

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.11278 of 2021(O&M)

Date of Decision: 02.09.2021

Paramjit Kaur

.....Petitioner

Versus

Bajaj Allianz Life Insurance Company Limited and others

..... Respondents

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Ashok Bharadwaj, Advocate
for the petitioner.

LISA GILL, J(Oral).

This matter is being taken up for hearing through video conferencing due to outbreak of the pandemic, COVID-19.

Petitioner has filed this writ petition challenging order dated 05.07.2019, Annexure P-3, passed by the learned Permanent Lok Adalat (Public Utility Services), SAS Nagar, Mohali (for short 'PLA').

Brief facts necessary for adjudication of the present case are that petitioner filed an application under Section 22 (C) of the Legal Services Authority Act, 1987 (for short 'Act') against the respondent- Insurance Company with the averments that the applicant came to India in February 2008. Respondents no.1 and 2, through their agent approached the applicant and his father-in-law for purchase of Insurance Policy in question. It was assured by the agent that the insured is required to pay a one time premium initially and can opt for a specified number of years such as 10 or 15 years for which the life insurance cover would prevail. Lock-in period was stated to be three years and in case, insured wished to withdraw the amount after three years, she would get back the premium/ premiums

already deposited with simple rate of interest along with other benefits. It is further averred that the applicant's father-in-law received his retiral benefits which he wanted to deposit in his saving bank account, but the agent allured him to invest the same in applicant's favour for getting insurance policy which was touted to be a kind of fixed deposit along with insurance cover. It is further stated that applicant's father-in-law agreed to invest his money for securing future of his son-in-law. Signatures of the applicant/petitioner were allegedly taken on blank forms. A sum of Rs. 1,75,000/- was handed over to the respondents and policies bearing numbers 008795762 dated 22.02.2008 and policy no. 0092408617 dated 20.03.2008, respectively, were issued to the applicant.

It is further stated that respondents are in violation of KYC norms as well as notification and circular issued by Insurance Regulatory and Development Authority (for short 'IRDA') as no document was collected from the applicant, who merely asked to put his signatures on the blank proposal form. Petitioner-applicant had never applied for a policy with regular premiums and he was informed that for policy opted for, there is a one time premium only which has to be paid and after three years he would get double the amount deposited and in case, he wanted to withdraw early, the amount would be refunded along with 10% interest on request. Applicant after completion of three years of getting the policy, in February 2011, is stated to have approached the respondents and he was informed that benefits would be sent at his residential address along with drafts, but nothing was received till 2013. Sum of Rs. 63,189/- was received qua policy no. 87959162 and a sum of Rs. 30,967/- towards policy no. 92408617. It is averred that no calculation sheet or account statement was provided to show how the invested amount had become less than the deposited amount and

that the applicant was victimized by misrepresentation. Various circulars referred to as Annexure C-5 and C-6 as well as guideline dated 01.07.2010, Annexure C-7, were not complied with by the respondents. Amount in question was stated to have been received under protest by the applicant, who approached the respondents to settle his claim, but to no avail. Therefore, application was filed before the learned PLA, Mohali.

Respondent-Insurance Company filed its reply with preliminary objections that application filed by the petitioner was barred by the principle of *res-judicata* and that the applicant-petitioner had actively concealed material facts regarding filing of complaint by him before the learned District Consumer Dispute Redressal Commission, SAS Nagar, Mohali (for short 'District Forum') under the Consumer Protection Act, 1986 (for short 'Act'). Appeal preferred by the respondent-Insurance Company was allowed by the State Consumer Disputes Redressal Commission, Punjab (for short 'Consumer Commission, Punjab'), vide order dated 03.08.2015 and complaint filed by the petitioner was dismissed.

Respondents on merits stated that the disputed policies stood terminated strictly in accordance with terms and conditions of the contract and permissible surrender value stood paid to the applicant. Fund value under the policy was necessarily to vary depending on the market and other conditions, thus question of any promise to double the payment after three years or payment of any interest under the said Unit Linked Insurance Policies (for short 'ULIP') does not arise. Policies opted for by the petitioner were stated to be market linked, thus their value depend on the market conditions at the relevant time. Incorrect allegations, it is stated have been raised without even naming the agent who is stated to have misrepresented to the petitioner and his family. Yearly premiums which the applicant was

under an obligation to pay, it is stated were never remitted by him. Thus, policy had lapsed for risk cover. Applicant was entitled to the revival period of four years from the date of first unpaid premium, but he did not avail of the same. Applicant, it is stated was also given 15 days free look cancellation period from the date of receipt of policy bonds and that in case, he was not satisfied with the terms and conditions of the policy, he should have given written notice to the respondents. Dismissal of the application was sought.

Parties produced evidence in respect to their respective claims.

An effort was made for conciliation and terms of the settlement were set out, but as the parties failed to reach a settlement, learned PLA, proceeded to decide the case on merits in terms of Section 22 (C) (8) of the Act.

Learned PLA, while taking note of the fact that petitioner had earlier approached the District Forum, under the Consumer Protection Act, held that he was not entitled to invoke jurisdiction of the PLA on the same cause of action while specifically observing that the said facts were deliberately concealed by the petitioner. Accordingly, application was dismissed by the learned PLA.

Aggrieved therefrom, this writ petition has been filed.

Learned counsel for the petitioner vehemently argued that principle of res-judicata is not applicable in the present case, as first and foremost the consumer courts had not decided the case of the petitioner on merits. The question of res-judicata would have applied only if the consumer court had decided the question on merits. Moreover, provisions of Code of Civil Procedure are not *ipso facto* applicable to proceedings before the learned PLA. Learned Consumer Commission, Punjab, had permitted the

petitioner to approach the Civil Court, in case, it was felt that surrender value is less than what was admissible. Therefore, in this situation, application under Section 22 (C) of the Act, is maintainable before the learned PLA. It is thus prayed that the present petition be allowed.

I have heard learned counsel for the petitioner at length and have gone through the file with his assistance.

Admittedly, petitioner had initially filed a complaint under Section 12 of the Act, before the District Forum wherein identical pleas as in the application before the learned PLA have been raised. Learned District Forum, on considering the facts and circumstances vide order dated 11.12.2013 held the petitioner entitled to refund of the amount of premium he had deposited along with interest at the rate of 9% per annum from the date of initial deposit till the date of actual realization besides interest at the rate of 9% per annum on the amount which already stood paid to him in 2013. Further lump sum compensation of Rs. 50,000/- for mental agony and harassment and litigation costs, was also awarded. Learned District Forum has observed that notification dated 01.07.2010 issued by IRDA, clarifying as to how the treatment is to be given to the discontinued linked insurance policies, were applicable to the petitioner's case. Reference was made to Regulation 7 of the said Regulations and relief granted.

Learned Consumer Commission in the appeal filed by the respondent-Insurance Company set aside order dated 11.12.2013 while specifically holding that Regulation 7 of the said notification was not applicable to the petitioner's case. The policies in question were issued in February 2008. Notification dated 01.07.2010, it is held was thus not applicable in any manner. It is further observed that policies purchased by the complainant were Unit Linked Insurance Plans (for short 'ULIP'),

subject to market variations and that it is clearly mentioned in terms and conditions of the policy that market risk under the policy is to be borne by the insured. Surrender value at the relevant time, it is stated was calculated and paid to the complainant. However, in case of any dispute regarding quantum of surrender value, liberty was afforded to the petitioner to approach the Civil Court. Relevant part of order dated 03.08.2015, passed by the learned Consumer Commission, reads as under:-

“These policies were taken by the complainant in February 2008 and secondly, these policies must have been cleared by the IRDA before that date. Therefore, from any angle, this notification is not applicable to the facts and circumstances of the case. There is latest judgement of the Hon’ble National Commission I (2014) CPJ 326 (NC) “Life Insurance Corporation of India Versus Sudhi P.P. and Anr.”. In that judgement, it has been observed by the Hon’ble National Commission that Unit Linked Policies are market plus plan are subject to market variation and terms and conditions of the policy are elaborate and specific of the risk covered under the policy is to be borne by the insured. In that case, the complainant had surrendered the policy much prior to maturity date. The surrender value payable will be fixed value of units held in the policy holder’s account at the date of surrender and the District Forum had held that the surrender value calculated by the Ops was payable. Whereas the order of the State commission vide which the invested amount alongwith interest was ordered to be refunded was set-aside and that of the District Forum was restored. The present case is also squarely covered under this judgement because the policy purchased by the complainant was Unit Linked Policy, subject to market variation and it has been elaborately mentioned the terms and conditions of the policy that the risk under the policy is to be borne by the insured. The surrender value was calculated and has been paid to the complainant. In case he might have

received this amount under protest, it does not mean that he is entitled to more amount. The amount is to be paid according to the terms and conditions of the policy. Once the surrender value has been paid and in case the complainant is of the opinion that the surrender value given to him is less and has placed on the record NAV calculation procedure because the accounts have not been produced on the record in that event the accounts from the date of taking the policy to the date of surrender value are required to be assessed, which are quite voluminous and it may entail lengthy evidence also, which is difficult to be adjudicated in the summary procedure and in that event, the complainant can approach the Civil Court in case he feels that the surrender value given to him is less than what was admissible.”

It is a matter of record that the petitioner did not file any civil suit regarding quantum of the surrender value pursuant to passing of order dated 03.08.2015 and neither did he challenge the same. Rather, he preferred the application under Section 22 (C) of the Act, in July 2016 i.e., after a lapse of nearly one year. Identical averments/details as in pleadings before learned Consumer Commission, were raised in the said application under Section 22 (C) of the Act without even a whisper of the earlier proceedings initiated by the petitioner before the Consumer Courts.

Learned counsel for the petitioner is unable to deny filing of complaint under Section 12 of the Act and that orders passed thereon were not even mentioned in the petitioner’s application under Section 22 (C) of the Act. I do not find any merit in the argument that petitioner is entitled to file application under Section 22 (C) of the Act and that concealment or non-mentioning of the proceedings before learned District Consumer Forum, is not material. It cannot be said as the District Forum and State Commission have not dwelled and adjudicated upon question of quantum of surrender value, they have not rendered verdicts on the merits of the matter. This

argument raised by learned counsel for the petitioner is clearly incorrect in the face of detailed orders dated 11.12.2013 and 03.08.2015.

In case, such an interpretation is permitted, it would clearly amount to permitting a litigant to indulge in forum hunting. No finality whatsoever would ever be achieved in a matter. Same would in-fact amount to a mockery of the system where a litigant can go from one forum to another on the same cause of action. Conduct of the petitioner regarding active concealment of material facts regarding the earlier round of litigation before the consumer courts, in respect to the same cause of action before the learned PLA, is in-fact sufficient to dismiss the present petition.

Last but not least and in all fairness to learned counsel for the petitioner, argument raised by him that this writ petition be admitted to be heard along with CWP No. CWP no. 7283 of 2021, titled as '*Amandeep Singh Vs. Bajaj Allianz Life Insurance Company Limited and others*', is devoid of any merit. I do not find any justification for admitting this writ petition in view of the clear cut facts before me.

No other argument has been raised.

Accordingly, I do not find any illegality, irregularity or perversity in the impugned order dated 05.07.2019, Annexure P-3, passed by the learned PLA, SAS Nagar Mohali.

Writ petition is accordingly dismissed with no order as to cost.

02.09.2021
s.khan

[LISA GILL]
Judge

Whether speaking/reasoned : Yes/No.
Whether reportable : Yes/No.