IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.28364 of 2020
(Through hybrid mode)

Branch Manager, Bajaj Allianz General Insurance Company Ltd. and others	....	***Petitioners***

Mr. G.P. Dutta, Advocate

-versus-

Smt. R. Jyoti Reddy and another	....	***Opposite Parties***

Mr. Ramakanta Sahoo, Advocate

CORAM: JUSTICE ARINDAM SINHA

ORDER
14.10.2022

Order No.
06.

1. Mr. Dutta, learned advocate appears on behalf of petitioners, the insurance company. He submits, impugned is award dated 27th February, 2020 made by the Permanent Lok Adalat (PLA). He submits, the award is perverse. Several letters were issued to opposite party no.1 to produce documents regarding existence of stock, said to have been destroyed in the fire. No document was produced. In the circumstances, his client intended to settle the case paying Rs. 1,29,690/- under non-standard basis but said opposite party did not accept the same by not furnishing NEFT details.

2. His client has filed affidavit pursuant to direction made in order dated 6th January, 2022. The affidavit discloses several requisitions made by his client upon opposite party no.1, to submit documents. On omission, the claim was repudiated by letter dated 6th July, 2018. The affidavit also discloses survey report. He relies thereon.

3. Mr. Sahoo, learned advocate appears on behalf of opposite party no.1 (the insured). He relies on impugned award. Relied upon passage is extracted and reproduced below.

> *"**The Advocate for the applicant produced copy of these statements of stocks under pledge/hypothecation to Andhra Bank dated 30.06.2017, 31.07.2017, 31.08.2017, 30.09.2017, 31.10.2017, 30.11.2017, 31.12.2017 and 31.01.2018 being signed by the applicant and certified by the officer of the financing bank** which revealed that the value of stock material was Rs.13,56,500/- as per statement of stock dt.31.01.2018 which was just prior to the date of fire on dt.15.02.2018. The argument of the respondent is that those documents were not produced before the Surevyor by the applicant. Had those been produced before him, the calculation of loss would have been different. But at this stage the applicant is stopped to produce those documents to get higher amount towards loss of her stock. But this being an Alternate Dispute Redressal Forum, the respondents should have examined those documents and settled the dispute. But the Authorized Officer of the Respondent gave an endorsement on the terms of possible settlement that they did not agree for any settlement. As discussed above, the*

> *Survey report cannot be accepted as a gospel truth without being substantiated with any valid document and affidavit. In that view of the matter we accept that the stock which was damaged in the fire valued to Rs.13,56,500."*

(emphasis supplied)

4. Mr. Sahoo hands up copy of affidavit dated 19th May, 2022 of petitioner since, the original is not in the file. Referring to page-28 of his client's counter he submits, this is the document relied upon by the PLA. He submits further, disclosures at pages 36 onwards of the counter are documents that were duly submitted to the insurance company.

5. The PLA has relied on documents disclosed by opposite party no.1 at pages 28 to 35. These are borrower's statements submitted to the bank, on declaration made by her. The statements were acknowledged to have been received by the bank on putting seal and signature. It does not appear from the documents that the bank had caused verification, pursuant to the declaration and certified that the stocks was there.

6. The PLA relied upon aforesaid declarations to disbelieve the survey report. The report was pursuant to survey made by a physical verification. Instead the PLA relied upon statements of opposite party no.1. In doing so it acted in a manner perverse.

7. Impugned award is set aside and quashed. Petitioner is directed to revisit the claim and allow petitioner to produce such documents as are in her custody. In event opposite party no.1 does not approach with her documents within three weeks from date, said opposite party may either accept the settlement on non-standard basis, failing which aforesaid repudiation dated 6th July, 2018 will operate.

8. The writ petition is disposed of.

(Arindam Sinha)
Judge

Sks