

25

24.06.2021
TN

CO No.1131 of 2021

(Via video conference)

Sharmistha Chaudhuri

Vs.

The Life Insurance Corporation of India and
another

Mr. K. Thaker,
Mr. Chayan Gupta,
Mr. Souvik Kundu

.... for the petitioner

Ms. Sanjukta Roy,

.... for the opposite parties

As argued by learned counsel appearing for the petitioner, the appellate court below acted without jurisdiction in imposing interest on the payment, which was to be made as a condition for stay, at the behest of the opposite parties. Learned counsel for the petitioner reiterates his previous submission that, in view of Special Bench judgments of this court, as extended from time to time, relaxation has been granted even in respect of making conditional payments during the Covid-19 period starting from March, 2020 onwards. As such, it is argued that no interest ought to be

charged for the lapses in payment during the said period.

That apart, the petitioner's original argument remains, which is that there was no default on the part of the petitioner in non-encashment of the cheque, which was deposited by the petitioner for a previous period within the stipulated time.

The said contentions are controverted by learned counsel appearing for the opposite parties.

Upon hearing both sides, it is evident from the records that the cheque-in-question, a copy of which has been annexed to the instant revisional application, *ex facie* shows no discrepancy between the amounts written in figures and in words respectively. Hence, the contention of the opposite parties that the cheque was dishonoured by the concerned Bank on the ground of such alleged discrepancy, cannot hold water. Rather, even without casting any stigma on the LIC, since there was apparently no fault on the part of the LIC also in non-encashment of the cheque, it can very well be seen that there was no default at least on the part of the petitioner which could prompt the opposite parties to oust the petitioner from possession of the suit property on the pretext of

contravention of the condition for stay as stipulated by the trial court.

As regards the subsequent defaults regarding payment of current occupation charges, learned counsel for the petitioner is justified in contending that, in view of the relaxation granted by the Larger Bench even in respect of payments as conditions for stay, it was not mandatory for the petitioner to make the payments during the pandemic period.

Hence, there cannot be any justification for unnecessarily imposing the burden of interest on the petitioner for non-payment of current occupation charges during the Covid-19 period, since such an imposition would go against the grain of the relaxation granted by the Larger Bench.

In such view of the matter, CO No. 1131 of 2021 is disposed of by directing the petitioner to pay Rs.1,83,600/- in lieu of default of payment of occupation charges from April, 2020 to March 2021, along with Rs.5,53,887/-, which was the amount covered by the cheque, which was dishonoured for no fault of either of the parties, totalling to the amount of Rs.7,37,487/-, within one month from date to the opposite parties. Thereafter, the petitioner shall carry on paying occupation charges, as directed by the appellate

court as a condition of stay, within the stipulated period regularly each month to the opposite parties. The current occupation charges shall be paid for each month within the 15th day of the succeeding month at the rate of Rs.15,300/- per month. The first of such installments shall be paid by the petitioner by September 15, 2021, as occupation charges for the month of August, 2021.

Immediately upon clearance of the said dues of Rs.7,37,487/- by the petitioner to the opposite parties, the opposite parties shall restore possession of the property-in-suit in favour of the petitioner, at the most within three days after completion of the payment.

The above directions are peremptory.

It is further clarified that, in the event of subsequent defaults of the petitioner in payment of current occupational charges, it will be open to the opposite parties to approach the appellate court for appropriate orders for vacating the stay. The parties as well as the appellate court below shall act on the communication of the learned advocates for the parties and/or server copy of this order without insisting upon prior production of a certified copy.

There will be no order as to costs.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)