(1996) 07 DEL CK 0023

In the Delhi High Court

Case No : S. No. 171 of 1984

M/s. Hanuman Industries APPELLANT

Vs

The New India Assurance Co. Ltd. and another RESPONDENT

Date of Decision : 19-07-1996

Acts Referred:

Citation : (1997) ACJ 1228 : AIR 1997 Delhi 160

Hon'ble Judges : Dr. M.K. Sharma, J

Bench : Single Bench

Advocate : Dalip Singh, for the Appellant;

Judgement

1. The plaintiff is a registered partnership firm and is carrying on the business of motor parts, Sanitary fittings, tube well sockets, pipe sockets, pipes and pipe fittings. Initially the plaintiff was carrying on the business of manufacturing motor parts and in May, 1982, the plaintiff commenced all sorts of business of manufacture and production of C.P. Fancy Bathroom fittings etc., for which brass scrap and other brass raw materials were stocked by the plaintiff in their factory at A-53, Noida, Ghaziabad.

2. The plaintiff-firm had insured their stocks of finished and semi-finished goods and raw materials pertaining to their business which were lying in their factory at the aforesaid premises with the New India Assurance Company Ltd., being defendant No. 1 through their Bankers namely, defendant No. 2 bank under Insurance Policy No. 55160-05075 dated 26th March, 1982, for Rs. 80,000/-.

3. After the plaintiff started addition of their business of manufacture of C.P. Bathroom Fittings etc., the defendant No. 2 bank vide their letter dated 5-8-1982, informed the defendant No. 1 that the plaintiff had also added the production of C.P. Fancy Bathroom fittings in their factory situated in their aforesaid factory and forwarded a copy of the plaintiffs letter dated 2-7-1982 to them requesting them to cover the above noted products in the policies noted therein.

4. The defendant No. 2 bank within their authority also wrote to defendant No. 1 to enhance the sum insured from Rs. 80,000/- to Rs. 1,50,000/- and the latter enhanced the assured amount from Rs. 80,000/- to Rupees 1,50,000/- vide Endorsement No. 1516031813 attached to the Insurance Policy No. 1516006312. The defendant No. 2 bank also paid the additional premium of Rs. 134/- for the enhanced sum assured as aforesaid by Cheque No. 955210 dated 2-11-1982 along with covering letter dated 2-11-1982 to the Agent/Representative of defendant No. 1 namely, Shri O. P. Sharma, Development Officer of defendant No. 4 after obtaining his signature in token of acknowledging the receipt thereof on the office copy "of the aforesaid covering letter.

5. In the aforesaid manner, it is averred in the plaint, the stock of brass, scrap, brass fittings and raw materials including brass ''Borada'' lying in the plaintiffs aforesaid factory were duly insured under the said Insurance Policy and the assured sum was Rs. 1,50,000/- on 2-11-1982 against burglary, fire, etc., and that there was a valid and subsisting contract of insurance between the plaintiff and defendant No. 21 under which defendant No. 1 was liable to pay to the plaintiff the assured sum of Rs. 1,50,000/- in case of loss by burglary or fire etc.

6. On the night of 8th/9th November, 1982, there was a burglary in the plaintiff''s aforesaid factory and number of brass raw material, Zasta (Zinc) etc., were stolen by miscreants. The plaintiff immediately lodged F.I.R. at 2.50 a.m. on 9-11-1982 with the local Police Station, Noida u/s 457/380, Indian Penal Code regarding the said burglary on 9-11-1982 and also informed the defendant No. 2 Bank personally at 10.15 a.m. on 9-11-1982. The defendant No. 2 bank informed of the said burglary to defendant No. 1 on telephone and vide letter dated 9-11-1982, with a copy to the plaintiff requesting the defendant No. 1 to arrange for assessment of loss/damage that occurred by virtue of the said burglary fully covered under the aforesaid Assurance Policies.

7. The defendant No. 1 deputed their surveyors who visited the plaintiffs factory on 12th November, 1982 and also checked the stock register, cash book, ledger and invoices of raw materials maintained by the plaintiff and also verified the stock statements and the bills which were filed by the plaintiff with the bank, the defendant No. 1. However, by letter dated 17-8-1983, the defendant No. 1 rejected the plaintiff''s claim without assigning any reason whereupon the plaintiff served a legal notice on defendant No. 1 vide notice dated 23/26th September, 1983 claiming a sum of Rs. 1,46,472.85 p. with respect to the burglary claim aforesaid along with interest on account of loss caused to the plaintiff by the said burglary. The defendant No. 1 refused to pay the amount of loss demanded and tried to repudiate the plaintiffs claim and hence the present suit.

8. The defendant No. 2 filed its written statement contending, inter alia, that the defendant No. 2 paid the additional amount of Rs. 134/- for the enhanced sum assured by way of Cheque No. 955210 dated 2-11-1982 along with a covering letter dated 2-11-1982 to the authored agent of defendant No. 1, Shri O. P.

Sharma, Development Officer of the Assurance Company and that the said Shri O. P. Sharma accepted the said amount on behalf of defendant No. 1 being an authorized representative on behalf of defendant No. 1. It is further stated that the defendant No. 1 wrongly and illegally rejected the claim of the plaintiff although the plaintiff-firm was duly insured through the defendant 2 by defendant No. 1.

9. The Assurance Company, namely, the defendant No. 1 also filed their written statement contending, inter alia, that the premium amount of Rs. 134/- for the enhancement of the sum insured was received by Cheque No. 955210 dated 2-11-1982. It was further stated that, the said premium cheque was received on 10-11-1982 and the premium amount calculated from 10-11-1982. The defendant No. 1 stated that the claim was rightly rejected based on the indiscreet investigation, facts so revealed and the legal advice so received.

10. On the pleadings of the parties, the following issues were framed on behalf of the plaintiff No. 1.

1. Whether the suit is bad for misguide of parties? OPD-2.

2. Whether this Court has no jurisdiction to entertain the present suit? OPD-2.

3. Whether there is any cause of action against defendant No. 2, if not to what effect? OPD-2.

4. Whether the limit of insured amount was raised from Rs. 80,000/- to Rupees 1,50,000/- and the additional premium of Rs. 134/- was not paid on 2-11-1982 by cheque dated 2-11-82 through defendant No. 2 bank? OPD-1.

5. Whether the loss by burglary which took place on 9-11-82 is not covered by the said insurance policy? OPD-1.

6. To what amount, if any, the plaintiff is entitled and from whom? OPD-1.

7. Whether the plaintiff is entitled to any interest, and if so, at what rate and from what period?

11. One of the partners of the plaintiff-firm was examined as P.W. 1 and on behalf of the bank namely, the defendant No. 2, the Branch Manager, State Bank of Patiala, Noida, U.P. was examined.

Issue No. 1

The plaintiff in the present suit has arrayed as the defendant No. I, the Assurance Company with whom they had insured their stocks of finished and semi-finished goods and raw materials pertaining to their business and which were lying in their factory at Noida, Ghaziabad through their Bankers namely, the defendant No. 2. As the aforesaid defendant Nos. 1 and 2 have both been arrayed as parties in the present suit, there is no misguide of parties and, Therefore this issue is decided in favor of the plaintiff and against the defendant No. 1.

Issue No. 2.

The defendant No. 1 has not been able to produce any material on record to show that this Court has no jurisdiction to entertain the present suit. Accordingly, this issue is also decided in favor of the plaintiff and against defendant No. 1.

Issue Nos. 3, 4 and 5.

These issues being common in nature are being taken up together and are being answered collectively. The specific case of the plaintiff is that with the addition of the business of manufacture of C.P. Bathroom Fittings, etc., by the plaintiff, the defendant No. 1 took steps to get enhanced the sum insured from Rs. 80,000/- to Rs. 1,50,000/-. The defendant No. 2 Bank within their authority also wrote to defendant No. 1 Assurance Company to enhance the sum insured from Rs. 80,000/- to Rs. 1,50,000/-, and in the light the defendant No. 2 Bank paid an additional premium of Rs. 134/- for the enhanced sum assured by Cheque No. 955210 dated 2-11-1982. A photocopy of the aforesaid Cheque No. 955210 dated 2-11-1982 has been exhibited as Ex. P.5 and the same is an admitted document. The covering letter has also been exhibited as Ex. P.4 and the same is also an admitted document, having not been objected to by defendant No. 1.

Now, the issue that arises for consideration is as to whether the aforesaid Cheque No. 955210 dated 2-11-1982 along with the covering letter dated 2-11-1982 was received by the defendant No. 1 and on which date, it is stated in the plaint that the aforesaid Cheque along with the covering letter (Exs. P.4 and P.5 respectively) were handed to Shri O. P. Sharma, Development Officer of the defendant No. 1 after obtaining his signature in token of acknowledging the receipt thereof on the office copy of the said covering letter. The said office copy of the covering letter is Ex. P.4 which is an admitted document. In the written statement filed on behalf of the defendant No. 1, it is admitted that the premium amount of Rs. 134/- for enhancement of the sum assured was received by Cheque No. 955210 dated 2-11-1982.

P.W.1 had stated in her evidence that the insurance cover was raised to Rs. 1,50,000/-with effect from 2-11-1982 and a cheque in the sum of Rs. 134/- was given for the purpose of increasing the insurance cover. She has further stated that the covering letter by which the cheque was sent was Ex. P.4 and a photocopy of the cheque is Ex. P.5 which document is admitted by defendant No. 1. She also stated that Ex. P.4 was signed by the Divisional Manager of the Insurance Company, and in token of receipt of the same, it was signed at place mark "A" by the said Divisional Manager.

She has also proved Ex. P.21 which is the endorsement of the defendant No. 1 increasing cover from Rs. 80,000/- to Rs. 1,50,000/-. She further stated that the partnership had sought increase in the cover on 2-11-1982 and the premium was also paid for increasing the cover on 2-11-1982. She was cross-examined by the counsel, for defendant No. 1 but the aforesaid evidence adduced by the said witness could not be shaken in the cross-examination.

The Branch Manager of the State Bank of Patiala, Noida, was also examined in the suit. The said witness proved the signatures of the then Branch Manager who executed the aforesaid documents Exs. P.4 and P.5. In Examination-in-Chief, he has particularly stated that the ''Bank got'' a cheque from the plaintiff, in the sum of Rs. 134/- for enhancing the insurance cover of the hypothecated goods and the said cheque was passed on to the Insurance Company on the same date and as per their record, the limit was enhanced on 2-11-1982 and on the same date, the Cheque for Rs. 134/- towards enhanced insurance premium was given to the representative of defendant No. 1. The aforesaid witness was cross-examined by the counsel for the plaintiff in which he stated that initially the limit for insurance cover was Rs. 80,000/- and on 2-11-1982, the aforesaid limit was enhanced to Rs. 1,50,000/- when the cheque of Rs. 134/- was given to the representative of the defendant No. 1. He further stated that the Cheque for Rs. 134/-was given to the representative of the defendant No. 1 to enhance the cover under the insurance policy from Rs. 80,000/- to Rs. 1,50,000/- on 2-11-1982. The aforesaid witness was not cross-examined by the defendant No. 1 whose counsel was absent on that date when the said witness was examined.

The aforesaid evidence clearly proves and establishes that for increasing the limit for insurance cover from Rs. 80,000/- to Rs. 1,50,000/-, a Cheque amounting to Rs. 134/- towards enhanced insurance premium was issued by the Bank on 2-11-1982 and that the same was received by the representative of the defendant No. 1 on 2-11-1982 itself. In view of the aforesaid factual position, it is crystal clear that the defendant No. 1 assumed the risk in respect of the aforesaid goods belonging to the plaintiff and lying in their aforesaid factory which were stolen on the night of 8th/9th, November, 1982. In this connection, reference may be made to the provisions of Section 64-VB which reads as follows:--

No risk to be assumed unless premium is received in advance-- (1) No insurer shall assume any risk in India in respect of any insurance business on which premium is not ordinarily payable outside India unless and until the premium payable is received by him or is guaranteed to be paid by such person in such manner and within such time as may be prescribed or unless and until deposit of such amount as may be prescribed, is made in advance in the prescribed manner.

(2) For the purposes of this section, in the case of risks for which premium can be ascertained in advance, the risk may be assumed not earlier than the date on which the premium has been paid in cash or by cheque to the insurer.

On consideration of the aforesaid provisions, it is apparent that the enhanced premium for covering the risk to the extent of Rs. 1,50,000/- was received by the Insurance Company, defendant No. 1 on 2-11-1982, and in terms of sub-section (2) of Section 64VB, the risk would be assumed by the insurance company on the date on which the premium was paid by cheque to the insurer.

The occurrence of burglary on the night of 8th/9th November, 1982 at the factory of the plaintiff firm is proved on the evidence of P.W. 1. No rebutting evidence could be produced by the defendant No. 2 to disprove the same.

In view of the aforesaid evidence on record and also in view of the aforesaid provisions of the Insurance Act, I have no hesitation in my mind to hold that the limit of the assured amount in respect of the goods belonging to the plaintiff and lying in their factory at Noida and stolen on the night of 8th/9th November, 1982 was raised from Rs. 80,000/- to Rupees 1,50,000/- and that the additional premium of Rs. 134/- was paid on 2-11-1982 by Cheque dated 2-11-1982 through the defendant No. 2 Bank and was received by defendant No. 1. Therefore, the aforesaid loss caused to the plaintiff because of the burglary which indeed took place on 9-11-1982 was covered by the said insurance policy, the limit of which was raised from Rs. 80,000/- to Rs. 1,50,000/- on 2-11-1982.

Issue No. 6.

In view of the aforesaid findings arrived at by me in respect of issues Nos. 3, 4 and 5, the plaintiff is entitled to a decree of Rupees 1,43,473/- against defendant No. 1 which I hereby order.

Issue No. 7.

In addition to the aforesaid relief, the plaintiff shall also be entitled to pendente lite and future interest on the aforesaid amount of Rs. 1,43,473/- at the rate of 18% per annum to be paid by the defendant No. 1 to defendant No. 2 from the date of institution of the suit till the date of realization. The plaintiff shall be entitled to cost of the suit.

12. In the result, this suit filed by the plaintiff stands decreed for an amount of Rs. 1,43,473/- as against the defendant No. 1 with pendente lite and future interest till realization at the rate of 18% per annum with cost. Let a decree or prepared accordingly.

13. Order accordingly.

