IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.34955 Of 2021
(Through hybrid mode)

Judhisthir Jena .... ***Petitioner***

Mr. J.P. Tripathy, Advocate

-versus-

The BM, Indusind Bank, Ganjam and others .... ***Opposite Parties***

Mr. P.K. Mishra, Advocate
Mr. S.K. Mohanty, Advocate

CORAM: JUSTICE ARINDAM SINHA

<u>Order No.</u>

<u>ORDER</u>
14.03.2022

05. **1.** Mr. Tripathy, learned advocate appears on behalf of petitioner. He submits, impugned is presale intimation dated 16th April, 2021, on subject matter of loan agreement regarding vehicle bearing registration no.OD07AD/9669. He submits, loanee was insured with opposite party nos. 3 and 4. The policy covered repayment of the loan on happening of, inter alia, contingency of death of the insured. The insured died. Yet the bank wants to sell the hypothecated vehicle. Hence, prayer for relief to quash the presale intimation and release the vehicle to petitioner, who is husband of the deceased.

2. Mr. Mishra, learned advocate appears on behalf of opposite party-Bank and submits, the loan remains outstanding. As per terms and conditions, the vehicle was taken possession of and there should not be restraint on selling it to recover the outstanding form the proceeds. Also his client be at liberty take further steps, in case there is deficit recovery. He submits further, the insurance company had repudiated the claim.

3. Mr. Mohanty, learned advocate appears on behalf of the insurance company and submits, on investigation made under section 45 of Insurance Act, 1938, his client discovered that the insured died on 6th January, 2020. This discovery was made on information recorded in the Aganwadi Centre. He relies on section 16 in Evidence Act, 1872 to submit, the information stood recorded in regular course of business of the Centre and, therefore, the record of information is a relevant fact. He submits further, on such discovery the premium amount was returned to the bank.

4. In reply Mr. Tripathy points out that annexure-3 in the writ petition is death certificate, certifying his client's wife died on 2nd March, 2020. He submits, the policy was taken on 20th January, 2020.

5. By order dated 7th March, 2022 adjournment was granted to the insurance company, to enable demonstration before Court that information given by the death certificate is not correct. The death certificate is record of the fact of death required under Registration of Births and Deaths Act, 1969. It is a statutory requirement maintained by the State. The certificate, therefore, is good evidence to be relied upon as against record made in an Anganwadi Centre, by an Anganwadi worker. Court does not have anything as basis of information, said to be appear from the record of the Anganwadi Centre, which runs on a Central scheme. The death certificate says, following information was taken from original records of death, which is the register of Sumandal CHC of Tahsil Kodala of district Ganjam and gives particulars, inter alia of petitioner's wife, having died on 2nd March, 2020.

6. It appears petitioner's wife was duly insured with the insurance company. As such, refund of the premium to the bank was wholly unwarranted. More so because, on query from Court, Mr. Mishra submits, premium was paid by or on behalf of the insured. The policy was taken to cover repayment of the loan in contingency of death of borrower. The contingency happened during subsistence of the policy. The insurance company must pay the sum assured or take liability for liquidating the loan, on happening of the contingency.

7. Impugned presale notice is set aside and quashed. Consequently, the bank will release the vehicle to petitioner forthwith on communication of this order. The bank will obtain insurance pay out on the policy, upon tendering the refunded premium. The insurance company will release the sum assured for appropriation and liquidation of the outstanding. On the loan being accordingly paid off, the bank will release the vehicle from hypothecation. The vehicle must be released forthwith and the payment, liquidation of loan and release of hypothecation to be done within six weeks thereafter.

8. The writ petition is disposed of.

(Arindam Sinha)
Judge

Sks