

(2010) 08 CAL CK 0024

Calcutta High Court

Case No: Writ Petition No. 19235 (W) of 2007

Radheshyam Mondal

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

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**Date of Decision:** Aug. 11, 2010**Acts Referred:**

- Insurance Act, 1938 - Section 45

**Hon'ble Judges:** Syamal Kanti Chakrabarti, J**Bench:** Single Bench**Advocate:** Tapabrato Chakraborty, Atarup Banerjee and Kapil Chandra Sahoo, for the Appellant; None, for the Respondent**Final Decision:** Allowed

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**Judgement**

Syamal Kanti Chakrabarti, J.

The writ petitioner has claimed that he purchased a plot of land by Sale Deed dated 14th February, 2000 appertaining to R.S. Plot No. 857 measuring .024/5 acres under R.S. Khatian No. 38 of Mouza Barhmohanpur, Belda P.S., District- Paschim Medinipur and constructed a shop room in the name and style of "Kunja Behari Bastralaya" for dealing with the business of cloths since he was unemployed. He applied to the State Bank of India, Belda Branch for a loan of about Rs. 7,00,000/- towards cash credit facility and Rs. 70,000/- towards overdraft to enlarge the business, which was granted by respondent No. 5. W with that money he purchased cloth and cloth materials amounting to more or less Rs. 20,00,000/-. He also insured his shop with the respondent authorities Nos. 2 to 5, New India Assurance Company Limited to the extent of Rs. 17,32,000/- being policy No. 512602/48/06/34/00000478, 83000006 and 83000008 under shop keepers policy. Unfortunately, on 11.12.2006 at about 20:30 p.m., his entire shop was destroyed by fire. At that time, there were clothing materials worth Rs. 18,01,640/-, furniture worth Rs. 1,30,000/- and cash of Rs. 53,000/-, in his shop which were totally destroyed. With the help of the West Bengal Fire Service, the fire of the shop was extinguished and they issued a certificate to

this effect dated 2.1.2007. He also lodged FIR with the Officer-in-Charge, Joragaria Police Station, Khakurda, Paschim Medinipur under G.D. Entry No. 329 dated 12.12.2006. The Branch Manager, respondent No. 5, State Bank of India, Belda Branch, visited his shop and communicated on 12.12.2006 the incident to the insurer, respondent No. 4. The President and the Secretary of Khakurda Bazar Bastra Babsahi Samity and the Secretary of Khakurda Bazar Development Committee also issued certificates relating to breaking out of fire as well as damage and destruction of his shop thereby.

2. Thereafter, he applied before the respondent authorities claiming fire insurance amount of Rs. 20,00,000/- in the prescribed form against the sum insured. On receipt of such application, respondent No. 4 appointed one A. K. Talukdar to survey and assess the loss sustained against his insurance policy. On 19.12.2006, the said Surveyor issued a notice to the petitioner to furnish certain documents in support of his claim followed by another notice dated 12.1.2007 for confirmation of phase-wise enhancement of the insured sum to the tune of Rs. 17,32,000/-. The Senior Divisional Manager of the Assurance Company also sent a letter to him to clarify seven points in support of his claim of compensation for damages against the fire insurance only to deny any payment to be made by them against such insurance on the basis of report of the Surveyor. Ultimately, the petitioner issued a lawyer's notice on 12.7.2007 demanding justice to all concern but to no effect. Therefore, he has come up before this Court with a prayer for directing the respondents, their agents, servants and associates not to give any effect or further effect of the letter dated 15th May, 2007 as well as letter dated 24th July, 2007 issued by the Senior Divisional Manager of the New India Assurance Company Limited, Haldia Divisional, Purba Medinipur and to direct them to take steps for making payment of the claim amount as specifically admitted in the insurance certificate amounting to Rs. 17,32,000/- in terms of his aforesaid insurance policy.

3. Despite service of notice none appeared on behalf of the respondents.

4. Having heard learned lawyer for the petitioner and on perusal of the writ petition with all connected documents I find that in their letter dated 15th May, 2007, the respondents raised the following seven points:

(1) This is unquestionable fact that every subject matter of Insurance must be legitimate or has legal acceptance/sanction under law of the land. In your case, your shop is situated on a land of Govt. of West Bengal (PWD). As per document Owner of this Plot No. 857 and Khatian No. 37 is PWD as per records maintained by R.I. Office vide Deed No. 6785 dated 1987 as per Land Acquisition Act - I of 1894 under WBG declaration No. 290 L.R (P.W) dated 13.01.47 for the purpose of construction of "Contai - Belda" Road. Therefore your shop is carrying on business on this illegally acquired plot of land.

(2) Your Trade Licence for this Shop for 2006-2007 was not renewed and at the time of accidental loss the shop had no Trade Licence as per Official record. You are aware that this is an illegal aspect and against the law of land which cannot be insured.

(3) Though this Licence was renewed subsequently alongwith the Licence for 2007-2008 Tax was paid for Rs. 100/- each totally Rs. 200/-. Now this is observed that Tax amount was Rs. 250/- for 2005-2006 for the capital worth more than Rs. 1,00,000/- as per written Certificate from Anchal Pradhan. Therefore, as per your own declaration to Panchayat Office, whilst renewing the Licence post dated, your shop did not contain value of Stock more than Rs. 1,00,000/-, whereas your claim was for Rs. 20,00,000/-. This is absolute contradiction.

(4) You could not produce Electric Bill for the consumption at your shop. You have submitted one Electric Bill in the name of Sri Gayaprasad Mondal. This is neither in the name of M/s. Kunja Behari Bastralaya nor in your name. The Bill does not carry any indication that we can accept this Bill is for this Shop only. You are aware that cause of fire is due to spark in Electric wire which actually spread to your shop and if this is due to unauthorized hooking to get Electricity at your shop, Insurance Company cannot take any responsibility.

(5) You have lodged claim for Stocks of various products such as Clothes and Readymade Garments. However, your insurance cover is for Stock of Cloth only. This is not an aberration or slip of the pen since all your documents such as Proposal Form, Application for loans from State Bank of India, Belda Branch, Interview Form for Loans, Pre-sanction Inspection Report, Opinion Report, Hand Written Application by you on 21.12.2006 are remarked as "Cloth Shop". Now we cannot go beyond the scope of cover especially of course when there is no doubt regarding intention of Insured and your claim for the amount of other items damaged due to Fire cannot be admitted under any circumstances.

(6) This is found that different types of Stock Statement submitted by you to different Authorities such as Account/Balance Sheet to I.T. Authority, Balance Sheet and P/L A/c. to SBI and document submitted to undersigned. The anomaly speaks itself the merit of claim.

(7) You have not submitted the Stock Statements to the Bank as per Bank's record the last date of inspection was on 12.01.2006 by Belda Branch Officials at your above business premises where date of loss was 11.12.2006.

5. Though the petitioner clarified all those points in his letter dated 18.06.2007 (Annexure P - 15), the respondents were not satisfied and in their letter dated 24th July, 2007, they intimated that the clarification, so made by him, do not at all satisfy them and as such, his claim cannot be entertained.

6. From the submissions made by learned lawyer for the petitioner and the contention raised in the instant writ petition, I hold that the following points need be considered:

(1) Whether the Insurer can raise any point on inaccuracy or false statement made in the proposal form relating to the grant of the insurance policy at the time of subsequent claim of any damage/destruction for insured property by fire?

(2) Whether on account of failure on the part of the Insurer to make proper enquiry before issuing any insurance policy, the holder can be deprived of his claim of sum assured?

7. It appears from the annexures made with the writ application, that the New India Assurance Company Limited granted relevant policy No. 512602/48/06/34/00000478 in respect of Kunja Bihari Bastralaya, proprietor - Radheshyam Mondal, Khakurda, Post-Belda, Paschim Medinipur on 23.9.2006, which was valid from 21.10.2006 to 22.09.2007 on receipt of extra premium of Rs. 3,002/- for enhancement of the sum assured (Annexure- "P-1").

8. From the seven points raised by the Insurer, as mentioned in para 4 (Supra), it will appear that the Insurance Company is now raising the question Nos. 1 to 4 regarding possession of the property by the claimant for claiming the assured sum after granting of the policy. All the four points raised, in my opinion, ought to have been considered by them before granting the policy in his favour and after verification of documents of possession of Plot No. 857 and source of supply of electricity to such shop. Similarly before enhancing the sum assured from time to time proper enquiry on question Nos. 2, 3, 5 and 7 ought to have been made before receipt of additional charges, as mentioned above.

9. What appears from such queries is that the insurer was reluctant to pay any sum against the insurance certificate issued by them on receipt of premium. It is their claim that their insurance was against stock of clothes and not readymade garments. It so, they could at least adjudicate the claim of the petitioner in their own way and offer any amount much earlier showing their bona fide intention which is absent here. Their second contention is that the cause of fire in the instant case was due to spark in electric wire which actually spread to the shop. It is their assertion that this is due to unauthorised hooking to get electricity at his shop. But the petitioner has furnished a certificate dated 20.12.2006 issued by local Panchayat (Annexure P - 6) to the effect that such fire broke out by short circuit from electric line. But they have neither called for nor relied upon any report of the Electric Supply Agency to come to such conclusion which is, therefore, based on conjecture and such argument is not tenable in law.

10. The peculiar aspect of this case is that while issuing policy No. 512602/48/06/34/000004/8 on 23.09.2006 it was endorsed that at the request of the insured the assured sum was enhanced from Rs. 10,32,000/- to Rs. 17,32,000/- by

receipt of extra premium of Rs. 3,325/- (Annexure P - 1). Such endorsement was effected from 13.11.2006 and due to expire on 22.09.2007. The incident of fire did take place on 11.12.2006 while such policy was valid. If such enhancement is made without verification of Stock Register or amount of Trade Licence paid for 2006-07 or submission of Stock Statements to the Bank after last date of inspection on 12.01.2006 by the Bank, as raised in point No. 7 above, this is due to negligent act of the employees of the Insurer and the fire insurance certificate was issued at the own risk and responsibility of the Insurer who cannot afterwards call in question propriety of their own action which is barred by the doctrine of estoppel by conduct.

11. In this connection, the ratio in the case of Branch Manager, Life Insurance Corporation of India and Ors. v. Nilkanta Mondal 2007(1) CHN 819, may be relied upon. In deciding such matter the Hon"ble Division Bench relied upon the principles laid down in Life Insurance Corporation of India v. Asha Goel reported in 2001 (2) SCC 160. In dealing with the scope of Section 45 of the Insurance Act, Hon"ble Division Bench relied upon the relevant para 12 of the judgment of the Hon"ble Apex Court which is quoted below:

Coming to the question of scope of repudiation of claim of the insured or nominee by the Corporation, the provision of Section 45 of the Insurance Act is of relevance in the matter. The section provides, inter alia, that no policy of the life insurance effected after the coming into force of this Act shall, after the expiry of two years from the date on which it was effected, be called in question by an insurer on the ground that a statement made in the proposal for insurance or in any report of a medical officer, or referee, or friend of the insured, or in any other document leading to the issue of the policy, was inaccurate or false, unless the insurer shows that such statement was on material matter or suppressed fact which it was material to disclose and that it was fraudulently made by the policy-holder and that the policy-holder knew at the time of making it that the statement was false or that it suppressed fact which it was material to disclose. The proviso which deals with the proof of age of the insured is not relevant for the purpose of the present proceeding. On a fair reading of the section it is clear that it is restrictive in nature. It lays down three conditions for applicability of the second part of the section namely: (a) the statement must be on material matter or must suppress fact which it was material to disclose; (b) the suppression must be fraudulently made by the policy-holder; and (c) the policy-holder must have known at the time of making the statement that it was false or that it suppressed facts which it was material to disclose. Mere inaccuracy or falsity in respect of some recital or items in the proposal is not sufficient. The burden of proof is on the insurer to establish these circumstances and unless the insurer is able to do so there is no question of the policy being avoided on the ground of misstatement of facts. The contracts of insurance including the contract of life insurance are contracts uberrima fides and every fact of material (sic material fact) must be disclosed, otherwise, there is good ground for recession of the contract.

12. From the seven questions raised by the Insurer, I find that there was no suppression of material fact and false statement in the proposal for insurance made by the writ petitioner which was detected subsequently. All the points raised by the insurer were within the domain of their enquiry/verification to be made before issuing the Insurance Certificate and periodical enhancement of sum assured on receipt of extra premium from Rs. 4,00,000/- to Rs. 17,32,000/- as clarified by the writ petitioner in his letter dated 12.01.2007 (Annexure P - 12).

13. So relying upon the above principles, I hold that after total destruction of the cloth shop of the petitioner by fire, the petitioner is entitled to claim the sum assured under the certificate in question and I also hold that the refusal to consider such prayer on the part of the Insurance Company on flimsy ground is arbitrary and illegal. Therefore, I find sufficient merit in this application and hold that (a) the genuineness of the claim of the policy holder at the time of settlement of the claim cannot be called in question by the Insurer, on account of incorrect or false statement made in the proposal form which points ought to have been considered and decided by them before issuing any insurance certificate in favour of the policy holder and (b) that failure on the part of the Insurer to make proper enquiry before issuing any such insurance policy cannot forfeit the right of the policy holder to claim the sum assured on account of total destruction and damage of his insured property and in absence of contrary materials on record, the Insurer is bound to pay the entire sum assured under shop keeper's policy against such claim. Since there has been inordinate delay and intentional refusal to grant such relief claimed by the petitioner, the Insurer is also held to be liable to pay interest for the sum assured till the date of repayment at the current usual bank's rate of interest.

14. Therefore, the writ petition is allowed and the respondent Nos. 2 to 4 are directed to pay within one month from the date of communication of this order the total sum assured i.e., Rs. 17,32,000/- to the writ petitioner with interest @ 8 % per annum w.e.f. 1st of September, 2007 till the date of payment.

15. The writ application is, thus, disposed of.

16. Urgent photostat certified copy of this order, if applied for, be given to all the parties upon compliance of all necessary formalities.