IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

<u>114</u>

CWP-23521-2024 (O&M)
Date of decision: 15.10.2024

HDFC Life Insurance Co. Ltd. ...Petitioner

VERSUS

Inderjit Kaur Chima and others ...Respondents

CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present :- Mr. Nitin Thatai, Advocate for the petitioner.

Mr. Jagmohan Ghuman, Advocate for respondent No.1.

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<u>VINOD S. BHARDWAJ, J. (Oral)</u>

1. Challenge in the present petition is to the order dated 10.04.2024, whereby the Permanent Lok Adalat (Public Utility Services), SAS Nagar (Mohali) in case No.87 dated 06.03.2018, had allowed the application preferred by respondent No.1-applicant and held as under:-

> ***"20. After going through the application, reply of the respondents, evidence produced by both the parties and arguments advanced by the Ld. Counsel for the parties, we are of the considered view that in the first place it seems a case of misrepresentation made by the respondents and duped the old lady of 85 years from her hard earned money.***
> ***21. The evidence placed on record by the applicant points towards the situation where it seems totally impractical that an old lady of 85 years would buy an insurance policy for her niece with whopping premium of Rs.25 lacs P.A, for next 10***

years and the maturity period of the same was 10 years which can be very well seen from the insurance policy Ex-R5. Perusal of the insurance policy shows that name of the nominee is mentioned as Mrs. Wahikdik Kaur Dilsion, whereas the name of the aunt of the petitioner was Mahinder Kaur Dhillon from whose account no.01541600001480 the entire amount of Rs.25 lacs have been transferred for this policy. Nominee Wahikdhik Kaur Dilson is neither the aunt of the petitioner nor she has any relation with the deceased lady Mahinder Kaur Dhillon from whose account the entire premium amount of Rs.25 lacs have been transferred. Whereas in the proposal form Ex-R2, the name of the nominee is mentioned as Mrs. Dhillon Mahinder Kaur, so this fact alone creates a big doubt in the execution of the alleged assurance policy.

22. Perusal of proposal form Ex-R2 further shows that relationship of the Insured and the nominee is mother and daughter which is also not correct. Petitioner is the niece of the deceased Mrs. Mahinder Kaur Dhillon from whose account entire premium amount of Rs 25 lacs has been transferred. If the deceased got this policy for her niece in a proper manner and after understanding the nature of the document, then relationship between the nominee and the insured might have been correctly mentioned in the proposal form. It shows that the deceased who has been duped by the

respondents, did not know about the nature of the documents upon which her signatures have been taken and the act of the respondents seems to be not genuine.

23. Another fact which makes the execution of the documents doubtful is the mailing address on Ex-R2 mentioned as "Deep Niwas Chandigarh Ambala Road, Near Sharma Farm, Zirakpur. After issuance of the policy, the respondents sent, the policy at the permanent address which is Pune, Maharashtra, When the mailing address was specifically given by the proposer le nominee from whose account the amount of premium was paid, why the policy has not been sent at her mailing address. It seems that respondents did not want that the deceased should know about the fraud committed by the respondents. They clandestinely sent the policy at the permanent address, so that she may not be able to get the policy cancelled in time. This fact again points out towards a misrepresentation and fraud committed by the respondents.

24. The next arguments advanced by the Ld. Counsel for the applicant that a blank proforma was sent to the applicant for her signatures by marking crosses. Perusal of Ex-R3 clearly shows the places where the signatures of the petitioner were to be taken have been cross marked. Ex-R3 further shows that it is filled in with different hand writing than the form Ex-R2 which includes nominee details and this fact

again creates a doubt in the fair execution of the policy.

25. Moreover, the person in whose name the policy was purchased is a housewife and not earning anything of her own. It seems that the old lady instead of bequeathing some money to her niece is burdening her for the coming next 10 years with a premium of Rs.25 lacs p.a. Further, the lady who purchased this policy was more than 85 years of age and was having Rs.25 lacs in her account and it was not possible that she invested the entire Rs.25 lacs in purchasing the said policy without bothering the fact that Rs.25 lacs have to be paid annually for another 9 years. Thus total payment which the applicant has to pay would become Rs.2,50,00,000/- but she will get an amount of Rs. 2,10,67,335/- which is assured amount and is less than the invested amount. No prudent man would invest his hard earned money in a plan which gives a return less than the invested amount. Remaining benefit which is mentioned in policy is non- Guaranteed Benefit may be or may not be given, so it again raises a high suspicion in the fair execution of the assurance policy and it seems that she became a prey of the bad designs of the respondents.

26. The respondents did not do any verification about the status of Mahinder Kaur since deceased that whether she has any other source of income to pay a premium of Rs 25 lacs P.A. for the coming 9 years. Similarly, they did not verify the source of income of the beneficiary whether she was in a

capacity to pay Rs.25 lacs P.A for another 9 years. More over the insurance official even did not get the beneficiary medically examined that whether she is fit and fine for the saving assurance policy as her age was more than 58 years at the time of said policy. No insurance company would take such a big risk that beneficiary, if not medically fit and is old age of more than 58 years, will grant her a policy without any medical examination. It seems that the respondents were bent to take away the entire amount of the old lady of 85 years by way of hook or crook and this act of the respondents shows that the respondents were dishonest and duped the old lady of more than 85 years by transferring entire amount of Rs.25 lacs from her account.

27. Next, it is always the beneficiary who himself/herself applies for buying any policy except in the case of minors. As per norms, no other person can buy a policy for an adult person.

28. That in this case, policy being purchased by an old lady of 85 years who might not have been able to understand the ramifications of such policy. The malafide of bank and insurance company officials is apparent on the face of record that policy documents were incomplete in nature Ex-R2 was mailed at the permanent address of the applicant instead of sending her at mailing address, so that she could not avail the benefit of free look period, during which she could have

cancelled the policy. Moreover the policy in question Ex-R5 is a saving assurance policy and it assures the return of the amount deposited with benefits mentioned therein i e. amount paid in the shape of premium and the other benefit on account of death. So, it is a kind of fixed deposit. Therefore, this policy cannot be cancelled and the amount cannot be forfeited. Unfortunately, respondent no.1 treated this policy Ex-R5 as insurance policy and cancelled/terminated the policy on account of non-payment of future premiums and forfeited the amount Therefore, the action of respondent no.1 in treating this policy as insurance policy and forfeiting the amount deposited is wholly untenable in law.

29. The respondents were asked by this court to produce the original application form of the assurance policy duly filled in by the applicant because there was an over writing on the name of the applicant in the Photostat Ex-R2. But it has not been produced. Furthermore, in Ex-R3 the commencement date of policy is 07 August, 2008, whereas in original policy placed on record and in copy of the same Ex-R5, commencement date is mentioned as 12 August, 2008. For the same policy how two commencement dates are there, it again shows that it is a result of fraud played upon the applicant and the deceased old lady by the respondents. Whenever any person commits a fraud with the other, he may leave many holes from where he can be caught for committing the fraud.

Same thing has happened in the case which has already been discussed above.

30. Keeping in view the above said facts, it is a crystal clear case of fraud and misrepresentation on the part of respondents which have been committed with the old lady of 85 years in the name of high returns on her savings.

31. Now coming to the arguments advanced by the Ld. Counsel for the respondents that case of the petitioner is time barred, these arguments of the counsel for the respondents have been considered and we find no merits in the contentions raised by him.

> ***As per Para 3 titled as "Payment and cessation of premium of assurance policy Ex-R5 provides as under.-***
>
> ***(1) The first premium must be paid along with the submission of your completed application. Subsequent premiums are due in full on the date (s) (called here the "Due Dates") and at the frequency set out in your policy schedule. We will not accept part payment of the premium. Any statutory levy or charges including any indirect tax may be charged to you either now or in future by the company and such amount so charged shall become due and payable in addition to the premium and such charge shall be subject to the same terms and conditions as applicable to payment of premium (ii) If any premium remains unpaid 15 days after the Due Date, we may lapse your Policy with effect from the Due Date of the first unpaid premium (iii) If premiums cease your Policy may acquire a surrender value, to be determined by us at our sole discretion. (iv)***

> ***If, however, you pay premiums for a continuous period of 3 years, your Policy will acquire a guaranteed minimum surrender value, which will be calculated in accordance with Provision 4 of these Provisions.***

As per the above said provisions, the premium if remained unpaid for 15 days after the due date, discretion of the respondents was there to lapse the policy w.e.f. due date of the first unpaid premium and if premium ceases the policy, it may acquire a surrender value which is to be determined by the respondents at their sole discretion But the respondents did not determine the surrender value till date though the applicant had given a specific application Ex- A1 for the cancellation of the policy. <u>Since, surrender value has not been decided till date by the respondents, the case of the petitioner cannot be held to be time barred. Hon'ble HP State Consumer Redressal Commission, Shimla in Bachni Devi Vs. Managing Director HDFC Life Insurance and others bearing appeal no.421 of 2014 decided on 03.03.2015, it has been held that as per 5(ii) (c) if the lapsed policy is not revived, the utilized fund value on the date of lapse, less surrender charge as specified in schedule would be paid to the policy holder at the end of the two years from the date of lapse or at the end of three years from inception whichever is later. Upon payment of this benefit the policy terminate and no further benefits are payable. The surrender charges will be determined at the sole discretion from time to time with approval from the insurance</u>

<u>regulatory and development authority, subject to the maximum as stated in the schedule of charges</u>.

32. But the respondents in this case did not determine the surrender value till date though the applicant had given a specific application Ex-A1 for the cancellation of the policy, so petition filed by petitioner is not barred by limitation period.

33. As per para 5 of the policy Ex-R5, when the policy lapsed, the basic benefits will lapse, but the entire amount of premium cannot be forfeited. The respondents cannot make unnecessarily enrichment for themselves by forfeiting the huge amount of premium of Rs.25 lacs paid by the deceased old lady of 85 years of age. Although she has not paid the premium as already discussed above, but the respondents misrepresented the old lady and extorted the huge amount of Rs 25 lacs from her. Now respondents cannot be allowed to retain or forfeit the entire amount under the garb of lapsed policy. When the petitioner had already applied for the cancellation of the policy vide application Ex-A1 it was the duty of the respondents to deduct the minimum amount of 3% from the paid up premium and refund the remaining amount to the petitioner but they did not do so.

34. Since the policy from the very accretion was the result of misrepresentation and fraud as already discussed in detail, now respondents cannot be allowed even deduct 3% from the

paid up premium and are liable to refund the entire amount alongwith interest. Therefore, we find no merit in the contentions raised by the Ld. Counsel for the respondents.

35. Since, the petitioner is waiting for the refund of her amount since 2009 and has filed the present case when the respondents did not do anything despite her application for cancellation and the respondents harassed the petitioner, so she is entitled to compensation as well as litigation costs.

<u>Relief</u>

36. In view of our above discussion, application filed by the applicant succeeds and is hereby allowed and applicant is entitled for the refund of Rs.25 lacs alongwith interest @ 8% p.a. from the date of payment till actual realization. Applicant is also entitled for compensation to the tune of Rs 1 lac and litigation costs to the tune of Rs.25,000/-. However applicant is liberty to lodge a criminal case of fraud and misrepresentation if they desire and law of limitation permits so. Award is passed accordingly. Copy of award be supplied free of costs to the parties. File be consigned to record room".

2. Respondent No.1-applicant is on a Caveat before this Court. During the course of hearing, an offer was made by the learned counsel for the petitioner that the petitioner-Insurance Company is ready and willing to refund the sum of Rs.25,00,000/- alongwith the interest @ 6% per annum from the date of payment till its actual realization within a period of six weeks from today, further, requesting and that the compensation to the tune

of Rs.1,00,000/- and litigation costs to the tune of Rs. 25,000/- alongwith a direction to lodge a criminal case of fraud and mis-representation may be deleted from the award passed by the Permanent Lok Adalat (Public Utility Services).

3. Learned counsel for respondent-applicant/Caveator fairly accepts the aforesaid offer. Hence, the merits of the case are not being gone into. The present petition is **disposed of**, with the consent of the parties and without expressing any opinion on the merits of the case by **partly allowing** and **modifying** the award dated 10.04.2024 passed by Permanent Lok Adalat (Public Utility Services), SAS Nagar (Mohali) in application No.87 dated 06.03.2018, by recording the undertaking of the learned counsel for the petitioner to deposit the entire amount of Rs.25,00,000/- along with interest @6% from the date of payment till its actual realization within a period of six weeks.

4. In the event of the petitioner depositing the above said amount as undertaken today in the Court, the compensation and litigation expenses as awarded along with the direction to register a criminal case of fraud and misrepresentation against the petitioner shall stand **expunged**.

5. It is clarified that in case the above said amount is not paid within the stipulated time period, the present writ petition be treated as dismissed.

6. **Disposed of being partly allowed in aforesaid terms**.

(VINOD S. BHARDWAJ)
JUDGE

15.10.2024
Mangal Singh

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