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ORDER SHEET

WPO No. 494 of 2021

IN THE HIGH COURT AT CALCUTTA

Ordinary Original Civil Jurisdiction

ORIGINAL SIDE

POONAWALLA FINCORP LTD.
(Formerly Known as MAGMA FINCORP LIMITED) & ANR.
Versus
THE NATIONAL INSURANCE COMPANY LIMITED & ANR.

BEFORE:

The Hon'ble JUSTICE RAJASEKHAR MANTHA

Date : 16th September, 2021

Appearance:
Mr. Abhratosh Majumder. Sr. Adv.
Mr. Arif Ali, Adv.
Mr. Prabhat Kumar Srivastava, Adv.
...for the petitioners

Mr. Rajesh Singh, Adv.
...for the Respondents

The Court : The writ petitioner is aggrieved by the order dated 8th March, 2019 passed by the National Insurance Company rejecting its claim under Policy number ending with no.6322. The category of insurance contract is “Fidelity Guarantee Blanket Policy”. In essence, the insurer had agreed to make good any loss suffered by the insured on account of any fraud or illegality perpetrated by its employees.

The writ petitioner is engaged in the business of finance and is categorised as a non-banking finance company under the provisions of the Reserve Bank of India Act, 1938.

The alleged fraud by its employees as a consequence of which the petitioner claims to have suffered loss to the extent of Rs.50 Lacs occurred sometime around 2011-12. The assured claims to have come to know of the same sometime in January, 2012. An FIR is lodged sometime in July, 2012 and the insurance company was informed in August, 2012.

The insurance company rejected the claim of the petitioner for the first on 26th November, 2012. The order was challenged before the State Consumer Disputes Redressal Commission at Kolkata by way of Complaint being C.C. No. – 364 of 2015. The application was dismissed on 10th May, 2016 for being barred by limitation.

The petitioner approached this Court by way of WP No.10330(W) of 2016 against the order of the insurance company on the ground that sufficient reasons were not disclosed, for rejecting the petitioner's claim by the respondent in the order dated 26th November, 2012.

The insurance company was directed by order dated 17th June, 2016 to give reasons for rejecting the petitioner's claim. It is completely ununderstood how the writ petition could have been filed or entertained after 4 years of the said order and after the petitioner's claim was rejected by the State Consumer Disputes Redressal Commission, albeit on the ground of limitation under the Consumer Protection Act, 1996.

Thereafter WP No.1215(W) of 2019 was filed for a direction upon the insurance company to pass final orders with reasons. During the pendency of the said writ petition, the impugned order dated 8th March, 2019 was passed. Recording the passing of such orders, the writ petition was disposed of by a coordinate Bench on 20th March, 2019.

Mr. Majumder, learned senior counsel appearing for the writ petitioner, would argue that the impugned order is not sustainable for procedural irregularity. It is submitted that the said order rejected the claim of the insurance company based on a survey report. Surveyor was appointed by the insurance company itself.

The report was never disclosed to the petitioner by the respondents. The said report was obtained under the provisions of the RTI Act. Based on such survey report it is argued that the respondents have completely misled the petitioner by not disclosing the fact that the surveyor has allowed the petitioner's claim to the extent of Rs.48 odd Lacs.

It is submitted that the impugned order should be interfered with for suppression of material facts and/or for not dealing with the portion of the report of the surveyor which allowed the claim albeit to a slightly reduced extent.

Counsel for the insurance company Mr. Rajesh Singh opposes the writ petition with vehemence. It is submitted that a stale claim hopelessly barred by limitation is sought to be revived under Article 226 of the Constitution of India. The object and purpose of the writ petition is only to cover up the delay and laches and bar on limitation of the petitioner's claim.

It is also argued that a surveyor's report, even assuming for the sake of argument has not been disclosed to the petitioner, is not binding on the insurance company. Such report only decides the extent of loss. A decision on legality of such claim is within the exclusive domain of the insurance company. Such illegality in conduct of the assured, is for flagrant violation of the terms of the insurance contract.

Having heard learned Counsel for the parties at length, this Court has no hesitation to hold that the writ petition is harassive and has been filed for collateral purposes.

The claim of the petitioners had become stale and barred by limitation, sometime in the year 2015. Reliance is placed on an order dated 1st September 2017 passed in CPAN 1320 of 2016 arising out of WP 11330(W) of 2016. By the said order it was held that the petitioner's claim would not be treated as barred by limitation by the respondents.

Be that as it may, even assuming that the petitioner's claim is otherwise sustainable and not barred by limitation, the question really is whether this writ petition ought to be entertained in these facts. It has also to be ascertained as to whether there is any sustainable ground for interference under Article 226 against the impugned order.

This Court is of the view that the claim of the petitioner has been rejected on ground of violation of the terms of the contract. To assess, the legality and propriety of such rejection, disputed questions of fact would have to be entered into which cannot be done under Article 226.

There is also the question of delay and laches, that is applied under Article 226. The two year delay after the impugned order in filing of the writ petition and 9 years delay after the cause of action accrued, would definitely constitute serious laches on the part of the writ petitioner.

Commercial grievances in relations between the parties, particularly with an instrumentality of State must be agitated at the earliest available opportunity. This Court finds inordinate and unexplained delay in the filing writ petition.

The writ petition is even otherwise speculative and not bona fide.

For the reasons stated above, the writ petition is not entertainable and is hereby dismissed.

There shall be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the parties on priority basis.

(RAJASEKHAR MANTHA, J.)

SN/Akg.