



WEB COPY



W.P.No.29757 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.11.2022

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

W.P.No.29757 of 2017
and W.M.P.No.32101 of 2017

M/s.Arasan & Company,
No.1, Commercial Plot,
GST Road, Kattankulathur - 603 203.
Kancheepuram District,
Rep. by Authorised Agent / Proprietor,
D.Shanthi.

.. Petitioner

Vs.

1. The Regional Manager,
The New India Assurance Co. Ltd.,
Claims Hub Second Floor,
B-Block, Sundaram Finance Building,
No.21, Pattulos Road, Chennai - 600 002.

2. The Divisional Manager,
The New India Assurance Co. Ltd.,
Binny Road (Anna Salai),
Mount Road, Chennai - 600 002.

3. The Branch Manager,
The New India Assurance Co.Ltd.,
No.2, B.R.Complex, Woods Road,
Chennai - 600 006.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India



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seeking a Writ of Mandamus directing the respondents herein to pay compensation of Rs.20 lakhs (Rupees Twenty Lakhs only) for the loss of damages caused to the petitioner's Petrol Bunk situated at No.1, Commercial Plot, GST Road, Kattankulathur - 603 203, Kancheepuram District due to the flood affected during November, 2015 to the petitioner herein.

For Petitioner : Mr.R.Ramesh

For Respondents : Mr.S.P.Chockalingam

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ORDER

This writ petition has been filed seeking a direction to the respondents to pay compensation of Rs.20,00,000/- towards the loss caused to the petitioner's Petrol Bunk situated at No.1, Commercial Plot, GST Road, Kattankulathur - 603 203, Kancheepuram District due to the floods affected during November, 2015.

2. The learned counsel appearing for the petitioner submitted that the petitioner is having dealership for running petrol bunk and she is insured with the 3rd respondent and the policy covers the risks under the "Standard Fire & Special Perils (Policy)". Due to water inundation the petroleum outlet



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of the petitioner has been damaged. Despite, insurance was existing, the claim made by the petitioner has been negated. Hence, the petitioner has filed the writ petition.

3. The learned counsel appearing for the respondents would contend that the damage is not due to water inundation but due to hydrostatic pressure in the ground level and the same is outside the scope of the insurance policy. According to him, there are disputed facts in this case and therefore the same cannot be decided in a writ petition. As the claim of the petitioner has been repudiated on certain grounds, whether the petitioner will be entitled for claim as per the policy condition or not is a matter of evidence and it has to be proved.

4. Such view of the matter, this Court is of the view that the writ petition is not maintainable. At this stage, the learned counsel appearing for the petitioner seeks liberty to file a suit or complaint before the Consumer Forum as the case may be to establish her right.

5. Considering the nature of relief sought for and as the petitioner bonafidely perused the writ petition before this Court without knowing the



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consequences, this Court is of the view that the period spent in the writ petition may be excluded for filing the suit or complaint before the Consumer Forum. Accordingly, the petitioner is granted liberty to file suit or complaint before the Consumer Forum within a period of three months from the date of receipt of a copy of this order. With the above liberty the writ petition is disposed of. Consequently, the connected miscellaneous petition is closed. No costs.

17.11.2022

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To

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N.SATHISH KUMAR, J.

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