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

% ***Date of decision: 11th July, 2024***

\+ CM(M) 2893/2024 &CM APPL. 38404/2024

PADMA POLYCHEM PVT LTD .....Petitioner

Through: Mr. Niteen Kumar with Ms. Rashmi Dixit, Advocates.

versus

NEW INDIA ASSURANCE COMPANY LIMITED .....Respondent

Through: Mr. J P N Shahi, Advocate.

CORAM:
HON'BLE MR. JUSTICE MANOJ JAIN

<u>J U D G M E N T</u> ***(oral)***

1. Present petition has been filed under Article 227 of the Constitution of India whereby the petitioner seeks quashing of order dated 06.12.2023 passed by Hon'ble National Consumer Dispute Redressal Commission (in short 'NCDRC') whereby the Revision Petition filed by the petitioner company has been dismissed.

2. The petitioner-company, admittedly, had a money insurance policy to the extent of Rs. 10,00,000/- for period covering 13.06.2014 to 12.06.2015.

3. As per the petitioner, on 11.02.2015 at about 06:00 p.m., when Mr. Rakesh Gupta, the then Director of said company was returning from office to his residence by his car, he was carrying a sum of Rs. 9,65,000/-, besides some other office documents in his bag. En route, he discovered puncture in the rear tyre of his car. When he started changing the tyre, he learnt that the

bag containing the aforesaid money was missing from the rear seat of his car.

4. According to him, there was one CCTV installed at a petrol pump near the spot and it was clearly captured in said CCTV footage that some individual had stolen away the bag when Mr. Gupta was in the process of changing the tyre.

5. FIR was also registered on the basis of his complaint.

6. Admittedly, such FIR has been sent as untraced.

7. The intimation with respect to the aforesaid money claim was lodged with the insurance company. However, after considering the report of the surveyor, such claim was repudiated by the insurance company vide its communication dated 30.09.2015 which reads as under: -

> *"Re: Claim No.32320048l40390000001 under Money Insurance Policy No.323200481403000000l5, Date ofloss-11.02.2015,*
>
> *This has reference to your letter dated 12.02.2015 informing about the loss of money under the captioned policy. Accordingly our panel Surveyor was deputed by the competent authority to assess and investigate the loss. We have now received the survey report vide which the surveyor has denied any liability under the policy on the following basis-*
> *"In FIR, the insured has stated that one of the young men stood near the car & when no one was near the door, stolen the bag and side away on the bike with other men" since the vehicle was left unattended and unlocked when the accident occurred, it is a violation of our policy conditions.*
> *"Due to insured's inability to provide appropriate clarification for withdrawing cash from the bank on various dates despite having adequate cash balance as per cash book to meet day to day expenses, it creates doubt about the actual cash balance with the insured on the date of loss; under such circumstances, the case may be closed.*
> *Hence, based on the above facts, the competent authority has*

repudiatedyour claim. We hope, you would also appreciate our limitations under the policy.lnconvenience caused to you is regretted.
Thanking You and assuring you our best services in future,"

8. According to the petitioner herein, the vehicle was never left unattended and he was very much present when the tyre was being replaced. It is also submitted that everything was captured in CCTV and such CCTV footage was also seen by Mr. Gupta.

9. When asked, learned counsel for the petitioner, very fairly, admitted that no such CCTV footage was either preserved or retrieved and therefore, admittedly, the petitioner does not possess the same in order to show that the vehicle was "attended" when the theft in question had taken place.

10. As noticed already, repudiation was also to the effect that there was violation of terms of policy as the vehicle was left unattended and unlocked as well. There is also nothing to indicate that the car was locked and that the bag was stolen by opening the door in some illegal manner or by breaking the window glass.

11. Hon'ble NCDRC has gone through the minute details of the facts and even extracted the relevant portions from the orders passed by the concerned District Forum as well as by the State Commission.

12. Being conscious of its limited revisional jurisdiction, eventually, the petition was dismissed by Hon'ble NCDRC holding that there was no illegality or material irregularity or jurisdictional error in the order passed by the State Commission.

13. Fact remains that jurisdiction of this Court has also been invoked by filing a petition under Article 227 of Constitution of India and the scope of such supervisory jurisdiction is also very much restricted and constricted. This Court, while exercising such supervisory power, cannot act as an Appellate Court and cannot go any deeper with respect to the facts and evidence. The duty of the supervisory Court is to interdict if it was found that findings were perverse i.e. (i) Erroneous on account of non-consideration of material evidence, or (ii) Being conclusions which are contrary to the evidence, or (iii) Based on inferences that are impermissible in law. Reference be made to *Puri Investments Versus Young Friends and Co. and Others: 2022 SCC OnLine SC 283.*

14. Moreover, as noted, it is not a case where there was any kind of finding going contrary to the evidence.

15. Finding no merit or substance in the present petition, the same is dismissed.

(MANOJ JAIN)
JUDGE

JULY 11, 2024/*sw*