In the High Court of Punjab and Haryana, at Chandigarh

Civil Revision No. 7561 of 2019

Date of Decision: 22.08.2022

Bajaj Allianz General Insurance Co. Ltd.

... Petitioner(s)

Versus

Harpreet Kaur and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Nikhil Sabharwal, Advocate
for the petitioner(s).

Mr. Rajender Goyal, Advocate
for the respondent No.4.

Anil Kshetarpal, J.

1. The petitioner herein is the insurance company. It's application under Order VII Rule 11 of the Code of Civil Procedure, 1908 (hereinafter referred to as "CPC") to reject the plaint has been dismissed vide order dated 05.04.2019 passed by the Civil Judge (Junior Division), Ludhiana.

2. Some facts are required to be noticed. The respondent No.1 to 3 are the proprietors of M/s Tarun Flour Mills. It was set up after getting financial facility/loan from the IDBI Bank Limited. The factory premises was got insured from the petitioner. There was a fire incident in the factory premises of the respondent No.1 to 3. The claim filed by the management was allowed to the extent of ₹72,19,705/-. The management, feeling dissatisfied, filed a claim petition before the State Consumer Disputes Redresssal Commission. It was allowed to the extent of ₹ 6,50,000/-. An appeal filed by the management is pending. The plaintiffs, proprietors of

M/s Tarun Flour Mills, filed a suit for declaration to the effect that the plaintiffs are entitled to get adjustment of ₹1,06,12,613/- in the due amount claimed by the defendant (IDBI Bank Limited). The insurance company was subsequently impleaded as a party to the suit. The following substantive prayers were made by the plaintiff while filing the suit:-

> *"It is, therefore, prayed that a decree for suit declaration that the plaintiffs are entitle to get adjustment of Rs.1,06,12,613/- in the due amount claimed by the defendant in the account No. 0003655100003599 being operated by the plaintiffs in the name of her firm M/s. Tarun Flour Mills with the defendant bank being the difference of the amount of the loss suffered by the plaintiffs in the fire , which took place in the night of 23/5/2014 in the factory premises of the plaintiff, which destroyed the entire machinery, stock and building as well which was got insured by the defendants themselves from M/s. Bajaj Alliance, Feroze Gandhi Market, Ludhiana vide policy No. OG-14-1214-4001-00000586 for an amount of Rs.1,85,00,000/-, vide insurance policy No. OG-13-1214-40001-0000-1255 for an amount of Rs.8,12,000/- and insurance policy No. OG-14-1214-4001-00000888 for an amount of Rs.23,90,000/-, policy No. OG-14-1214-00000888 for an amount of Rs.50,00,000/- and policy no. OG-14-1214-4001-00000886 for amount of Rs1,35,00,000/- and had been making premium amount to the said company by debiting the account of the account of the plaintiffs and suit for grant of*

mandatory injunction directing the defendants to adjust the amount of Rs.1,06,12,613/- in the amount, which may be found due in the account of the firm of the plaintiffs M/s. Tarun Floor Mill towards the defendant No.1 and suit for declaration that the defendants are not entitled to declare the account of the plaintiffs as non- performing account till the amount of Rs.1,06,12,613/- is adjusted in the amount due from the plaintiffs and suit for grant of permanent injunction restraining the defendants from declaring the account of the plaintiffs as non-performing account , may please be passed in favour of the plaintiffs and against the defendant.

Any other additional or alternative relief to effect that the plaintiffs is found entitled to in the circumstances of the case, be also granted to the plaintiffs."

3. The petitioner's application under Order VII Rule 11 CPC for rejection of the plaint on the ground that the plaint does not disclose any cause of action and the suit, is not maintainable without payment of *ad valorem* court fee, has been dismissed.

4. Heard the learned counsel representing the parties, at some length and with their able assistance, perused the paper-book.

5. It is evident from the reading of the impugned order passed by the trial Court on 05.04.2019 that the Court has only addressed the issue of failure of the plaintiffs to pay *ad valorem* court fee. However, the Court has not examined the objection of the petitioner that the suit is without any cause of action.

6. Keeping in view the aforesaid facts, the present revision petition is allowed and the order under challenge is set aside. The trial Court is directed to decide the application under Order VII Rule 11 CPC afresh after considering both the objections.

(Anil Kshetarpal)
Judge

August 22, 2022
"DK"

Whether speaking/reasoned :Yes/No
Whether reportable : Yes/No