IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

127 **2024:PHHC:044700**

RSA-1533-2021 (O&M)
Date of decision: 03.04.2024

RAJINDER SINGH AND ANR **..Appellants**

Versus

HDFC STANDARD INSURANCE COMPANY LTD AND ORS **..Respondents**

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Kanwal Goyal, Advocate
and Ms. Sheena Dahiya, Advocate
for the appellants.

<u>ANIL KSHETARPAL, J(Oral)</u>

<u>CM-6118-C-2021</u>

1. For the reasons stated in the application for condonation of delay which is supported by an affidavit, the application is allowed.

2. The delay of 478 days in refiling the appeal is condoned.

3. CM stands disposed of.

<u>Main case</u>

4. This is plaintiffs regular second appeal against the concurrent findings of fact arrived at by the Courts below while dismissing their suit for the grant of mandatory injunction directing the respondents (defendants) to return the amount invested by the plaintiff. The plaintiff filed a suit on the ground that he is illiterate and he was promised a visit to America when he purchased two insurance policies by investing an amount of Rs.3,00,000/- from an agent of the company. However, the aforesaid promise has not been fulfilled therefore, he is entitled to refund of the amount. The defendant-company denied any such promise. Both the Courts below upon appreciation

of evidence have concurrently found that the plaintiff failed to prove any promise extended to the plaintiffs that he will be taken to America.

5. This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paperbook.

6. The learned counsel representing the appellant submits that as per the following stipulation, the plaintiffs are entitled to some amount if the policy is surrendered within a period of first three years:-

> *"**Illustrative Benefits on Surrender***
> *This contract is designed for long term savings and is not designed for short term investment. Should you need to surrender your policy in the short term, any surrender benefits may be less than the premium(s) you have paid.*
> *There is no guaranteed amount of Rupees on surrender. We guarantee to pay the bid value of units in your unit linked fund, less an charges applicable on surrender (inclusive of Service Tax & Education Cess on the charges).*
> *A policy may be surrendered at any time in the first three years of the policy but the amount payable on surrender will be paid out or on the 3rd police anniversary. Hence, Surrender values are shown only from the start of year 4 onwards."*

7. On a Court question, the learned counsel representing the appellants fairly admits that this argument/contention/submission was never taken up before the Courts below. It is evident that the argument of the learned counsel representing the appellants is not only beyond his pleadings but even this contention was never taken up before the Courts below. Such contention is based upon evidence, which is required to be led to prove that their case falls within the stipulation.

8. For the first time in the regular second appeal, it would not be appropriate to make out an entirely new case.

9. Hence, no ground to interfere is made out.

10. Dismissed accordingly.

11. All the pending miscellaneous applications, if any, are also disposed of.

April 03rd, 2024 **(ANIL KSHETARPAL)**
Ay **JUDGE**

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