

IN THE HIGH COURT OF JUDICATURE AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

RESERVED ON: 29.11.2023

DELIVERED ON: 08.02.2024

PRESENT:

THE HON'BLE MR. JUSTICE SURYA PRAKASH KESARWANI

AND

THE HON'BLE MR. JUSTICE RAJARSHI BHARADWAJ

APO 246 of 2018

With

WPO 94 OF 2015

ECGC LIMITED

[FORMERLY EXPORT CREDIT GUARANTEE CORP. OF INDIA LTD.]

VERSUS

MITTAL TECHNOPACK PRIVATE LIMITED AND ANR.

Appearance:

Mr. Dhruha Gshoh, Sr, Adv.

Mr. Soumajit Ghosh, Adv.

Mr. Amitava Mitra, Adv.

Ms. Antara Choudhury

.....for the Appellant

Mr. Soumya Majumder, Adv.

Mr. Debraj Sahu, Adv.

Ms. Susrea Mitra, Adv.

Mr, Avik Kundu, Adv.

.....for the Respondents



JUDGMENT

Surya Prakash Kesarwani, J.:

1. Heard Sri Dhruba Ghosh, learned senior advocate, assisted by Sri Soumajit Ghosh, learned counsel for the appellant/respondent and Sri Soumya Majumder, learned counsel, assisted by Sri Debraj Sahu, learned counsel for the respondents / writ petitioners.
2. Briefly stated, facts of the present case are that the respondents / writ petitioners took a Multi-buyer Exposure Policy No. MBE0050008485 which was issued by the appellants to the respondents / writ petitioners on 16.01.2012 covering the period commencing from 28.12.2011 to 27.12.2012, for an aggregate loss limit of Rs.5 crore. The Insurance Premium was Rs. 9,10,000/- but its payment was to be made in four equal quarterly instalments of Rs. 2,27,500/- each, falling due on 28.12.2011, 28.03.2012, 28.06.2012 and 28.09.2012. The third instalment which fell due on 28.06.2012 was not deposited in time by the respondents / writ petitioners. A shipment was made by the respondents / writ petitioners on 27.07.2012 to one M/s. Techpack Tanzania Limited, but the consignment was neither received by the consignee nor its payment was made.



Therefore, the respondents / writ petitioners submitted an application dated 20.11.2012 before the appellant/respondent for permission for re-import of the shipment dated 27.07.2012. Approval to the aforesaid request was granted by the appellant/respondent by a letter dated 29.11.2012, subject to terms of the policy and verification. Subsequently, the respondents / writ petitioners made payment of third instalment on 03.12.2012 and the last instalment on 06.12.2012, which both were accepted by the appellant without any objection. Thereafter, the respondents / writ petitioners lodged a claim on 25.04.2013 which was rejected by the appellant/respondent on 15.05.2013 on two grounds, as under:-

- “1) Section 64VB of Insurance Act, 1938 regarding payment of advance premium was not complied with.
 - 2) Report of Default was submitted with a delay of 67 days.”
3. Against the aforesaid rejection, the respondents / writ petitioners submitted representations including the representation dated 23.12.2013. The representation was



rejected by the competent authority by order dated 24.03.2014, as under:-

“The Committee decided to reject the claim as there was no premium available to cover the exports in question since the installment due to be paid on 28.06.2012 was paid by the Company only on 03.10.2012.”

4. Aggrieved with the aforesaid rejection order, the respondents / writ petitioners filed Writ Petition No.94 of 2015 [Mittal Technopack Private Limited & Another v. ECGC Limited], which was allowed by the impugned order dated 27.01.2017 passed by the Learned Single Judge.
5. Aggrieved, the appellant/respondent has filed the present appeal.
6. Both the learned counsel for the parties jointly submit that the following questions need to be answered in the present appeal:
 - a. “Whether under the facts and circumstances of the case there was a valid insurance cover under the Policy for the period from 28.06.2012 to



03.12.2012 to cover the shipment made on 27.07.2012 when the third instalment due and payable by 28.06.2012 covering period from 28.06.2012 to 26.09.2012 was paid by the writ petitioners on 03.12.2012?

- b. Whether under the facts and circumstances of the case and in view of the provisions of Section 64VB of the Insurance Act, 1938, the Writ Court has lawfully allowed the insurance claim of the writ petitioners?"

7. Submissions on behalf of the appellant:-

- (i) Learned counsel for the appellants submits that the policy was for one year and the premium was payable in four equal quarterly instalments on dates specified in the policy itself. The respondents / writ petitioners did not pay the third instalment on due date i.e. 28.06.2012. Therefore, the shipment in question dated 27.07.2012 was not covered under the policy. The refusal to receive goods or not to make payment by the consignee happened sometime in August 2012. Both the events were not covered under the policy since the premium



was not paid by the respondents / writ petitioners. Under the circumstances and in view of the legislative mandate of Section 64VB of the Insurance Act, 1938, the insurance claim of the respondents / writ petitioners was lawfully rejected by the appellants but it has been incorrectly allowed by the impugned judgment.

- (ii) The legislative mandate of Section 64VB of the Insurance Act, 1938 has neither been waived nor it can be waived by an insurance company, particularly when the Section itself starts with prohibitory words.
- (iii) There was no coverage during the period the Insurance Premium in advance was not paid by the respondents / writ petitioners and as such, the claim of the respondents / writ petitioners could not have been allowed by the impugned judgment.

8. In support of the submissions, learned counsel for the appellants has relied upon a judgment of Hon'ble Supreme Court in *Deokar Exports Private Limited v. New India Assurance Company Limited* [(2008) 14 SCC



598 (Paras 10, 11, 13 and 14)] and a judgment of Delhi High Court in *Indusind Bank v. Export Credit Guarantee Corporation of India Limited* [2016 SCC OnLine Del 5152].

9. Learned counsel for the appellants has also carried us through the provisions of Section 64VB of the Insurance Act, 1938, the Insurance Policy in question and the rejection orders.
10. Submissions on behalf of the respondents / writ petitioners:-
 - (i) Learned counsel for the respondents / writ petitioners submits that as per clauses 10 and 20 of the Insurance Policy read with the schedule, respondents / writ petitioners have paid the entire instalment before lodging the claim and as such, the claim of the respondents / writ petitioners has been lawfully allowed by the Writ Court. The respondents / writ petitioners have complied with the conditions of the policy which requires that entire Insurance Premium has to be paid before lodging the claim. Therefore, the claim of the respondents / writ petitioners could not have



been rejected by the appellants. Therefore, the order of rejection of claim has been lawfully quashed by the Writ Court.

- (ii) Failure to make payment of one instalment on the due date shall not invalidate the policy cover, which was for 12 months. It was a yearly contract and not a quarterly one. Therefore, on account of non-payment of the third instalment, it cannot be said that the shipment in question shall not have coverage during the default period of payment of the instalment.

11. In support of his submission, learned counsel for the respondents / writ petitioners has relied upon a judgment of the Hon'ble Supreme Court in *New India Assurance Co. Ltd. v. Rula and Others* [(2000) 3 SCC 195 (Paras 2, 7, 11 and 13)].

Discussion & Findings

12. We have carefully considered the submissions of learned counsels for the parties and perused the paper book.
13. The respondent is a hundred per cent export oriented unit. From the record it appears that the respondents



have taken policy from the appellants from year to year since the year 2004-2005. For the relevant period also, undisputedly the respondents took a Multi-buyer Exposure Policy No. MBE0050008485 which was issued by the appellants to the respondents / writ petitioners on 16.01.2012 covering the period commencing from 28.12.2011 to 27.12.2012, for an aggregate loss limit of Rs.5 crore. The Insurance Premium of Rs. 9,10,000/- was payable by the respondents to the appellants in four equal quarterly instalments of Rs. 2,27,500/- each falling due on 28.12.2011, 28.03.2012, 28.06.2012 and 28.09.2012. The third instalment which fell due on 28.06.2012 was belatedly deposited by the respondents / writ petitioners on 03.12.2012 which was accepted by the appellants. The last instalment was paid on 06.12.2012.

14. A shipment was made by the respondents / writ petitioners on 27.07.2012 to one M/s. Techpack Tanzania Limited, but the consignment was neither received by the consignee nor its payment was made. Therefore, the respondents / writ petitioners submitted an application dated 20.11.2012 before the appellant/respondent for permission for re-import of



the shipment dated 27.07.2012. Approval to the aforesaid request was granted by the appellant/respondent by a letter dated 29.11.2012, subject to terms of the policy and verification. Subsequently, as aforesaid, the respondents / writ petitioners paid the third instalment on 03.12.2012 and the last instalment on 06.12.2012 both of which were accepted by the appellants.

15. Thus, the claim of the respondents was finally rejected by appellant by order dated 24.03.2014 on the ground that there was no premium available to cover the export in question dated 27.07.2012 since the third instalment due on 28.06.2012 was paid by the respondents on 03.12.2012.
16. Clause 7 of the Insurance Policy empowers the appellants to cancel the cover. Clause 8 of the policy empowers the appellants to give notice relating to a loss limit and /or the reduction and cancellation of the cover. Clause 10 of the policy provides as under;-

“10. PERIOD OF COVER, PREMIUMS AND CHARGES

(a) Period of Cover:



(i) This is a continuous Policy, which unless otherwise agreed, shall generally be renewed and continued for consecutive periods of the twelve months. The Schedule attached to the Policy specifies the currently extant Period of Cover. **At the end of the first or any subsequent Period of Cover specified in the Schedule, either you or we may elect to terminate the Policy by giving notice to the other in writing before the close of any such period;**

(ii)Cover under this Policy will not be available to you for shipments made by you to any Insured Buyer **after the expiry of the Period of Cover specified in the Schedule** you have got a fresh Schedule issued and attached to the Policy indicating that the shipments is made during the period of Period of Cover specified in the Schedule..

(b) Payment of Premiums and Charges:

(i) The amount of premium due and payable by you under this Policy is specified in the Schedule:

(ii)The entire amount of premium falls due and payable forthwith upon our acceptance of your proposal for issue of the Policy. **However upon your request we may agree for a deferred payment of premium in such number of instalments** and subject to such conditions as we may, at our sole discretion, stipulate.

(iii)In the event of you preferring a claim under this Policy at any time before the full amount of premium due under the Policy is fully paid, any agreement allowing you instalment facility for payment of premium shall stand withdrawn with immediate effect and **the whole of the balance amount of premium remaining unpaid shall forthwith become payable by you.**



No claim under the Policy will be registered or processed by us until the whole of the premium due under the policy is paid in Full:

(iv) We acknowledge having received together with the Proposal the amount of Proposal Processing Fee specified in the Schedule from you. In addition, you will pay, to us such other charges, if any, as may be payable to us towards services like the processing of your application For an enhancement in the amount of Aggregate Loss Limit under the Policy, etc.

(c) Termination of the Policy In the event that you wish to terminate the policy before the end of the Period of Cover we shall be entitled to retain the whole of the premium(s) paid by: you and to receive forthwith the balance, if any, of the amount of premium specified in the Schedule and remaining unpaid. Payment of premiums and other charges in accordance with provisions under Condition 10 is a condition precedent to our liability.”

17. **The schedule relatable to clause 10 provides the period of cover to be from 28.12.2011 to 27.12.2012.** There is nothing on record to show that on alleged non-payment of the third instalment on or before the due date, the appellants have elected to terminate the policy by giving notice in writing before closing of the period, as provided in clause 10 (a) (i) of the policy reproduced above. Instead the appellants,



without any objection protest; accepted the payment of third and fourth instalments from the respondents. The respondents have also complied with the terms and conditions of clause 10 (b) (iii) of the policy by making payment of full amount of premium due under the policy for the whole year before lodging the insurance claim in question. The permission to re-import the shipment dated 27.07.2012 was sought by the respondents from the appellants by letter date 20.11.2012 and the permission was granted by the appellants vide letter dated 29.11.2012.

18. It is not the case of the appellants that any material facts were suppressed by the respondents in their application dated 20.11.2012. Even the order dated 15.05.2013 and 24.03.2014 passed by the appellants do not disclose at all suppression of any material facts by the respondents. The appellants were well aware of the facts at all relevant point of time including at the time of granting permission for re-import, that the third instalment has not been paid. The appellants never issued any notice to the respondents for cancellation of policy cover or for termination of the policy which they could have exercised in terms of clause 10 (a) (i) of the



Insurance Contract i.e. the policy. Instead in terms of sub clause (b) (iii) of clause 10 of the policy the appellants accepted the entire deferred premium under the policy so as to enable the appellants to lodge the claim. Deferment of payment of Insurance Premium was own decision of appellants under the Insurance Policy i.e. the contract of Insurance.

19. Section 64 VB of the Insurance Act, 1938 casts an obligation on the Insurance Company regarding receipt of Insurance Premium. It does not cast any obligation upon the policy holder. The facility of deferred payment of Insurance Premium was granted by the appellants while covering the entire period of 12 months under the policy. The Insurance Policy being a contract, the parties are bound by it. The appellant insurance company being a party to the insurance contract, is bound by the terms of the contract. It cannot turn around and take a different stand when the claim is lodged, particularly when the entire premium for the whole year was accepted by it on 03.12.2012 without any objection. No attempt was made by the appellants to cancel the policy cover or to terminate the insurance contract in terms of clause 10 of the policy, due to



delayed payment of the third instalment. Under the circumstances the appellant was not justified to reject the insurance claim of the respondents under the policy in question on the alleged ground of breach of section 64 VB of the Insurance Act 1938.

20. As we have already held and also as correctly held by the learned Single Judge, Section 64 VB casts an obligation on the insurance company and not upon the policy holder. The Insurance Premium for the entire period of coverage on 12 months was Rs. 9,10,000/-. The facility of deferred payment of Insurance Premium was granted by the appellants to the respondents. Therefore, it cannot be said that payment of a particular instalment of premium shall relate to a particular period. The Insurance Premium of Rs. 9,10,000/- was payable for the whole period of 12 months and the entire premium was paid by the respondents, although there was some delay in payment of third instalment for which neither the policy cover was cancelled nor the policy in question was terminated. Therefore, the appellants having allowed the policy to continue for the entire period of 12 months, on deferred payment of Insurance Premium in four instalments, cannot be



allowed to reject the claim of the respondents on the ground of delay in payment of the third instalment.

21. In view of the aforesaid, we are in complete agreement with the finding recorded by the learned Single Judge in paragraph 22, 23 and 24 of the impugned judgement dated 27.01.2017 passed in *Writ Petition No. 94 of 2015 (Mittal Technopack Private Ltd. And Anr. V. ECGC Ltd. (Formerly Export Credit Guarantee Corp. of India Ltd.)* which are reproduced below;-

“ (22) In this connection it may be noted that in New India Assurance Co. Ltd.-vs.-Rula, (2000) 3 SCC 195, The Hon'ble Supreme Court held that ordinarily a liability under the contract of insurance would arise only on payment of premium, if such payment was made a condition precedent for taking effect of the insurance policy but such a condition which is intended for the benefit of the insurer can be waived by it. In the present case, the respondent received the belated payment of the third instalment of premium without any protest, demur or reservation. Hence, the respondent must be held to have waived his protection under Section 64VB of the Insurance Act.

(23) Further, the respondent did not cancel the insurance



policy upon the petitioner company's failure to pay the third instalment of premium within the prescribed date. The respondent would have been within its rights to cancel the policy between 28 June, 2012 and It did not do so. Had it done so, the petitioner October, 2012. company would have had no legitimate grievance about the rejection of its claim under the policy. However, the respondent kept the policy alive and accepted the third instalment on 3 October, 2012 belatedly without any reservation. Under those circumstances, the respondent cannot take shelter under Section 64VB.

(24) In the letter dated 29 November, 2012 issued by the respondent in response to the petitioner company's application for approval of re- importation, there was no whisper of the present stand taken by the respondent. As on the date when the petitioner company lodged its claim with the respondent company, admittedly, the entire premium stood paid. Hence, it would be unfair and inequitable to uphold the first ground for rejection of the petitioner company's claim. Having approved the re- importation of the concerned shipment, the respondent company cannot be permitted to contend that since there was a delay in the payment of the third instalment, the petitioner company is not covered by the policy. In my



view, payment of any one instalment cannot be related to a particular date when the risk arose during the subsistence of the policy. I am in agreement with the submission of Mr. Banerjee that individual shipments could not be co-related with the accrued premium under the policy. I am of the view that permitting the respondent company to reject the petitioner company's claim on the first ground of non-compliance with Sec. 64VB would be unconscionable and would also result in unjust enrichment of the respondent company. It is true that the law of insurance is a technical branch of law but the same cannot be carried to a point of hyper-technicality which would result in manifestly unjust results. In view of the aforesaid, the first ground for rejection of the petitioner company's claim cannot be sustained."

Insurance Policy is a contract

22. It is settled law that Insurance Policy is a contract based on an offer (proposal) and acceptance. The respondents made a proposal which the appellants accepted which resulted in coming into existence the contract i.e. the Insurance Policy in question. In a contract of insurance, rights and obligations of the parties are strictly governed by the policy of insurance, vide *Deokar Exports Private Limited vs.- New India Assurance*



Company Limited (2008) 14 SCC 598 (paras 13 and 14).

23. In the case of *New India Assurance Co. Ltd. V.- Rula and Others (2000) 3 SCC 195* (para 4,5,6 and 7) Hon'ble Supreme Court considered the provision of **Section 64 VB** of the Insurance Act 1938 and the provision of Section 2(d)/(e)/ (f)/ (h) of the Contract Act and held that a contract of insurance, like any other contract, is concluded by offer and acceptance. Normally a liability under the contract of insurance would arise only on payment of premium if such payment was made a condition precedent to the Insurance Policy. **But such a condition which is entered into for the benefit of the insurer can be waived by the insurer.**
24. In the present set of facts the appellants/insurers have issued the Insurance Policy to the respondents for a period of 12 months on deferred payment of premium, by agreeing to accept the payment of premium in four quarterly instalments. This condition for payment in instalment is part of the contract of insurance itself. Despite there being the provision of Section 64 VB of the Insurance Act 1938, the insurer/appellant have chosen for their benefit of business of insurance, to accept the premium in instalments. Thus, in the present set of facts, rigour of Section 64 VB shall not operate against the respondents.



25. In the case of *New India Assurance Co. Ltd. V.- Rula and Others* (*supra*) (paragraph 7) Hon'ble Supreme Court held as under ;-

*“7. Now, a contract of insurance, like any other contract, is concluded by offer and acceptance. **Normally, a liability under the contract of insurance would arise only on payment of premium if such payment was made a condition precedent to the insurance policy taking effect. But such a condition which is intended for the benefit of the insurer can be waived by the insurer** as laid down in *P. Abdul Azeez & Co. v. New India Assurance Co. Ltd.* [AIR 1954 Mad 520 : (1953) 2 MLJ 714] in which a decision of the Bombay High Court in *Ocean Accident & Guarantee Corpn. Co. Ltd. v. D.K. Patkar* [AIR 1935 Bom 236 : 37 Bom LR 304] was followed. To the same effect is an old decision in *Equitable Fire & Accident Office Ltd. v. Ching Wo Hong* [1907 AC 96 : 76 LJPC 31 : 96 LT 1 (PC)] . These are the principles relating to an ordinary contract of insurance,”*

(Emphasis Supplied)

WAIVER

26. In the case of *Commissioner of Customs, Mumbai vs. Virgo Steels, Bombay and Anr.* (2002) 4 SCC 316 (paras 9 to 14) Hon'ble



Supreme Court has laid down the law that even though a provision of law is mandatory in its operation if such provision is one which deals with individual rights of the person concerned and is for his benefit, the said person can always waive such right. While laying down the aforesaid principles, Hon'ble Supreme Court has referred to the judgements in the case of *Vellayan Chettiar v. Govt. of Province of Madras*, AIR 1947 PC 197, *Dhirendra Nath Gorai v. Sudhir Chandra Ghosh*, AIR 1964 SC 1300 relating to Section 35 of the Bengal Moneylenders Act, *S. Raghubir Singh Gill v. S. Gurcharan Singh Tohra* 1980 Supp SCC 53 relating to Section 94 of the Representation of the People Act, 1951, *Krishan Lal v. State of J & K* (1994) 4 SCC 422 and *Martin & Hariss Ltd. V. Vith ADJ* (1998) 1 SCC 732 and held that M/s Vigro Steels, having specifically waived their right for a notice, cannot now be permitted to turn around and contended that the proceeding initiated against them are void for want of notice under Section 28 of the Customs Act.

27. In the case of *Krishna Bahadur vs. Purna Theatre and ors* (2004) 8 SCC 229 (paras 9, 10 and 11) Hon'ble Supreme Court has considered the principle of waiver and estoppel and held that the principle of waiver although is akin to the principle of estoppel; the difference between the two, however, is that



whereas estoppel is not a cause of action; it is a rule of evidence; **waiver is contractual and may constitute a cause of action; it is an agreement between the parties and a party fully knowing of its rights has agreed not to assert a right for a consideration.** A right can be waived by the party for whose benefit certain requirements or condition had been provided for by a statute subject to the condition that no public interest is involved therein. Whenever waiver is pleaded it is for the party pleading the same to show that an agreement waiving the right in consideration of some compromise came into being. Statutory right, may also be waived by conduct.

28. In the case of *All India Power Engineer Federation and Ors. Vs. Sasan Power Limited and Ors.* (2017) 1 SCC 487 Hon'ble Supreme Court again considered "waiver" of a statutory provision and held as under;-

"18. It is thus clear that if on facts there is a waiver of a provision of the PPA by one of the parties to the PPA, then Section 63 of the Contract Act will operate in order to give effect to such waiver.

19. At this juncture, it is important to understand what exactly is meant by waiver. In Jagad Bandhu Chatterjee v. Nilima Rani [Jagad Bandhu Chatterjee v. Nilima Rani, (1969) 3 SCC 445] this Court held: (SCC pp. 446-47, para 5)

"5. In India the general principle with regard to waiver of contractual obligation is to be found in Section 63 of the Contract Act. Under that section it is open to a promisee to dispense with or remit, wholly or in part, the performance of the promise made to him or he can accept instead of it any satisfaction which he thinks fit. Under the Indian law neither



consideration nor an agreement would be necessary to constitute waiver. This Court has already laid down in *Waman Shrinivas Kini v. Ratilal Bhagwandas & Co.* [*Waman Shrinivas Kini v. Ratilal Bhagwandas & Co.*, 1959 Supp (2) SCR 217 : AIR 1959 SC 689], SCR p. 226 that: (AIR p. 694, para 13)

‘13. ... waiver is the abandonment of a right which normally everybody is at liberty to waive. A waiver is nothing unless it amounts to a release. It signifies nothing more than an intention not to insist upon the right.’

It is well known that in the law of pre-emption the general principle which can be said to have been uniformly adopted by the Indian courts is that acquiescence in the sale by any positive act amounting to relinquishment of a pre-emptive right has the effect of the forfeiture of such a right. So far as the law of pre-emption is concerned the principle of waiver is based mainly on Mohammedan Jurisprudence. The contention that the waiver of the appellant's right under Section 26-F of the Bengal Tenancy Act must be founded on contract or agreement cannot be acceded to and must be rejected.”

20. In *P. Dasa Muni Reddy v. P. Appa Rao* [*P. Dasa Muni Reddy v. P. Appa Rao*, (1974) 2 SCC 725], this Court held: (SCC p. 729, para 13)

“13. ... Waiver is an intentional relinquishment of a known right or advantage, benefit, claim or privilege which except for such waiver the party would have enjoyed. Waiver can also be a voluntary surrender of a right. The doctrine of waiver has been applied in cases where landlords claimed forfeiture of lease or tenancy because of breach of some condition in the contract of tenancy. The doctrine which the courts of law will recognise is a rule of judicial policy that **a person will not be allowed to take inconsistent position to gain advantage through the aid of courts. Waiver sometimes partakes of the nature of an election. Waiver is consensual in nature. It implies a meeting of the minds. It is a matter of mutual intention.** The doctrine does not depend on misrepresentation. **Waiver actually requires two parties, one party waiving and another receiving the benefit of waiver.** There can be waiver so intended by one party and so understood by the other. **The essential element of waiver is that there must be a voluntary and intentional relinquishment**



of a right. *The voluntary choice is the essence of waiver. There should exist an opportunity for choice between the relinquishment and an enforcement of the right in question. It cannot be held that there has been a waiver of valuable rights where the circumstances show that what was done was involuntary. There can be no waiver of a non-existent right. Similarly, one cannot waive that which is not one's as a right at the time of waiver. Some mistake or misapprehension as to some facts which constitute the underlying assumption without which parties would not have made the contract may be sufficient to justify the court in saying that there was no consent."*

29. Waiver of contractual obligation is found in Section 63 of the Contract Act. Under that section it is open to a promisee to dispense with or remit, wholly or in part, the performance of the promise made to him or he can accept instead of it any satisfaction which he thinks fit. Under the Indian law neither consideration nor an agreement would be necessary to constitute waiver. Thus, waiver is the abandonment of a right which normally every body is at liberty to waive. It is an intentional relinquishment of known right or advantage, benefit, claim or privilege which except for such waiver the party would have enjoyed. Waiver is also a voluntary surrender of a right. It implies a meeting of the minds. It is a matter of mutual intention. Waiver actually requires two parties, one party waiving and another receiving the benefit of waiver. Even though a provision of law is mandatory in its operation if such provision is one which deals with individual rights of the person concerned and is for his benefit, the said person can always



waive such right. A right can be waived by the party for whose benefit certain requirements or condition had been provided for by a statute subject to the condition that no public interest is involved therein. Normally in view of Section 64 VB of the Insurance Act, 1938, a liability under the contract of insurance would arise only on payment of premium if such payment was made a condition precedent to the Insurance Policy taking effect. But such a condition which is intended for the benefit of the insurer can be waived by the insurer which has been waived by the appellant herein by deferring the payment of Insurance Premium and providing for payment in instalments.

30. Thus, the appellants having waived the requirement of Section 64 VB under the Insurance Policy resulting in a contract and also having accepted the deferred payment of Insurance Premium, cannot be permitted to approbate and reprobate, to reject the claim on the ground of Section 64VB.

31. For all the reasons afore stated, we do not find any manifest error of law in the impugned judgement passed by the learned Single Judge. The learned Single Judge has lawfully and correctly set aside the communication of the appellants herein dated 15.05.2013, 15.01.2014 and 24.03.2014 and directed to pay /disburse to the respondents herein its claim under the Policy in question. There is no merit in the appeal.



Consequently, the **appeal is dismissed**. However, there shall be no order as to costs.

32. Urgent certified photocopy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(SURYA PRAKASH KESARWANI, J.)

I agree

(RAJARSHI BHARADWAJ, J)