IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
(Original Side)

Reserved on: 11.03.2022
Pronounced on: 29.03.2022

APOT No. 207 of 2021
With
WPO No. 494 of 2021
IA NO: G.A. 1 of 2021

(Through Video Conference)

Poonawalla Fincorp Limited and Anr.

...Appellants

-Vs-

The National Insurance Company Limited and Anr.

...Respondents

Present:-

Mr. Abhrotosh Majumdar, Sr. Advocate
Mr. Arif Ali,
Mr. Prabhat Kumar Srivastawa, Advocates
... for the appellants

Mr. Rajesh Singh,
Mr. Aniruddha Singh, Advocates
... for the respondents

Coram: THE HON'BLE JUSTICE PRAKASH SHRIVASTAVA, CHIEF JUSTICE

THE HON'BLE JUSTICE RAJARSHI BHARADWAJ, JUDGE

Prakash Shrivastava, CJ:

1. This appeal is at the instance of the writ petitioner challenging the order of the learned Single Judge dated 16th of September, 2021 dismissing the WPO No. 494 of 2021.

2. The appellant had approached the writ Court with the plea that it had obtained a fidelity guarantee policy from the respondent insurance company and that during the policy period appellant had discovered that one of the sales executive along with others had defrauded the appellant and misappropriated Rs. 76,92,000/- by issuing false commercial vehicle loan in respect of 10 new vehicles on the basis of 10 forged and fabricated invoices, hence the appellant had lodged an FIR on 16th of July, 2012 and thereafter had lodged a claim before the respondent company on 6th of August, 2012 which was repudiated vide communication dated 26th of November, 2012. After entering into certain communications appellant had filed the complaint before the State Consumer Disputes Redressal Commission which was dismissed by an order dated 10.06.2016 finding the complaint to be barred by limitation. Earlier appellant had filed 2 writ petitions wherein certain directions were issued and again by the order date 8th of March, 2019 the claim of the applicant was repudiated, hence he had filed WPO No. 494 of 2021 which has been dismissed by the learned Single Judge by order under appeal.

3. Learned Single Judge has taken the view that the claim of the appellant is barred by limitation and even otherwise disputed questions of facts are involved.

4. Submission by the learned Counsel for the appellant is that after the repudiation order dated 08th of March, 2019, the writ petition was filed within 3 years which is within reasonable time and considering the COVID situation, there was no delay in approaching the writ Court and that the petition did not involve any disputed questions of facts as in the surveyor's report, insurance company was held liable but that part of the surveyor's report has not been considered in the order dated 08th of March, 2019. He

has placed reliance upon sub-Section 4 of Section 64UM of the Insurance Act, 1938, as also the judgment of the Hon'ble Supreme Court in the matter of **Sri Venkateswara Syndicate vs. Oriental Insurance Company Limited and Another, 2009 8 SCC 507** and in the matter of **New India Assurance Company Limited vs. Sri Buchiyyamma Rise Mill and Another, 2020 12 SCC 105** in support of his submission that the insurance company cannot keep on obtaining surveyor's report, one after another, with the object of repudiating the claim and that if the surveyor's report is not accepted then opportunity is required to be given.

5. Learned Counsel for the respondent has opposed the appeal and has submitted that the petition involves disputed questions of facts, therefore, it has rightly been dismissed and that the surveyor can only give a report and he can not give any finding about the liability of the company as the same is required to be decided after considering other factual and legal issues, therefore, the conclusion drawn by the surveyor about the liability is of no consequence and that the full survey report has not been placed on record which indicates otherwise.

6. We have heard the learned Counsel for the parties and perused the records.

7. The record reveals that against the repudiation of claim at the initial stage, appellant had approached the State Consumer Disputes Redressal Commission and the complaint was dismissed as time barred. Thereafter, appellant had filed W.P. 10330 (W) 2016 and the learned Single Judge had found that the order impugned contained in the communication dated 26th of November, 2012 was not a reasoned order, hence had set it aside by the order dated 17th of June, 2016 by holding as under:

> "However, I am of the considered view that the reasons should be indicated so that the petitioners, if so advised, may approach the appropriate forum in accordance with law by raising an effective challenge to the order of rejection of the claim.
>
> In that view of the matter, the impugned communication stands set aside.
>
> The senior divisional manager shall immediately but not later than six weeks from date inform the petitioners the reasons for rejection of the claim that was raised.
>
> If the petitioners are aggrieved by the reasons, they shall be at liberty to approach the appropriate forum in accordance with law.
>
> Needless to observe, if the senior divisional manager considers it necessary to hear the petitioners personally, he shall be at liberty to put them on notice.
>
> The writ petition stands disposed of, without costs."

8. The above order was not complied with, therefore, appellant had filed C.P.A.N. 1320 of 2016 and the Single Bench of this Court on 01st of September, 2017 found that there was some dispute about filing up the claim form, therefore, had directed as under:

> "Since there is some controversy as to whether claim form was at all supplied to the petitioners or not, this Bench directs the contemnors/respondents to supply the claim form to the petitioners within a week from date.
>
> Mr. Gangopadhyay, learned advocate appearing on behalf of the contemnors/ respondents has assured the Bench that the claim form, if it is duly filled in and submitted in terms of this order, would relate back to the date of filing of the insurance claim by the petitioners and that the claim shall not be rejected as barred by limitation.
>
> The petitioners, upon receipt of the claim form, shall have seven days time to fill it up and submit before the contemnors/respondents together with the documents/information sought for, listed at serial nos. 2 to 8 of the communication dated 31st August, 2017. Once the claim form and the other

> documents/information are received, the contemnors/respondents shall proceed to consider the claim in accordance with law and pass an appropriate order disposing of such claim within a further period of two months.
>
> If the claim is not found to be genuine, a reasoned order shall be passed; on the contrary, if the claim is found to be genuine, the contemnors/respondents shall not waste any time in granting relief to the petitioners in accordance with law."

9. Thus in the above order there was a fresh direction to consider the claim and pass a reasoned order. This direction was not complied with, therefore, the appellant had filed W.P. No. 1215 (W) of 2019 but meanwhile the claim was repudiated by order dated 8th of March, 2019, therefore, the writ petition was disposed of by order dated 20th of March, 2019.

10. It has been pointed out by learned Counsel for the appellant that after receipt of repudiation order dated 8th of March, 2019, the appellant had approached the insurance company to obtain a copy of the surveyor's report on the basis of which the claim was repudiated. He has also pointed out that the survey report was received by the appellant on 28th of May, 2019 and thereafter due to COVID and lockdown the steps could not be taken within time and even otherwise there was an extension of limitation during the COVID period by the Hon'ble Supreme Court. In these circumstances, we find that writ petition could not have been rejected on the ground of delay, hence the order of the learned Single Judge finding delay in approaching the writ Court is set aside.

11. A perusal of the repudiation order dated 08th of March, 2019 reveals that the claim of the appellant has been repudiated on the ground of violation of the policy condition 1, 3 and 5. Issue, if the appellant had

violated these conditions, requires factual inquiry, therefore, writ Court has not committed any error in dismissing the petition on the ground that it involves disputed questions of facts. So far as the submission of the Counsel for the appellant that surveyor has found insurance company liable for payment and also the judgments relied upon by him in support of the surveyor's report, we are of the opinion that merely on the basis of the surveyor's report insurance company cannot be held liable without considering other factual and legal aspects. Hence, we leave the issue of liability of insurance company open for the decision by the appropriate forum.

12. In view of the above conclusion, we dispose of the appeal holding that no error has been committed by the learned Single Judge in dismissing the writ petition on the ground that the writ petition involves disputed questions of facts, but giving liberty to the appellant to approach the appropriate forum and establishes his claim in accordance with law.

(PRAKASH SHRIVASTAVA)
CHIEF JUSTICE

(RAJARSHI BHARADWAJ)
JUDGE

Kolkata
29.03.2022

PA(SS)

(A.F.R. / N.A.F.R.)