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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ RFA(COMM) 130/2023

PRAMENDRA KUMAR KHOKHER ..... APPELLANT

Through: Mr.Rajbir Singh with Mr.Umesh Yadav, Advocates.

versus

HDFC ERGO GENERAL INSURANCE COMPANY LIMITED ..... RESPONDENT

Through: None

% Date of Decision: 13th July, 2023

CORAM:
HON'BLE MR. JUSTICE MANMOHAN
HON'BLE MS. JUSTICE MINI PUSHKARNA

J U D G M E N T

MANMOHAN, J: (ORAL)

1. Present appeal has been filed challenging the judgement dated 24th February, 2023 passed by the learned District Judge (Commercial), Saket Court, Delhi.

2. Learned counsel for the appellant-plaintiff states that the learned District Judge has erred in holding that flooding is not covered by the insurance policy. He states that the Trial Court has not considered serial no.6 of Section–I of the Policy which covers loss, destruction or damage directly caused by storm, cyclone, typhoon, tempest, hurricane, tornado, flood and inundation.

3. He also states that the learned District Judge's observation that appellant-plaintiff had not filed replication is incorrect, as the appellant-plaintiff had duly filed the replication to the written statement of the defendant-respondent, which is available on the Court record.

4. He submits that the learned District Judge has erred in not appreciating that the allegation of the defendant company warranted proper trial of the matter and the same could not have been decided by a summary judgement.

5. A perusal of the impugned order as well as the surveyor report reveals that three reasons have been given by the learned District Judge for allowing the respondent-defendant's application under Order XIIIA CPC, namely, (i) plaintiff had not filed replication, (ii) flooding is not a risk covered under the policy, (iii) the appellant-plaintiff was in breach of the terms of the policy as the basement was occupied as a training centre instead of its prescribed use, under the special conditions under Section-I of the policy, as car park and/or housing of utilities only.

6. Though, this Court finds merit in the appellant-plaintiff's argument that flooding is covered under the insurance policy and the appellant-plaintiff had filed its replication, yet as the usage of the basement was contrary to the terms of the insurance policy, the suit was liable to be dismissed.

7. This Court is of the opinion that on this sole ground itself, the respondent-defendant's application had to be allowed as the said ground had not been specifically challenged or disputed in the plaint filed by the appellant-plaintiff. After all, it is settled law that a summary judgment under Order XIIIA CPC can be passed when there is no real prospect of

successfully defending the claim. The expression 'no real prospect of successfully defending the claim' means that the Court is able to make the necessary finding of fact, apply the law to the facts, and the same is a proportionate, more expeditious and less expensive means to achieve a fair and just result. (See: ***Su-Kam Power Systems Ltd. vs. Kunwer Sachdev & Anr., 2019 SCC OnLine Del 10764***). Accordingly, on the aforesaid ground alone, the impugned order is upheld and the present appeal is dismissed.

MANMOHAN, J

MINI PUSHKARNA, J

JULY 13, 2023
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