



W.P.No.34046 of 2022

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:13.08.2024

Coram:

THE HONOURABLE DR. JUSTICE G. JAYACHANDRAN

W.P.No.34046 of 2022
and
W.M.P.No.33504 of 2022

C.Joseph Thavamony

.. Petitioner

/versus/

1.Bajaj Allianz Life Insurance Company Limited,
Bajaj Allianz House, Airport Road,
Yerawada, Pune 411 006.

2.Bajaj Housing Finance Ltd.,
5th Floor, Cerebrum IT Park B2 Building,
Holy Cross Road, Kalyani Nagar,
Pune, Maharashtra 411 014.

3.Insurance Regulatory and Development Authority,
9th Floor, United India Towers,
Basheerbagh, Hyderabad,
Andra Pradesh 500 029.

.. Respondent

Writ Petition has been filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus directing the respondents to honour the claim amount of Rs.71,30,117/- in respect of



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the Group Credit Protection Plus Policy No.0359372586 made by the petitioner.

For Petitioner :Mr.K.Thilageswaran
For R1 :Mr.Srinath Sridevan, Senior Counsel for
M/s R & P Partners
For R2 :Mr.M.Arunachalam
For R3 :No Appearance

ORDER

The petitioner, who had taken up the Insurance Policy suppressing the pre-existing compliance has been denied of the insurance coverage. He has raised a dispute before the Insurance Ombudsman wherein the claim of the petitioner been considered and on facts and materials, the Ombudsman has directed the petitioner herein to approach appropriate Forum/Court for his redressal.

2. The learned counsel appearing for the petitioner rely upon the judgment of the Hon'ble Supreme Court in *Harbanslal Sahnia and Ors. v. Indian Oil Corpn. Ltd and Ords reported in [AIR 2003 SC 2129]*



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and few others judgments of the Hon'ble Supreme Court as well as the Hon'ble High Courts, wherein the Courts have interfered in an extraordinary case invoking the writ jurisdiction and passed orders and wants this Court to apply the same dictum and direct the respondents to pay the claim amount of RS.71,30,117/-.

3. This Court is conscious of the fact that wherever there is a fact disputed, needs examination of documents and evidence, the writ jurisdiction cannot be invoked. The extraordinary jurisdiction of Article 226 of the Constitution of India can be exercised only when an alternate remedy is not efficacious. The petitioner's counsel says that the petitioner is suffering from cancer and therefore, the High Court should short circuit the procedure, bypass the law established and invoke its power under Article 226 of the Constitution of India. With all sympathy, this Court is not able to entertain the prayer sought for in this writ petition for a simple reason that serious allegation of suppression of fact and misrepresentation been made to the Insurance Company by this petitioner. While so, it is for the petitioner to establish that he has not suppressed any fact, while entering into the contract with the respondent. Precisely for the said



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reason, the Ombudsman, who is the specialised agency, after considering the merits of the case, has directed the petitioner to approach the appropriate Forum/Court to get redressal. Unfortunately, this petitioner was misdirected to approach this Court under Article 226 of the Constitution of India, instead of approaching a Civil Court or Consumer Court, whichever he prefer.

4. Hence, this Writ Petition is dismissed on the ground that there is a serious dispute regarding the facts, which has to be tested by due process of law and trial.

5. The learned counsel appearing for the respondents states that a conditional order was passed by the Hon'ble Division Bench of this Court to deposit a sum of Rs.66 lakhs on or before 22.01.2024 and the same may be permitted to be withdrawn.

6. This Court permits the second respondent to withdraw the



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said amount. The time consumed by the petitioner herein, from filing the writ petition to passing the order in the writ petition, shall be condoned under Section 14 of the Limitation Act, if he prefers any claim petition before the appropriate Court. Consequently, connected Miscellaneous Petition is closed. No costs.

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Index:yes/no
Neutral Citation:yes/no
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DR.G.JAYACHANDRAN,J

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