IN THE HIGH COURT OF JUDICATURE AT BOMBAY, NAGPUR BENCH, NAGPUR.

FIRST APPEAL No. 644/2010

Sant Shri Gajanan Maharaj Sansthan,
Branch at Pandharpur, through its
Managing Trustee, Shegaon, District Buldana. **APPELLANT**

.....VERSUS.....

United India Insurance Company Limited,
Branch Khamgaon, through its Branch
Manager, Maya Building, 1st Floor,
Khamgaon, District Buldana. **RESPONDENT**

Shri A.R. Patil, counsel for the appellant.
Mrs. Anita Mategaonkar, counsel for the respondent.

WITH

FIRST APPEAL NO. 955/2010

United India Insurance Co. Ltd.,
Khamgaon Branch, through the Regional
Manager, Nagpur Regional Office,
Shankar Nagar Square, Nagpur. **APPELLANT**

.....VERSUS.....

Sant Shree Gajanan Maharaj Sansthan Shegaon,
Branch at Pandharpur, through Shri Shivshankar
Sukhdeo Patil, Managing Trustee, Age 68 years,
Occ: Managing Trustee, r/o Shegaon,
Tah. Shegaon, Distt. Buldana. **RESPONDENT**

Mrs. Anita Mategaonkar, counsel for the appellant
Shri A.R. Patil, counsel for the respondent

CORAM : A.S. CHANDURKAR AND N.B. SURYAWANSHI, JJ.

DATE ON WHICH ARGUMENTS WERE HEARD : 04TH JANUARY, 2021.
DATE ON WHICH JUDGMENT IS PRONOUNCED : 29TH JANUARY 2021.

<u>ORAL JUDGMENT</u> (PER : A.S. CHANDURKAR, J.)

Since both these appeals raise challenge to the judgment dated 25.04.2010 in Special Civil Suit No.41 of 2004 decided by the learned Civil Judge (Senior Division), Khamgaon, they are being decided together by this common judgment. For the sake of convenience the parties are being referred to as per their status before the trial Court.

2. The case of the plaintiff as pleaded is that the plaintiff is a Public Trust registered under the provisions of the Bombay Public Trust Act, 1950 and the Societies Registration Act, 1860 and it is represented by its Managing Trustee. The Trust runs various educational institutions and charity hospitals at various places in the State of Maharashtra. The Trust on 04.08.1977 purchased non-agricultural property at Pandharpur for construction of Sant Gajanan Maharaj Temple and in that process it spent an amount of Rs.6,96,00,000/-. With a view to safeguard the said property, it entered into an agreement of insurance with the defendant which is a company registered under the Companies Act, 1956. The policy of insurance was dated 13.09.2001 and by paying premium of Rs.40,399/-, the risk to the Temple along with Bhakt Niwas No.1 to 4, the compound wall, the main gate as well other miscellaneous material was sought to be covered. The risk from all damages to the said property was got covered and the policy operated for the period from 13.09.2001

to 12.09.2002. By amending the plaint it was further pleaded that on account of earthquakes during the period from 15.05.2001 to 04.09.2003, there was damage caused to the said structures. A certificate to that effect was issued by the Collector of Latur. Similarly, river Chandrabhaga that was flowing adjoining the Temple witnessed heavy floods during the period from 15.05.2001 to 04.09.2003. The properties of the trust that were insured were submerged in about twelve feet deep flood water for three days thereby causing damage to it. As a result of the same, cracks developed to the foundation to the structure of the buildings and the Building designer advised dismantling the entire structure. On the advice of the Civil Engineer, the Temple, the main gate as well as the Bhakt Niwas was dismantled and thereafter reconstructed. The Trust was required to spent huge amount for dismantling the existing structures and thereafter reconstructing the same. On the basis of these developments the Trust pleaded that it was required to bear substantial costs and therefore there was a cause of action for recovering an amount of Rs.6,75,00,000/- from the defendants. It was pleaded the insurance agreement was entered into at Khamgaon as the defendants had their office there and it was renewed from time to time also at Khamgaon. The premium was paid at Khamgaon and therefore part of cause of action had arisen there. On these pleadings, the Trust filed Special Civil Suit No.41/2004 on 19.08.2004 seeking a declaration that it was entitled for the insurance claim under the policy for the damages caused to the buildings. A decree for an amount of Rs.6,75,00,000/- was prayed for.

3. The Insurance Company-defendant filed its written statement at Exhibit 11. It raised an objection to the territorial jurisdiction of the civil Court at Khamgaon on the ground that the property insured was located at Pandharpur which fell within the jurisdiction of the Solapur Court. The execution of the insurance policy was not disputed nor the fact that the premium for the same was paid. The claim for the insurance was however opposed on the ground that no damage had been caused by the earthquake as alleged. Despite request being made to the Trust to supply information about the date and time when the earthquake occurred, no details were given. It was further denied that by virtue of floods to river Chandrabhaga, damage had been caused to the building in question. It was alleged that on account of defect in construction the buildings developed cracks and therefore such damage was not covered under the insurance policy. It was also pleaded that the surveyor had visited the site in question and as per the survey report the liability of the insurance company was only to the extent of Rs.1,23,868/- but this was subject to providing a certificate by the Meteorology Department. Such certificate had not been produced. It was thus pleaded that the suit was liable to be dismissed.

4. Before the trial Court, the parties led evidence and after considering the same the trial Court recorded a finding that it had territorial jurisdiction to entertain the suit. It further held that the Trust had proved that the insured property developed cracks due to the earthquake and natural water pressure. It further held that the Insurance Company did not prove that the insured property developed cracks due to architectural and engineering defects. It assessed the loss at Rs.19,66,844/- and held the Insurance Company liable to pay the same under the policy. The suit was accordingly decreed to the aforesaid extent. The plaintiff being aggrieved by the failure on the part of the trial Court to decree the suit on its entirety has filed First Appeal No.644/2010. The Insurance Company being aggrieved by the decree as passed has challenged the same by filing First Appeal No.955/2010.

5. Shri A.R. Patil, learned counsel for the plaintiff-Trust submitted that the trial Court committed an error in partly decreeing the suit. The fact that the Temple, the four buildings of Bhakt Niwas, the compound wall and the main gate having been duly insured pursuant to the insurance policy dated 13.09.2001 (Exhibit 55) for an amount of Rs.6,75,00,000/- and it having been proved that the structures were damaged on account of the earthquake that occurred on 26.01.2001, the entire claim as raised by the Trust with the Insurance Company ought to

have been allowed. There was evidence on record that on account of floods to river Chandrabhaga which was at a distance of one kilometer from the Temple complex, the foundation of the buildings had sustained damage. The Trust had led substantial evidence to indicate the damage as caused by examining material witnesses. There was no reason to insist from any certificate of the Meteorology Department and merely because Municipal Council had informed about such damage having been caused to the structures the same could not be the ground to deny the entire claim. On the contrary, the Court was pleased to appoint experts as Court Commissioners and the reports in that regard at Exhibits 118 and 120 clearly justified the claim of the plaintiff. The claim as made was on account of damage suffered by the insured property during the period when the insurance policy was in operation. It had been rightly held by the trial Court that the Insurance Company had failed to prove that any damage was caused due to structural or engineering defects. There was no reason for the trial Court to restrict the grant of the insurance claim only for the damage caused to Bhakt Niwas Building Nos.1 and 2 and to refuse to grant any amount on account of damage to the Temple or other insured structures. The witnesses examined by the Trust had led credible evidence and there was no reason for only decreeing the suit to the extent of Rs.19,66,844/-. It was thus submitted that on a proper appreciation of the entire evidence on record it was clear that the suit was liable to be decreed in its entirety. To substantiate his contentions, the learned counsel for the plaintiff relied upon the decisions in *United India Insurance Co. Ltd. Versus Kiran Combers & Spiners* [**(2007) 1 SCC 368**], *New India Assurance Company Limited Versus Zuari Industries Limited & Others* [**(2009) 9 SCC 70**], *Oriental Insurance Company Limited Versus Ozma Shipping Company & Another* [**(2009) 9 SCC 159**], *New India Assurance Company Limited Versus Pradeep Kumar* [**(2009) 7 SCC 787**], *Traders Syndicate Versus Union of India* [**AIR 1983 Calcutta 337**] and *Dilipsingh Versus Dhaniram Naravandas & Others* [**AIR 1976 Bombay 38**].

6. Ms. Anita Mategaonkar, learned counsel for the defendant-Insurance Company in support of the grounds raised in First Appeal No.955/2010 submitted that the trial Court had no territorial jurisdiction to entertain the suit as filed. The property insured was situated at Pandharpur in Solapur District which was beyond the territorial jurisdiction of Khamgaon Court. The claim for insurance was based on the damage caused to the insured property on account of occurrence of the events also at Pandharpur. Merely because the insurance policy was entered into at Khamgaon the same could not be a reason to confer jurisdiction on the Court at Khamgaon. She then submitted that the evidence on record led by the Trust was not sufficient to hold that on

account of the earthquake as well as the flooding of river Chandrabhaga damage had been caused to the insured property. On the contrary, it was the specific case of the Insurance Company that on account of structural and engineering defects the property was required to be dismantled. Referring to the deposition of the Surveyor of the Insurance Company, it was submitted that this witness could notice damage only to the two buildings where the Bhakt Niwas was located. No damage to the Temple or other structures was pointed out by the members of the Trust to the representatives of the Insurance Company. The Court Commissioners had inspected the property after its reconstruction and their evidence was not of much help to the Trust. The claim as raised by the Trust was on a higher side and though the construction of the properties was much prior to the damage being caused, the Trust had been claiming the entire cost of construction without considering the aspect of depreciation. The trial Court ought not to have granted any amount of claim as made by the Trust. It was thus submitted that on these counts the judgment of the trial Court was liable to be set aside.

7. In reply to the submission that the trial Court had no territorial jurisdiction Shri A.R. Patil, learned counsel for the Trust submitted that the objection raised to the territorial jurisdiction did not go to the root of the matter and it was necessary for the defendant to

have indicated the prejudice caused on account of the suit being tried at Khamgaon. In any event, it was submitted that since the part of cause of action had arisen at Khamgaon the suit had been rightly entertained. In that regard, he relied upon the decisions in *Kiran Singh & Others Versus Chaman Paswan & Others* [**AIR 1954 SC 340**], *Union of India & Another Versus Shri Ladulal Jain* [**AIR 1963 SC 1681**], *A.B.C. Laminart Pvt. Ltd. & Another Versus A.P. Agencies, Salem* [**AIR 1989 SC 1239**], *Mantoo Sarkar Versus Oriental Insurance Co. Ltd. & Others* [**2009 ACJ 564**] and *Malati Sardar Versus National Insurance Co. Ltd. & Others* [**2016 ACJ 542**].

8. In the light of the pleadings of the parties and the contentions now raised in the appeals, the following points arise for determination:-

(a) Whether the trial Court has correctly held that it had territorial jurisdiction to try the suit as filed?

(b) Whether the plaintiff has proved that it is entitled to be indemnified under the terms of the policy of insurance at Exhibits 55 to 58?

(c) Has the defendant proved that it is not liable to satisfy the claim as raised by the plaintiff?

(d) If the plaintiff is successful in proving that it is entitled to be indemnified under the policy of insurance what is the amount of insurance claim to which it is entitled?

9. Since the issue of territorial jurisdiction was raised by the defendant before the trial Court which answered the same against the defendant, it would be necessary to first consider that issue. It is not in dispute that there was an contract of insurance between the plaintiff and defendant which culminated into execution of annual policies of insurance at Exhibits 55 to 58. The property to be insured was situated at Pandharpur, District Solapur. The contract between the parties was entered into at Khamgaon, District Buldana on 14.09.2001 and the amount of premium was paid by the plaintiff and received by the defendant at Khamgaon. The claim for insurance was also raised by the plaintiff at Khamgaon after which the present suit based on the policy of insurance came to be filed in the Court of Civil Judge (Senior Judge) Khamgaon.

The aforesaid indicates that as the contract of insurance between the parties was executed at Khamgaon and the policy of insurance was also issued by the Office of defendant at Khamgaon, part of cause of action arose at Khamgaon. On acceptance of premium by the defendant at Khamgaon, the policy of insurance commenced and though the property insured was located at Pandharpur, District Solapur the Court at Khamgaon had jurisdiction to entertain the suit based on the insurance policies at Exhibits 55 to 58 as the part of the cause of action had arisen at Khamgaon. We find that the trial Court has rightly held that the Court had territorial jurisdiction to entertain the suit. The decisions relied upon by the learned counsel for the plaintiff in *ABC Laminant Pvt. Ltd.*, *Kiran Singh & Others*, *Union of India & another* and *Rajesh Coach Bulders, Kolhapur* (supra) clearly support the finding recorded by the trial Court on this question. In any event the defendant has failed to point out any prejudice caused by virtue of the suit having been tried at Khamgaon. Such prejudice has neither been pleaded nor proved. It is thus held that the Court at Khamgaon, District Buldana had territorial jurisdiction to entertain the suit and the finding recorded by the trial Court in that regard is liable to be upheld. Point (a) is answered in the affirmative.

10. For considering the entitlement of the plaintiff to the principal relief claimed in the suit, it would be necessary to first refer to the plaint averments as made. According to the plaintiff, the Trust had purchased immovable properties at Pandharpur on 04.08.1997 after which a Temple of Sant Gajanan Maharaj was constructed by spending an amount of Rs.6,96,00,000/-. With a view to protect that property, the Temple along with the Bhakt Niwas as well as compound wall and main gate was duly insured with the defendant. The risk covered was from damage to the structures including damage from earthquakes and natural water pressure. It has then been pleaded that on account of earthquakes during the period from 15.05.2001 to 04.09.2003 as well as on account

of floods to river Chandrabhaga that was flowing at a short distance from the structures there was damage caused to the entire structure of the Temple, buildings of Bhakt Niwas, the compound wall as well as the main gate. As a result the Building Designer and Valuer appointed by the plaintiff inspected the structures on 12.12.2002 and on his recommendation as well as advice of the Civil Engineer the plaintiff had proceeded to dismantle the entire structure of the Temple and the gate. Similarly the buildings housing the Bhakt Niwas and the main gate were also dismantled. On this basis, it is the case of the plaintiff that the entire cost of the structures and the entire policy claim of Rs.6,75,00,000/- was recoverable from the defendant. It has also pleaded that the plaintiff spent substantial amount on reconstruction of all these structures.

11. The Insurance Company in its written statement had denied that the structures were damaged on account of earthquakes and flooding of river Chandrabhaga. The necessity of having the structures demolished was disputed and according to the defendant the damage was caused on account of structural and engineering defects in the property.

12. In the light of these pleadings, it would be necessary to refer to the relevant evidence led by the parties to substantiate their respective stands and to determine whether the plaintiff is entitled to be

indemnified under the policy of insurance. The Trust examined its Supervisor at Exhibit 15. In his deposition, he stated that for construction of the Temple, an expenditure of Rs.2,50,00,000/- approximately was incurred. Expenditure of Rs.3,16,00,000/- was incurred on the construction of the buildings of Bhakt Niwas. Further amount of Rs.65,00,000/- was spent on the construction of the main gate and Rs.12,00,000/- was spent on the construction of the compound wall. The insurance policies at Exhibits 55 to 58 were exhibited in his deposition. At Exhibit 58 is the cover note of the fire policy for the period from 24.09.1999 to 23.09.1999. At Exhibit 55 is another cover note of the fire policy and the period of insurance mentioned is from 13.09.20001 to 12.09.2002. Total premium was paid by valuing the insured property at Rs.6,75,00,000/-. One of the conditions of the policy was the coverage with regard to damage caused due to earthquakes. This policy was then renewed for the period from 24.09.2002 to 23.09.2003 and that policy is at Exhibit 56. Thereafter further cover note for the period from 24.09.2003 to 23.09.2004 is at Exhibit 57. The risk from earthquake, fire and shock has been covered. The Supervisor examined by the plaintiff admitted in his deposition that damage to the buildings was caused during the earthquakes that occurred after 2001. There were earthquakes during the period from 2001 to 2003 and that the claim of the plaintiff was based on the damage caused during the period from 2001 to 2003.

It has further come in his evidence that the construction of the Temple commenced in the year 1994 and was completed in the year 2001. The insurance policy with regard to the construction was obtained for the first time in the year 2001 from the defendant. It was in the year 2001 that it was revealed for the first time that damage had been caused to the construction undertaken by the Trust at Pandharpur. The actual amount spent for the construction of the structures was about Rs.6,75,00,000/- and it is for that reason that the properties were insured for that amount.

13. The plaintiff then relied upon the deposition of Shri Pankaj Shitoot, a Civil Engineer who has been examined as the third witness at Exhibit 114. As per the certificate at Exhibit 75 dated 15.12.2002, the Civil Engineer stated that he had visited the site on 12.12.2002 and had found that there were wide cracks at the foundation of the superstructures of the marble work of the Temple and the stone gate. It was opined that the entire structure be dismantled as it was likely to collapse at any time. This witness stated that the advice given by him was accepted by the Trust after which the structures were dismantled. In his cross-examination, he stated that there were about ten cracks to the superstructures of the entrance gate. There were many cracks to the superstructures of Bhakt Niwas Nos.1 and 2 but he could tell the exact number of cracks.

The plaintiff also examined the Court Commissioners who had inspected the properties of the Trust pursuant to their appointment by the Court.

14. The defendant examined its Branch Manager Vijay Dongre at Exhibit 127 who stated that during his tenure as Branch Manager an intimation was received from the plaintiff as regards the damage caused on account of the earthquake on 26.01.2001 and such intimation was given on 20.01.2002. After receiving such intimation the said witness along with the Surveyor of the Insurance Company Shri Narendra Khatri visited the properties of the plaintiff on 29.01.2002. The Surveyor had assessed the loss and the plaintiff had also submitted an estimate of the damage caused. On noticing that the damage would be covered under the terms and conditions of the policy but subject to a certificate from the Meteorology Department, the plaintiff was informed to obtain such certificate. He referred to a letter dated 03.04.2002 at Exhibit 135 that was issued to the Meteorology Department in that regard. He also referred to a letter sent on 02.01.2004 in which it was stated that as no certificate from the Meteorology Department was submitted the claim of the plaintiff was treated as "No Claim". In his cross examination he stated that there was no intimation received from the plaintiff about the damage alleged to be caused by the earthquake. He further admitted that

after issuing the letter at Exhibit 135 to the Meteorology Department there was no follow up. He admitted that he visited the buildings of Bhakt Niwas on 29.01.2002.

The defendant then examined the Surveyor Narendra Khatri at Exhibit 136. He deposed that after being informed by the defendant to carry out the survey he visited the site on 29.01.2002 and carried out the survey. His report is at Exhibit 142. In his affidavit at Exhibit 136 he specifically stated that the plaintiff's witness had only shown him the damage caused to building nos. 1 and 2 of the Bhakt Niwas. No other structure affected by the earthquake was shown to him. This stand taken by him was not disturbed in his cross-examination.

15. On a consideration of the entire evidence on record it becomes clear that after completion of the construction of the Temple, buildings of the Bhakt Niwas, the compound wall and the main gate, these properties were insured by the Trust to safeguard it against any damage likely to be caused from earthquakes, fire, shock, etc. The insurance policies drawn by the defendant are from 24.09.1999 to 23.09.2004 (Exhibits 55 to 58). The properties insured are shown to be valued at Rs.6,75,00,000/- in 2001. The letter dated 10.02.2004 issued by the Additional Collector, Latur (Exhibit 74) gives information about earthquakes having occurred between 15.05.2001 to 04.09.2003. As per

the letter dated 20.01.2002 written by the Trust to the defendant (Exhibit 131) on account of impact of the earthquake that occurred on 26.01.2001, the five buildings of the Bhakt Niwas were damaged resulting into water seepage from the terrace. There is no reference in this letter to any damage having been caused to the Temple, the compound wall or the main gate. Pursuant to the letter dated 20.01.2002 (Exhibit 131 written to the defendant, it appointed Narendra H. Khatri as the Insurance Surveyor and Loss Assessor to inspect the damage as caused to the insured properties of the Trust. He deposed (Exhibit 136) that he was shown only Building Nos.1 and 2 of the Bhakt Niwas by the representative of the Trust as properties damaged in the earthquake. There is no cross-examination of the said witness on this aspect and this stand of the defendant that only two buildings of the Bhakt Niwas were shown for inspection has gone unchallenged. The Insurance Surveyor accordingly carried out his survey on 28.01.2002 and 29.01.2002. He accordingly submitted his report to the defendant (Exhibit 142) which is dated 26.03.2002. The Building Designer of the Trust, Pankaj Shitoot inspected the properties of the Trust on 12.12.2002 and certified the damage caused to the Temple, its buildings, the compound wall and the main gate (Exhibit 75). It is on his advise that the Trust decided to dismantle the Temple, its buildings and main gate. This witness in paragraph 11 of his deposition (Exhibit 114) admitted that cracks had developed to Building Nos.1 and 2 of the Bhakt Niwas. In the context of the letter at Exhibit 131, the defendant on 03.04.2002 (Exhibit 135) sought information about occurrence of an earthquake on 26.01.2001 from the Meteorology Department at Latur. There was however no response to the same.

From the aforesaid evidence on record it is clear that though it was the case of the Trust that all the insured properties suffered damage on account of earthquakes and flooding of river Chandrabhaga, it informed the defendant of such damage being caused only to Building Nos.1 and 2 (Exhibit 131). Acting on this information the defendant appointed its Surveyor and he was also shown only Building Nos.1 and 2 by the representative of the Trust as having been damaged on account of the earthquake. There is no evidence on record to substantiate the claim of the Trust that all the insured properties had suffered damage due to the earthquakes. The trial Court therefore was justified in holding that it was only Building No.1 and 2 that suffered damage on account of the earthquakes. This is also made clear in the report of the Surveyor dated 26.03.2002 (Exhibit 142).

16. The trial Court in exercise of powers under Order XXVI Rule 9 of the Code of Civil Procedure, 1908 passed an order below Exhibit 13 on 12.08.2005 and directed local inspection of the insured properties. The

parties were directed to propose the names of qualified Architects and Engineers to ascertain whether damage was caused to the properties on account of earthquakes and water pressure or otherwise on account of architectural and engineering defects at the time of construction. The Court Commissioners inspected the properties on 21.06.2006 and submitted their reports (Exhibits 118 and 120). Both these witnesses admitted in their cross-examination that when they inspected the properties, the Temple and the main gate were already dismantled. In fact in the report dated 14.02.2006 (Exhibit 120), the Court Commissioner Anil Kemkar admitted that damage to the structures was not caused either by the earthquakes or due to water pressure. Similar opinion has been expressed in the joint report by both the Court Commissioners dated 25.06.2006 (Exhibit 118).

In view of the fact that the local inspection was carried out after dismantling of the insured properties and earthquakes as well as water pressure having been ruled out as the cause of damage, the reports of the Court Commissioners at Exhibits 118 and 120 are not of much assistance to the case of the plaintiff. In the light of the aforesaid evidence on record, we are of the considered view that the plaintiff has succeeded in proving that damage was caused only to Building Nos.1 and 2 of the Bhakt Niwas on account of the earthquakes that occurred during the period when the insurance policy drawn by the defendant was in operation. The report of the Surveyor (Exhibit 142) appointed by the defendant prior to dismantling the insured properties is thus liable to be accepted. Though the report of the Surveyor appointed by the insurer is not conclusive of the matter as held in *New India Assurance Company Ltd.* (supra), in absence of any other material on record the report (Exhibit 142) would have to be accepted. The defendant has failed to prove that it is not liable to satisfy the claim of the plaintiff. Points (b) and (c) are answered accordingly.

17. In the light of the finding recorded that the plaintiff has proved that it is liable to be indemnified by the defendant only in respect of the claim towards Building Nos.1 and 2 of the Bhakt Niwas, it would be necessary to determine the exact amount of insurance claim to which it is entitled. As noted above, it is only the Surveyor of the defendant Narendra Khatri who inspected the insured properties on 29.01.2002. before they were dismantled. The Building Designer examined by the plaintiff has also spoken about the cracks noticed in Building Nos.1 and 2 of the Bhakt Niwas. The Court Commissioners admitted that they had inspected the properties after they were re-constructed. Thus, except the report dated 26.03.2002 (Exhibit 142) prepared by the Surveyor appointed by the defendant there is no other documentary evidence which can be relied upon to determine the claim of the plaintiff.

As per the report dated 26.03.2002 (Exhibit 142), the valuation of the four buildings of the Bhakt Niwas as per the audit report of the plaintiff was taken into consideration. It was found that there was no under insurance of the Buildings. After noting that Building Nos.1 and 2 had suffered damage, the loss was assessed at Rs.1,23,868/-. The trial Court has found that this assessment was on a lower side. On the basis of the value assessed in paragraph 11 of the report, it was found that Building Nos.1 and 2 were worth Rs.1,09,26,914/-. After considering the age of the buildings as nine years, depreciation at 18% was taken at the value of the two buildings was assessed at Rs.19,66,844/-. It is on this basis that the plaintiff has been awarded the aforesaid amount towards value of Building Nos.1 and 2 under the insurance policy.

18. In absence of any other credible material brought on record by the plaintiff, we find that the trial court has rightly determined the value of Building Nos.1 and 2 of the Bhakt Niwas at Rs.19,66,844/- after due depreciation. The valuation of these two buildings has been taken from the audit report of the plaintiff. The reasons assigned by the trial Court in paragraphs 17 to 20 of its judgment are based on the material available on record and there is no reason to take a different view of the matter. This is after considering the ratio of the decisions relied upon by the learned counsel for the plaintiff. Point (d) is accordingly answered by

holding that the plaintiff is entitled to partly succeed in proving its entitlement to an amount of Rs.19,66,844/- towards damage suffered by Building Nos.1 and 2 of the Bhakt Niwas. Rest of the claim of the plaintiff thus stands disallowed.

19. In the light of the answers given to Point Nos.(a) to (d) we do not find any reason to interfere with the judgment of the trial Court at the behest of either of the parties. Accordingly, the judgment dated 25.04.2010 passed by the learned Civil Judge (Senior Division) Khamgaon in Special Civil Suit No.41 of 2004 stands confirmed. First Appeal No.644/2010 and First Appeal No.955/2010 stand dismissed. The parties shall bear their own costs.

(**N.B. SURYAWANSHI, J.**) (**A.S. CHANDURKAR, J.**)

APTE
Rohit Apte

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