BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 31.08.2020

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.21344 of 2019

M/s.Sri Maruthi Polymers,
412 E, Theni main Road,
Meenatchipuram Vilakku,
Bodinayakkanur,
Theni District - 628 582. :Petitioner

Vs.

1.M/s.United India Insurance Co Ltd,
Divisional Office:090100
457, V.E.Road, P.B.No.107,
Tuticorin - 628 002.

2.Grievances Cell,
United India Insurance Co.,Ltd,
Pattulos Road,
Chennai - 600 006.

3.Insurance Regulatory and Development Authority of India,
Old No.312, New No.453,
Fathima Akthar Court, 4th Floor,
Anna Salai, Chennai - 600 018.

4.M/s.Tamilnadu Mercantile Bank Ltd,
Rep by its Branch Manager,
D.No.22,Ponnambalam Street,
Bodinayakkanur,
Theni District - 625 513.

5.M/s.Tamilnadu Mercantile Bank Ltd,
Rep by its Branch Manager,
30,Besant Road,
Chinnachokkikulam,
Madurai-625 002.

6.Banking Ombudsman,
Office of the Banking Ombudsman,
Reserve Bank of India,
16, Fort Glacis, Rajaji Salai,
Chennai - 600 001. :Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the order passed by the 1st respondent dated 02.08.2019 and quash the same and consequently directing the 1st respondent to pay the genuiune compensation due to the fire accident on 27.05.2018 at Sri Maruthi Polymers.

For Petitioner : Mr.G.Annamalai Athiaman

For Respondents : For R1 & R2-Mr.Lakshmi Shankar
For R3 – No appearance
For R4 & R5 – Mr.N.Dhilip Kumar

O R D E R

Heard the learned Counsel appearing for the Writ Petitioner and the learned Standing Counsel appearing for the United India Insurance Company and Tamilnadu Mercantile Bank Limited.

2. The petitioner is a manufacturing unit. The petitioner had availed loan from Tamilnadu Mercantile Bank. The petitioner's insurer is United India Insurance Company. The petitioner had also registered themselves with MSME/GST etc., Whileso, an accident took place on 27.08.2018 in the premises bearing Door.No.412-E, Theni Main Road, Meenavilakku, Annaikarapatty Village, Bodinayakanur, Theni. According to the petitioner, he had stored the business stocks worth more than Rs.59 lakhs in the said premises. Since the premises had been insured, he wanted the Insurance Company to settle the loss suffered by him. The stand of the insurer was that the said fire policy covering the petitioner's business stock showed the address bearing 15-2-10, Perumal Kovil Street, B.Meenakshipuram, Bodinayakanur as a Godown and the accident place had not been covered in the said policy. This was intimated to the petitioner vide communication dated 02.08.2019. The same is under challenge in this Writ Petition.

3.The stand of the petitioner is that the petitioner has all along been residing only at Meenakshipuram and that the premises at Meenalvilakku was shown as Godown and factory in all the official records. The learned counsel appearing for the petitioner took me through the GST Certificate, MSME application form etc., pertaining to his business. He also repeatedly stressed that Tamilnadu Mercantile Bank officials have been visiting his premises every month and also signing the monthly stock statement. According to the petitioner, the mistake had been committed only by Tamilnadu Mercantile Bank officials and he drew my attention to the letter dated 23.07.2018 issued by Tamilnadu Mercantile Bank, referred to in paragraph 18 of the Counter affidavit filed by the insurer. The same is extracted hreunder:-

"18.It is respectfully submitted even as per the letter dated 23.07.2018 issued by Tamilnadu Mercantile Bank, the bank itself clearly stated at paragraph 2 as follows:

"inadvertently our branch has effected insurance for a very long period for the address of customer's office address instead of Godown/factory address. Hence, we request your goodselfs to amend the insurance coverage address for the policy No.0901001118P100562442 with effect from the date of insurance ie.17.04.2018 to 16.04.2019."

4. The specific contention urged by the petitioner's counsel is that Tamilnadu Mercantile Bank had acted as an agent of the Insurance Company and therefore the consequence of the mistake committed by the agent should be borne only by the principal. His categorical contention is that the premises at Meenatchipuram had always been his residence and that the premises at Meenalvilakku had been used as godown cum factory. The Bank is fully aware that the stocks are stored only at Meenalvilakku premises. Therefore, they ought to have insured it appropriately. The bank has been collecting the requisite premium from the petitioner every month. Therefore, according to the petitioner's counsel, the stand taken by the first respondent will have to be rejected as most unreasonable. He wanted me to direct the first respondent insurer to settle the claim of the petitioner. In fact, the actual loss sufferred by the petitioner is Rs.59 lakhs. But the maximum sum assured is Rs.35 lakhs. Even if the sum assured is paid in full, the petitioner would still be at a loss.

5.Per contra, the learned counsel appearing for the Insurance Company as well as the Tamilnadu Mercantile Bank submitted that the petitioner ought to have given the correct address in the contractual transactions. They also contended that filing this Writ petition is clearly misconceived and that therefore the petitioner should be relegated to the alternative forum.

6.I carefully considered the rival contentions and persued the materials available on record. As rightly pointed out by the learned standing counsel for Tamilnadu Mercantile Bank, the premises bearing Door.No.412-E, Theni Main Road, Meenavilakku, Annaikarapatty Village, Bodinayakanur, Theni appears to have been put up only as a residential building. In fact, the building plan approval, housing loan documents as well as the letters written by the petitioner to the bank clearly indicate that the building in question has been put up only as a residence. But the petitioner had stored the polybags in the said premises. It is obvious that Tamilnadu Mercantile Bank was aware of the same. The branch official cannot plead ignorance. But the fact remains that the place, where the accident took place had not been covered in the fire policy. The counsel appearing for the Insurance company drew my attention to the terms of policy. It is seen there from that the building covered by the policy in question has been shown as occupied as residence. The learned Standing Counsel for the insurance compnay also would point out that the policy would be voidable in certain circumstances and that the case on hand would fall under those circumstances.

7. On a careful perusal of the entire material on record, I come to the tentative conclusion that the blame may have to be borne more by the officials of Tamilnadu Mercantile Bank. I am not in a position to give a finding that the Insurance Company has to bear the consequences for the omission on the part of the Bank. As rightly pointed out by the learned counsel for Tamilnadu Mercantile Bank, the petitioner also may have to shoulder a part of the blame. The petitioner has been a long standing customer of the Bank. He ought to have diligently ensured that correct particulars are reflected in the insurance policy. He had not done so. Since the case is full of factual disputes and since they arises out of contractual obligations, I am of the view that the petitioner ought to move either the jurisdictional Civil Court or the State Consumer Commission. Therefore, leaving open to the petitioner's rights, I dismiss the writ petition.

8.With these observations and liberty to the petitioner, the Writ petition is dismissed. No costs.

Sd/-

Assistant Registrar (AD-II)

// True Copy //

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Sub Assistant Registrar(CS)

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Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To:

1.The Officer Incharge,
Insurance Regulatory and Development Authority of India,
Old No.312, New No.453,
Fathima Akthar Court, 4th Floor,
Anna Salai, Chennai – 600 018.

2. The Officer Incharge,
   Banking Ombudsman,
   Office of the Banking Ombudsman,
   Reserve Bank of India,
   16, Fort Glacis, Rajaji Salai,
   Chennai – 600 001.

+1 CC to Mr.N. DILIPKUMAR, Advocate (SR-15724[F] dated 02/09/2020)

+1 CC to Mr.A. SHAJAHAN, Advocate (SR-15643[F] dated 02/09/2020)

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VB (07.09.2020) 5P 5C