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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 3085 OF 2021

Havells India Limited …Petitioner

Versus

The New India Assurance Company Ltd & Ors …Respondents

Mr Akshay Patil, *with Vishesh Malviya, Krishna Borkute & S Satiya, i/b Rashmikant & Partners, for the Petitioner.*
Mr Asim Vidyarthi, *for Respondent No.1.*
Ms Chaitra Rao, *for Respondents Nos. 2 & 3.*

CORAM **G.S. Patel & Madhav J. Jamdar, JJ.**
DATED: **7th April 2022**

PC:-

1. Rule.

2. Respondents waive service. By consent, we make the Rule returnable forthwith and take up the Petition for hearing and final disposal.

3. The facts lie in a very narrow compass. The Petitioner is in the business of producing and manufacturing a range of industrial and domestic electrical related goods such as switchgear, cables, wires etc. The 2nd Respondent is W Warehousing, a proprietorship concern ("**W Warehousing**"). The 3rd Respondent is one Blue Ocean Transtrade Private Limited, a company ("**Blue Ocean**") is in the business of cargo storage.

4. On 1st November 2017, the Petitioner entered into a Warehousing Agreement with Blu Ocean. Blue Ocean in turn entered into a Storage Agreement with W Warehousing. This was sometime in 2018.

5. Blue Ocean invoiced the Petitioner periodically for storage charges, insurance charges and unloading charges for the Petitioners' cargo that was warehoused and stored under these Agreements.

6. On 12th April 2018, W Warehousing obtained an insurance policy from the 1st Respondent insurance company for insuring various goods at its warehouses. This was a Standard Fire and Special Perils Policy No. 17080011180100000144. The policy was for a period from 12th April 2018 to 11th April 2019.

7. On 16th February 2019 there was a fire at the warehouse. The Petitioners' goods of an estimated value of Rs.22,62,48,315/- were destroyed. These were 9,520 indoor units and 9,502 outdoor units of split air-conditioners. All were in the warehouse.

8. On 16th February 2019, W Warehousing lodged a claim with the 1st Respondent insurer covering the loss suffered by the Petitioners.

9. The case of the Petitioners is that the insurer has refused to process the insurance claim and disburse the amount directly to the Petitioners. This is despite the fact that W Warehousing has said that it has no objection to such a disbursement being made directly to the Petitioners.

10. Some of these facts have been expanded on the rest of the Petition but we believe this compact summary is sufficient for our purposes today.

11. In the grounds taken in the Petition, it is alleged that the conduct of the 1st Respondent insurer is arbitrary and unreasonable in refusing to accept the request or direction of the insured, the 2nd Respondent. There is also an allegation that the action of the insurer is 'discriminatory' but we will ignore that since this appears to us to be a case that is one of its kind. There is no dispute about the incident and no real dispute about the liability, although the actual amount to be disbursed may be less than the claim. It is also not anybody's case that the claim was lodged beyond the period stipulated in the policy or that there is any exclusion in the policy that applies.

12. Mr Vidyarthi for the 1st Respondent points out that the contract of insurance must be construed strictly according to its terms. It is a contract of the utmost good faith. It is simply impermissible for the insurance company to vary the terms of the contract. What is being sought by the Petitioner, he submits, is that the insurance cover should be paid out not to the named insured but to some other person with whom the 2nd Respondent may have had a separate, independent and downstream contract. The arrangements between the 2nd Respondent, the 3rd Respondent and the Petitioner inter se are of no concern to the 1st Respondent. He submits therefore that the only privity of contract in a situation like this is between the 1st Respondent, the insurer, and the 2nd Respondent, the insured. The insurance company will make a payout of the assessed claim but it will only make payment to the insured.

13. It seems to us that there is something of a miscommunication here. Apart from the considerable and quite unnecessary complications that are likely to arise in terms of accounting and tax, what is not to be lost sight of is that the claim is in respect of the value of the Petitioners' goods that were lost in a fire that occurred at the 2nd Respondent's insured warehouse. It is true that the 2nd Respondent is the insured. But it is always permissible for any person in any contract to assign the benefit of that contract to a third party or nominee in the peculiar facts and circumstances of a case. In fact, even an active claim may be so assigned as a chose in action. The Contract Act specifically and explicitly acknowledges this. All that the 2nd Respondent has said in the present case is that it does not itself wish to receive in its accounts any part of the insurance payout. It is instructing its insurer to make that payment in the name of the person whose goods were lost in the fire incident.

14. While we appreciate the constraints that Mr Vidyarthi faces, we are equally clear that an approach like this is not necessary warranted in every single circumstance. This is peculiarly a condition where nobody is going to be prejudiced in any manner whatsoever if payment is made by the 1st Respondent directly to the Petitioners. It is true that the 1st Respondent may not be able to volunteer to make payment to the Petitioners for operational or other reasons, but that is not a reason for a Writ Court to stay its hands and to refuse to direct the 1st Respondent to do that which most eminently needs to be done.

15. Accordingly we will make the Rule absolute in terms of prayer clause (a) with two qualifications.

> (a) the amount to be paid over by the 1st Respondent is not necessarily the value of the claim that has been made. It will be the value of the claim as passed by the 1st Respondent insurer;

16. The two qualifications are these:

(a) There is a question of input credit and GST reversal. Mr Patil for the Petitioner on instructions states that the necessary GST reversal will be done. This is in the amount of roughly Rs.4.90 crores. Consequently the Petitioners will make this reversal between 15th and 20th April 2022 and their Advocates will communicate this to Mr Vidyarthi.

(b) Payment by the 1st Respondent will therefore be made on these conditions in the amount passed or assessed within four weeks thereafter, that is to say by 7th June 2022.

17. The Petition is disposed of in these terms, with no order as to costs.

(Madhav J. Jamdar, J) **(G. S. Patel, J)**