IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Original Side

Present :- Hon'ble Justice Amrita Sinha

WPO 1702 of 2023

S. L. Packaging Private Limited
Vs.
The Oriental Insurance Company Limited & Anr.

For the writ petitioner	:-	Mr. Mainak Bose, Sr. Adv. Mr. Satadeep Bhattacharyya, Adv. Mr. Rabindra Kr. Mitra, Adv. Mr. Aasish Choudhury, Adv. Mrs. Uma Bagree, Adv.
For respondent no. 1	:-	Mr. Abhimanyu Shaudilya, Adv. Ms. S. Paul, Adv. Ms. Nandita Guha, Adv.
For respondent no. 2	:-	Mr. Pradeep Kumar, Adv. Mrs. Urmila Chakraborty, Adv.
Heard on	:-	07.03.2025 & 18.03.2025
Judgment on	:-	25.03.2025

Amrita Sinha, J.:-

1. The repudiation of the claim of the petitioner for the loss suffered on account of fire despite having a valid insurance policy, is impugned in the instant writ petition. The claim of the petitioner has been disallowed on account of mismatch of the address of the insured.

2. The petitioner is engaged in the business of manufacturing and sale of jute and cotton bags. It has various manufacturing units at diverse locations. One of such units is located in village Muragacha, North 24

Parganas. To protect and secure the unit from contingencies the petitioner obtained a Standard Fire and Special Perils insurance policy for the period 19th January, 2019 to 18th January, 2020. The policy stood renewed from time to time and the same was lastly renewed till 24th January, 2022.

3. The claim of the petitioner on account of the loss and damages suffered on account of the super cyclone Amphan in the year 2020 in respect of the Muragacha unit was allowed by the insurance company.

4. On 19th August, 2021 a fire gutted the factory premises at Muragacha. A claim was lodged before the insurance company. The insurance company engaged surveyors to inspect and assess the loss suffered on account of the fire and a final report was submitted by the insurance surveyor in April, 2022 assessing the loss at Rs. 2,75,59,104/-. The report mentions that though the policy recorded the address of the unit as Muragacha, Nadia but the fire had actually broken out at Muragacha, North 24 Parganas.

5. The insurance company held that as the unit at Muragacha, Nadia was not covered under the insurance policy, the claim of the petitioner cannot be allowed. The petitioner immediately objected to the same and it is then that it came to the knowledge of the petitioner for the first time that at the time of the last renewal of the policy, the address of the petitioner's unit at Muragacha was wrongly mentioned at Nadia instead of North 24 Parganas.

6. It has been submitted that the petitioner does not have any unit at Nadia. There is no place called Muragacha in the district of Nadia. The petitioner was not responsible for the wrong recording of the address of the unit of the petitioner. The respondent no. 2, being the agent of the petitioner no. 1 is responsible for the wrong recording of address and the claim of the petitioner ought not to fail because of the error on the part of the agent of the respondent no. 1.

7. The error, not attributable to the petitioner, rather attributed to the respondent no. 2, ought not to be the ground for refusal of the claim of the petitioner.

8. Prayer has been made to direct the insurance company to pay off the loss amount as assessed.

9. Learned advocate representing the respondent no. 1 contends that as the address of the unit which got damaged because of fire is not mentioned in the insurance policy, accordingly, the prayer of the petitioner cannot be allowed. It has been submitted that the petitioner ought to have rectified the mismatch at the time of signing the policy document and should have corrected the error, as alleged. The insurance company is not bound to pay any sum on account of loss suffered in respect of an unit not covered by the policy. Reference has been made to the general rules and regulations of the insurance policy wherein it has been clearly mentioned that policy in respect of any unspecified location shall not be allowed.

10. It has been submitted that it is not the obligation of the company to explore the matters of miscommunication or mistake between the petitioner and its broker being the respondent no. 2. The claim has been repudiated only because of the mismatch of the risk location and the location of the fire accident. The insurance company is bound to pay only in respect of claims, address of which is mentioned in the policy.

11. The respondent no. 1 further submits that not mentioning proper address in the policy has to be treated as wrongful submission of information and liable to be dealt with in terms and conditions of the insurance contract.

12. The respondent no. 2 being the agent of the respondent no. 1 submits that the deletion of the proper location of the subject unit and incorporation of the new location was an error and the same was identified only after the claim was lodged. The agent who was handling the petitioner's portfolio resigned from service of the respondent no. 2 in the year 2021.

13. It has been submitted that the respondent no. 1 ought not to have acted so mechanically at the time of renewal of policy. The petitioner no. 1 ought to have properly verified the address at the time of renewal of the policy. The respondent no. 1 ought not to have rejected the claim of the petitioner on hyper technical ground. The respondent no. 2 supports the claim of the petitioner.

14. I have heard the submissions made on behalf of both the parties.

15. It is admitted that the petitioner initially obtained the policy in the year 2019 and thereafter renewed the same from time to time. The insurance claim is valid for a period of one year unless renewed. The address of the unit of the petitioner was correctly recorded at the time of initiation of the policy. At the time of last renewal of the policy in the year 2021 one of the addresses of the units of the petitioner was recorded erroneously. As luck would have it fire broke out in the unit whose address was wrongly recorded. But coincidently it is the same unit which got damaged during the cyclone Amphan and the claim was allowed by the insurance company.

16. After fire broke out the surveyor engaged by the insurance company visited the site and assessed the loss suffered. It was then detected that the address of the unit was incorrectly recorded in the policy. The respondents have not come out with a case that no loss has been suffered by the petitioner. On the contrary, the loss suffered by the petitioner had been quantified by the surveyor.

17. It is also not the case of the respondents that there was any request from the petitioner for change of the address of any of the units of the petitioner. In the absence of a request for change of address, the policy was supposed to be renewed in respect of the address which was initially mentioned at the time of start of the policy. The respondent no. 2 being the authorized agent of the respondent no. 1 has admitted

that one of its employees committed an error by incorporating a wrong address. The same was not at all deliberate or intentional. The said employee had resigned from service long back.

18. It appears that the insurance company also did not scrutinize the details of the petitioner at the time of renewal of the policy. Had the error been detected at the time of renewal, both the parties would have been saved the trouble of approaching the Court for adjudication of the legal complication which cropped up of from such an inadvertent clerical error. Had the surveyor of the insurance company not been able to identify the location or site of the accident, then the ground of rejection of the claim on account of mismatch of location could have been accepted.

19. No case has been made out by the respondent no. 1 that there is a separate unit of the petitioner at Nadia or there is a place by the name of Muragacha in Nadia. It is nobody's case that the petitioner has deliberately incorporated the address of Nadia and intends to obtain relief in respect of a unit which suffered loss in North 24 Parganas. The petitioner will no way be benefitted or will gain any advantage of recording a wrong address in the insurance policy. On the contrary, the petitioner will be at complete loss if any error is detected in the policy and there is every possibility that the claim may be rejected as has been done in this case.

20. The respondent no. 1 being an entity under Article 12 of the Constitution of India ought not to act in such a rigid and hyper technical manner. No case of mala fide has been made out by the respondents. It is a clear case where an error has been used as an alibi to repudiate the claim of the insured. The said error ought to have been rectified after proper verification and the petitioner should not have been compelled to approach the Court for relief. Minor clerical errors are liable to be corrected the moment it is noticed so that no injustice is caused to a deserving party.

21. To err is human. The mistake is a curable one and is liable to be rectified immediately without any further delay. As the loss suffered by the petitioner has been duly assessed and quantified, accordingly, the authority ought to take steps to release the said amount at the earliest but positively within a period of eight weeks from the date of communication of this judgment. The communication made by the company rejecting the claim of the petitioner stands set aside.

22. The writ petition stands allowed.

23. No costs.

24. Urgent certified photocopy of this judgment, if applied for, be supplied to the parties or their advocates on record expeditiously on compliance of usual legal formalities.

(Amrita Sinha, J.)