the first respondent and that they had made a claim with the first respondent for the losses suffered by them on account of the fire accident in their respective godowns. According to the petitioners in W.P.No.8208 of 2017, the claim was totally rejected by the first respondent and according to the petitioner in WP No.8517 of 2017, the claim was partly allowed by the first respondent. Aggrieved by the same, the respective petitioners have filed these writ petitions seeking compensation for the losses suffered by them on account of the fire accident.

4. A counter affidavit has been filed in both these writ petitions by the respective first respondents stating that the writ petitions are not maintainable as under the respective contracts of insurance, the only remedy available to the petitioners is to approach a civil Court. It is also their case that the repudiation orders have also not been challenged and hence, these two writ petitions are not maintainable. The first respondent in both writ petitions have also denied their liability to the respective petitioners as according to them, their claim is untenable.

5. A counter affidavit has also been filed by the second respondent bank in both these writ petitions and they have stated that these writ petitions are not maintainable. According to them, on receipt of information about the alleged loss, they appointed surveyor to the spot and to submit a report. Based on the report submitted by the surveyor, it is their case that the respective petitioners have not maintained proper books of account and the respective petitioners have removed / disposed partially the damaged stock from the fire accident spot. Hence, it is their case that the claims made by the respective petitioners are unsustainable. It is also their case that only to avoid the recovery of the sums due and payable by the respective petitioners to the second respondent bank in both these writ petitions with whom, the respective petitioners had availed loan and are defaulters, these writ petitions have been filed.

6. Heard the respective learned counsels appearing for the respective parties.

7. The learned counsel for the respective petitioners drew the attention of this Court to the following two Single Bench judgments of this Court:

i) in the case of Dr.Shanthi Rengarajan versus The Oriental Insurance Company Ltd., Chennai and another passed on 9.3.2018 in WP No.43202 of 2016 and

ii) in the case of Jasmine Ebenezer Arthur versus HDFC ERGO General Insurance Company Ltd., Chennai and two others passed on 06.06.2019 in WP No.22234 of 2016

8. It is the contention of the learned counsel for the petitioners that there is no unauthorised storage of chemicals in the petitioners premises. According to her, by total non application of mind, the first respondent in the respective writ petitions has rejected the claim on the ground that the respective petitioners stored unauthorised chemicals in their respective premises which was the cause of the fire accident.

9. Per contra, the learned counsel for the first respondent in both writ petitions would submit that the writ petitions are not maintainable as there are several disputed questions of fact. It is his case that only due to the storage of unauthorised chemicals by the petitioners, the fire accident had happened. Further, it is his contention that the without challenging the repudiation order rejecting the insurance claim of the respective petitioners, writ petitions are not maintainable. According to him, the only remedy available to the petitioners is to approach the Civil Court.

10. The learned counsel for the second respondent bank in both these writ petitions contends that substantial sums of money are due and payable by the respective petitioners to the bank as they have committed default in the repayment of the respective loans. It is also his contention that already the second respondent has initiated DRT proceedings for the recovery of dues payable by the respective petitioners to the bank, which is now pending on the file of the Debts Recovery Tribunal, Madurai.

Discussion :

11. As seen from the affidavit filed by the petitioners as well as the counter affidavit filed by 1st and 2nd respondents, there are several disputed questions of fact involved. It is the contention of the respective petitioners that in their respective godowns, they did not store any unauthorised

chemicals which was the cause of the fire accident as alleged by the first respondent in both these writ petitions. It is the case of the first respondent in both these writ petitions that certain damaged goods were also removed by the petitioners subsequent to the fire accident and therefore, the petitioners are not entitled to claim any compensation for the said goods as it is a violation of the policy conditions. The same is however disputed by the respective petitioners, as seen from the affidavit filed in support of these writ petitions.

12. As seen from the above, it is evident that there are several disputed questions of fact involved and this Court under Article 226 of the Constitution of India cannot adjudicate the same. It is only for the Civil Court after considering the oral and documentary evidence available on record, to adjudicate the dispute between the parties.

13. The judgments relied upon by the learned counsel for the petitioners referred to supra, are not applicable to the facts of the instant cases, as the cases cited by the learned counsel for the petitioners is a case of medical negligence whereas, the instant cases are fire accident claims under fire insurance policy. Further in the above referred case viz., Jasmine Ebenezer Arthur versus HDFC Ergo General Insurance Company Ltd., Chennai and two others passed in WP No.22234 of 2016, Insurance Regulatory and Development Authority of India (IRDA) was a party. Furthermore, in those cases, medical negligence was proved to the satisfaction of the Court, whereas in the instant cases, the first respondent in both these writ petitions have categorically disputed the claim of the petitioners.

14. For the foregoing reasons, this Court is of the considered view that both these writ petitions are not maintainable, in view of the fact that there are disputed questions of fact involved.

15. In the result, both these writ petitions are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

vsi2
+1cc to Mr.S.Arun Kumar , Advocate SR.No. 15344

W.P. No.8208 of 2017
and
W.P. No.8517 of 2017

rsv co
A.SK(26/05/2020)