S/L 6
10.01.2022
Court No.8
SD

SA 29 of 2021
With
CAN 1 of 2021
With
CAN 2 of 2021
(Via Video Conference)

Life Insurance Corporation of India & Anr.
Vs.
Smt. Tapati Basu & Anr.

Mr. Dilip Kumar Kundu
... *for the appellants.*

In view of the report of the Stamp Reporter, we are of the opinion that the appeal is within time and this application for condonation of delay, being CAN 1 of 2021, is, accordingly, disposed of.

Since the appeal is within time, the department shall register the appeal provided the said appeal is in order.

This second appeal has come up for admission against the judgment and decree dated January 28, 2020 passed by the learned District Judge, Howrah in Title Appeal No.93 of 2019 affirming the judgment and decree dated December 24, 2018 passed by the learned Civil Judge (Junior Division), 3rd Court at Howrah in Title Suit No.16489 of 2014.

Mr. Kundu, learned Counsel appearing on behalf of the appellants, has submitted that this appeal is required to be admitted, in view of the fact that the policy in question had lapsed and the respondent/decree-holder is only entitled to pay the value of Rs.28,600/- under the said policy. However, this defence appears to have not taken by the appellant either before the trial court or before the first appellate court. In the written statement, there is no specific pleading to that effect and accordingly, no issue was raised on behalf of the defendants/appellants in said proceedings.

In a second appeal, we have to proceed on the basis of the pleadings and the evidence adduced before both the courts and to ascertain whether there has been any substantial question of law involved while scrutinizing the order of both the Courts.

This is a decree of affirmation. The Court having process on the basis of the pleadings and the evidence adduced on behalf of the parties before oral and documentary and had decreed the suit partly on the basis of such pleadings and evidence and on the basis of the materials on record. The view arrived at by both the Courts are found to be logical, reasonable and possible view taken by both the Courts on the basis of such evidence as were produced.

In the second appeal, we cannot permit at the stage of admission of second appeal that the appellants should be allowed to make out a case that was never made out before both the Courts. The second appeal is not as a matter of right. On such consideration, we having not found any reason to interfere with the order passed by both the Courts.

The plaintiffs approached the trial court as she was denied to receive the amount payable under the insurance policy by the appellants although the plaintiff was a nominee to the policy. Both the Courts have clearly hold that a nominee of an insurance policy is a person entitle to receive the sum assured in case of death of policy holder as a custodial which finds supports in the decision of the Hon'ble Supreme Court in 2010 (2) WBLR (SC) 47 and having regard to the fact that it was never urged before either of the Courts that the amount claimed by the plaintiff as nominee of the deceased is not payable on any account other than certain technical pleas raised by the insurance company. We are not inclined to accept the second appeal as no substantial question of law is involved in this appeal.

The second appeal, being SA 29 of 2021, accordingly, stands dismissed.

In view of the dismissal of the appeal, the stay application, being CAN 2 of 2021, stands dismissed.

There will be no order as to costs.

All parties shall act on the server copies of this order duly downloaded from the official website of this Court.

(Kesang Doma Bhutia, J.) **(Soumen Sen, J.)**