

**(2013) 05 DEL CK 0172**

**In the Delhi High Court**

**Case No : CS (OS) No. 176 of 1984**

M/s. Kusum Sahni Pvt. Ltd.

APPELLANT

Vs

National Insurance Co. Ltd.

RESPONDENT

**Date of Decision : 28-05-2013**

**Acts Referred:**

Arbitration and Conciliation Act, 1996 — Section 20  
Insurance Act, 1938 — Section 64UM(3)

**Citation : (2013) 8 AD 70**

**Hon'ble Judges : M.L. Mehta, J**

**Bench : Single Bench**

**Advocate :** Sanjeev Anand with Ms. Kajal Chandra, Ms. Renu Kuhar, Ms. Prachi Gupta and Mr. Abhaas Kumar, for the Appellant; Yogesh Malhotra with Mr. Vishal Kohli, for the Respondent

## **Judgement**

M.L. Mehta, J.—This is a suit for recovery. The plaintiff seeks recovery of Rs. 26,50,000/- from the defendant insurance company together with the interest @ 21 % p.a. from the date of filing of the suit till the date of realization. The case of the plaintiff in brief is that it is engaged in business of manufacturing and exporting garments, made ups and printing textiles etc. It is carrying its business in ten sheds located in Okhla Industrial Complex. Since from its incorporation, it has tremendously grown to different countries, resulting in increase of its turnover. It had insured its stocks of raw materials, fabrics, machinery etc. w.e.f. 22.01.1981 for a sum of Rs. 30 lakhs and thereafter, the same was raised to Rs. 40 lakhs vide endorsement dated 29.05.1981. It is also having its business/office activities at A-2, Maharani Bagh, New Delhi. According to the plaintiff, the insurance policies covering the stocks in trade, machinery, assets etc. are as under:

(1) On stock in trade, clothes, finished goods, dies, semi finished goods chemicals and like use for printing cloth lying in Shed No. 220, 223, 192, 193, 217, 218, 203, 204, 153, 139 and A-2, Maharani Bagh, New Delhi..... Rs. 30 lakhs.

(2) On stock of plant and machinery workshop equipment, office equipment air-conditioners, coolers and refrigeration equipment & electrical fittings, furniture, fixtures and fittings hand blocks, tables, in Shed No. 220, 223, 192, 193, 217, 218, 203, 204, 153, 139 and A-2, Maharani Bagh, New Delhi.....Rs. 10 lakhs.

TOTAL: Rs. 40 lakhs

It is also the plaintiff's case that the stocks indicated at serial No. 1 and fixed and other assets at serial No. 2 were interchangeable on the locations mentioned from time to time.

2. A fire broke out on the night of 15th-16th June, 1981 in the plaintiff's sheds No. 203 and 204, resulting in loss and damage of stock and assets. The plaintiff claims having suffered losses of Rs. 18 lakhs. In addition, the plaintiff has claimed damages of Rs. 8.5 lakhs on account of loss of damages by it for the non-payment of insurance claimed by the defendants. It is, in this way, that the plaintiff claims Rs. 26.5 lakhs with interest w.e.f. 16.06.1981.

3. The plaintiff also avers having earlier filed a petition being 853A on 14.06.1981 u/s 20 of the Arbitration and Conciliation Act, stating that since process involving settlement of claim was taking inordinate time and the liability of claim was admitted by the defendant as per the surveyors' report, it filed this petition.

4. The defendant has contested the suit on various grounds. The plaint is stated to be not maintainable being not signed, verified and filed by a duly authorized person. It is also stated to be not maintainable because of mis-joinder of party in that the division or the branch office of the insurance company has been made defendant, which is not a legal entity. It is alleged that the plaintiff failed to comply with the terms and conditions of policy as it did not produce either the books of accounts or statement of its claims within 15 days' period as per Clause 11 of the policy. The suit is also stated to be barred on account of the plaintiff having already filed a petition u/s 20 of the Arbitration and Conciliation Act, which was pending at the time of the filing of the suit. Further, the suit is also stated to be barred by time as per Clause 19 of the policy as it was filed after the expiry of 12 months from the date of repudiation of the claim. It is also its case that there is nothing on record to substantiate that the plaintiff is an incorporated company under the Companies Act, and was engaged in business of manufacturing of garments, made ups and printing etc. On merits, the defendant while denying the projected growth and turnover of the business of the plaintiff, states that the plaintiff at no point of time, informed that it was carrying storage and other activities in the sheds 203 and 204. It states that the insurance policy did not cover the dry-cleaning plant which was installed by the plaintiff at the sheds in question. Reiterating the contents of the insurance policy, the defendant states that insured sum of Rs. 30 lakhs included the stocks for machinery, hand locks, tables, dyes chemicals, clothes, semi-finished goods and like use for

printing clothes while lying in the sheds, whereas, the insured sum of Rs. 10 lakhs was for stocks-in-trade, clothes, finished goods lying or stored or contained in the insured's go-down at A-2, Maharani Bagh, Delhi. It also states that the stocks and the assets were not interchangeable as alleged by the plaintiff. Further, it states that the plaintiff did not co-operate with the surveyors and investigators, and did not furnish the required information and documents despite repeated requests and being called upon by them; but, every time, sought extension on different excuses. It is stated that since the plaintiff did not co-operate, a joint team of two surveyors, carried the survey on the basis of guess work and vide their report dated 20.09.1982, assessed a loss Rs. 4,27,746/- for stocks and Rs. 1,68,918.45/- for the movable and immovable property assets, and which were subject to the terms and conditions of the policy. Further, the plaintiff raised claim only on 03.10.1981, which was long after the expiry of the prescribed period of 15 days as stipulated in Clause 11 of the policy. It is alleged that the plaintiff has not shown any logic or basis for assessing loss at Rs. 18 lakhs and that the claim of Rs. 8.5 lakhs on account of loss in business is entirely remote and beyond the terms of the policy. It is alleged that in the mean, it was investigated that the fire was not accidental, but, was pre-planned and manipulated and that no valuable goods were destroyed, but, it was only gunny bags and rejected stocks of no value which were stocked in those sheds.

5. The plaintiff in replication reiterates and re-affirms the contents of the plaint and controverts the written statement filed by the defendant. On the pleadings of the parties, the following issues were framed for trial on 22.03.1999:

1. Whether the suit has not been instituted and plaint has not been signed and verified by a duly authorized person? OPD
2. Whether there is any mis-joinder of necessary parties and, if so, its effect? OPD.
3. Whether the suit is barred by limitation in view of clause-19(A) of the terms and conditions of policy of insurance? OPD.
4. Whether the suit is maintainable in view of the clause-18 of the terms and conditions of the policy of insurance? OPD.
5. Whether in view of the orders passed by this court in S.No. 853-A/1982 filed by the plaintiff, the present suit is not maintainable? OPD.
6. Whether the plaintiff has not committed breach of terms and conditions of policy of insurance by not producing the books of accounts and records, in accordance with the terms of the policy of insurance? If so, its effect. OPD.
7. Whether the plaintiff is entitled to recover an amount of Rs. 26,50,000/- from the defendants? OPP.
8. Whether the plaintiff is also entitled to any interest on the aforesaid amount

and, if so, for which period and at what rate?

#### 9. Relief.

The issue-wise findings are as under:

##### Issue No. 1:

6. The plaint has been signed, verified and filed by Mr. Sanjiwan Sahni. He examined himself as PW 1, and stated himself to be the Director and Smt. Kusum Sahni as the Managing Director of the company and both duly authorized to sign, verify and institute the plaint vide Board's resolution dated 17.11.1983. Copy of the said resolution is proved on record as Ex. PW 1/1. Vide this resolution, both Kusum Sahni, the Managing Director and Mr. Sanjeev Sahni, Director were severally authorized to institute the suit against the defendant and also to sign and verify the pleadings etc. Though the authorization to decide to institute a suit is not happily worded, but, this being a technical one, it would certainly mean to intend to have authorized Mr. Sanjiwan Sahni as well to institute the suit on behalf of the plaintiff. There being nothing to the contrary on record in this regard, the issue is decided in favour of the plaintiff.

##### Issue No. 2:

7. This issue arose on account of the objections raised by the defendant that its division or branch office could not be sued as it was not a legal entity, since legal entity is the National Insurance Company, which has various offices and divisions. This is a technical objection which has been taken by the defendant. The suit, in any case, is defended by the National Insurance Company and no prejudice can be said to have been caused to it by simply mentioning Division No. 2 along with its name in the title of the plaint. The issue is accordingly decided against the defendant.

##### Issue Nos. 3, 4 & 5:

8. These issues being inter-linked, are being dealt with together. The suit having been filed on 13.12.1983, the same was stated by the defendant to be barred by time after 12 months from the date of fire. In response to this, the case of the plaintiff is that the limitation of 12 months was from the date repudiation of the claim by the defendant and not from the date of happening of loss or damage as was prescribed in Clause 19-A of the policy. The plaintiff's case in this regard is that it had filed a petition u/s 20 of the Arbitration and Conciliation Act vide suit No. 853A/1982 and it was only on the disclaimer made by the defendant in its reply filed therein on 14.12.1982 that the claim of the plaintiff could be said to have been repudiated by the defendant and that being so, the instant suit was filed within one year of the said repudiation, and thus, it was within time as per Clause 19-A of the policy. The defendant's witness Mr. A.K. Gupta (DW 1) had also stated about the suit being barred by time for having been filed after the expiry of 12 months from the date of repudiation. In answer to a question in his cross examination, he stated that the period of 12 months was to be reckoned

from the date of repudiation of the loss or damage, which occurred on 15.06.1981. On repeatedly being asked, he was not able to say from the record as to when the claim of the plaintiff was actually repudiated. Ultimately, he stated that in the absence of there being any repudiation letter in record, he could not say as to when the same was repudiated. That being the factual situation in this regard, and there being no formal repudiation of the claim of the plaintiff, the disclaimer that was made by the defendant in the reply filed in petition u/s 20 of the Arbitration and Conciliation Act, would be taken to be the repudiation for the purpose of limitation of 12 months. That being so, the suit having been filed within one year of such repudiation, cannot be said to be barred by limitation as per Clause 19-A of the policy. Though the plaintiff was not entitled to carry both the civil as well as arbitration proceedings, but, having known the stand of the defendant that it was not admitting the projected claim of the plaintiff, the plaintiff ultimately chose to withdraw that petition. Now, since the same has already been withdrawn and the suit has proceeded further without objection, it could not be said to be not maintainable.

9. Since the defendant itself has taken the objection on the maintainability of the arbitration proceedings and which ultimately led the plaintiff to withdraw the same, now, it cannot be allowed to take a plea that the instant suit is not maintainable, but instead, the arbitration proceedings would lie as per Clause 18 of the policy. Even otherwise, since the liability as sought to be set up by the plaintiff, was not admitted, but, was disputed by the defendant, the arbitration proceedings would not lie and it was only the suit, which was maintainable. Thus, all the three issues are decided against the defendant.

Issue No. 6:

10. The plea of the defendant is that the plaintiff failed to comply the terms and conditions of the policy in that it did not produce either the books of accounts or the statement of its claims within the period of 15 days, as prescribed under Clause 11 of the policy. It is alleged that it was intentional and deliberate to manipulate and manage and gain time. On the other hand, the plea of the plaintiff is that the stipulated time of 15 days of giving of notice and submission of the claim & the documents etc., was not mandatory, but, directory and in any case, had become redundant since the surveyors themselves had been extending the time for submission of the documents for the reasons stated by the plaintiff.

11. A look at the report of the initial surveyor (loading surveyor) M/s. Mehta and Padamsey Surveyors Pvt. Ltd., which was proved on record as Ex. PW 2/1 by Sh. Rajiv Gupta of M/s. Padamsey Surveyors Pvt. Ltd., would evidence that despite being requested by them repeatedly, the plaintiff failed to produce stocks' books and other relevant record on one ground or the other. This was also despite the repeated visits made by the surveyor and also along with some of their chartered accountants. Few letters were also written by them to the plaintiff in this regard. In its letter of 14.07.1981, the plaintiff responded the surveyors stating that the records indicating stocks in shed Nos. 203 and 204 were destroyed and they are

in the process of making statements of loss and damage from the subsidiary data and documents available, and which they stated, would be furnished by 15th August. On 12th August, the plaintiff further sought time till 01st September, stating that the books of accounts were being audited. With this state of affairs and the conduct of the plaintiff, the surveyors reported that they are not competent to give further extension of time for submission of claims and record for verification, and that, they are of the opinion that the plaintiff is deliberately adopting the delaying tactics to confuse the claim and make the assessment extremely difficult from the accounts, which they say are being prepared.

12. PW 1 Sanjiwan Sahni, in his statement, has stated that the plaintiff was maintaining all books of account, but is not in possession of the same of the year 1981 or even prior thereto, as there was another fire in the company premises on 30th July, 1991. However, in his cross examination, it was elicited that at the time of the suit, the company was in the possession of the books of accounts of the year 1981-82 and even of the previous year. He admitted that despite that, these were not filed along with the plaint and were not produced. PW 1 was evasive to various questions put with regard to the record of the company, and it was with great difficulty that it was elicited from him that the books of accounts, concerning stock of losses were not kept in the premises where the fire had taken place, and that though the record was available at the time of survey and filing of the suit, but, it was not produced. He then stated that they did not have any record at this point of time and nor, they had any record at the time of filing of his affidavit of evidence. In answer to a question that the surveyors M/s. Mehta and Padamsey Surveyors Pvt. Ltd. had observed that the plaintiff avoided to produce the record stating that they were busy in sorting out the other problems and did not co-operate for preparation for physical inventory of the unaffected stocks in the other sheds, PW 1 stated to be not aware of all this. He, however voluntarily stated that the record was subsequently produced before the defendant and the auditor, and that the calculation of value of loss was derived by the plaintiff from the accounts maintained. He also voluntarily stated that prior to filing of his affidavit of evidence, the figures were rechecked from the available files of the company and the auditors.

13. From the answers which are seen to have been given by PW 1 Sanjiwan Sahni in his evidence, it would apparently evidence that he was extremely evasive with regard to the questions regarding non-production of record before the surveyors and also before the court, and further that as to what was the basis of value of loss and the contents of his affidavit of evidence.

14. DW 1, in his testimony, has categorically stated and maintained that the plaintiff did not produce the books of accounts and did not file statement of claims within the period of 15 days as per Clause 11 of the policy and this way, the plaintiff committed the breach of terms and conditions of the policy, and thus, the defendant is not liable for any claim. This part of the statement of DW

1 has remained unassailed. From the statement of PW 1 as noted above also, it would be seen that the plaintiff failed to produce books of accounts not only before the surveyor despite repeatedly being asked and requested, but, it even failed to produce the same before the court. Further, it is also not denied by the plaintiff that it did not lodge a claim with the defendant till the end of September, 1981 as against the prescribed period of 15 days in terms of Clause 11 of the policy. In answer to a question put to PW 1 that as per the terms of the policy, the plaintiff was required to file a claim within 15 days with all the particulars of accounts and damage with reasonable practical details and was also required to produce the particulars of accounts, vouchers etc. on the basis of which the claim was made, the PW 1 stated that this would be responded to by his lawyer only. From all this, it stands established that neither the claim was made in time, nor the plaintiff submitted any books of accounts etc. to the surveyors for their verification and this was apparently in violation and breach of the terms and conditions of the policy. PW 1 tried to justify the plaintiff's non-filing of the claim, stating that the defendant vide its letter dated 31.07.1981 had informed the plaintiff that it has assessed the claim approximately at Rs. 16 lakhs, and that it was in the process of settlement. The witness tried to maintain same assertions that the surveyors of the defendant has assessed its claim at about Rs. 16 lakhs and repeated reference was made to the aforesaid letter dated 31.07.1981 of the defendant. The letter dated 31.07.1981 (Ex. PW 1/5) written by the defendant to the plaintiff reads thus:

We have received your letter dated 30th July, 1981 wherein you have asked us to confirm that we have issued policy for stocks, building, machinery, furniture, fixtures and fittings for a value of Rs. 40 lacs.

We have been given to understand that you have preferred a claim of approximately Rs. 16 lacs which has been assessed by our surveyors, Messers Mehta & Padamsey P. Ltd. The claim is in the process of settlement and as soon as the final assessment is arrived at, we shall inform you.

15. The aforesaid letter only evidence that the plaintiff had represented having preferred a claim of Rs. 16.00 lakh which was assessed by the Surveyors M/s. Mehta and Padamsey Surveyors Pvt. Ltd. and the defendant vide this letter only communicated that the claim was in the process of settlement and as soon as a final assessment was arrived, the plaintiff would be informed. By any interpretation it could not be said that the claim of the plaintiff had been assessed and settled at Rs. 16.00 lakh and was so communicated to it vide this letter.

15A. The conclusion comes out to be that there was a breach on the part of the plaintiff of terms and conditions of the insurance policy in the manner as discussed above. The question, however, would be as to whether it would disentitle the plaintiff to claim losses, if any, suffered. It would be discussed subsequently that the breach of the terms of the policy, as discussed above, was not that fundamental to disentitle the plaintiff inasmuch as defendant got the

assessment made subsequently from the joint Surveyors M/s. V.N. Sarin and Co. Pvt. Ltd. & M/s. J.D. Gulshan before which the plaintiff did submit the available record as also participated in the assessment proceedings. Thus, the defendant by appointing joint Surveyors and latter calling upon the plaintiff to submit the documents, can be said to have waived requirements of Clause-11 of the policy. The conclusion is that though there is breach of Clause-11 of the policy, as discussed above, but, in view of the conduct of the parties, the breach of the said Clause would not have any effect on the claim of the plaintiff. The issue is decided accordingly.

#### Issue No. 7:

16. The plaintiff has sought claim of Rs. 18 lakhs as towards the loss of stocks and assets and Rs. 8.5 lakhs as towards the compensation on account of loss of business because of non-receipt of compensation. The onus to establish the loss lied upon the plaintiff. So far as the claim of Rs. 8.5 lakhs on account of loss of business is concerned, this was stated by the defendant to be a remote claim not being as per the terms and conditions of the policy. In answer to a question, PW 1 stated that the claim is based on the actual loss incurred on stocks and equipments and the calculations of the value of the loss were derived from the accounts maintained. It has already been noted above that the plaintiff failed to prove books of accounts before the leading surveyors M/s. Mehta and Padamsey Surveyors Pvt. Ltd. It was because of the non-cooperative attitude that the surveyors Mehta & Padamsey Surveyor Pvt. Ltd. had to abandon their further investigations and surveys, and it was thereafter that a team of joint surveyors of M/s. V.N. Sarin and Co. Pvt. Ltd. & M/s. J.D. Gulshan and Co. was assigned the job of survey and assessment of loss.

17. I will discuss the report of the team of joint surveyors of M/s. V.N. Sarin and Co. Pvt. Ltd. & M/s. J.D. Gulshan and Co. a little later. When the record was available with the plaintiff at the time of making claim or even at the time of filing of the suit, I failed to understand as to why the same was not produced before the surveyors and also in the court. If the record was not available, then it is not understandable as to what was the basis of statement of claim as also the claim set up in the plaint and the affidavit of evidence. In answer to a question as to the basis of the claim of Rs. 18 lakhs in the plaint, PW 1 stated that it was calculated by M/s. A.F. Ferguson & Co. to whom reference was made jointly by the insurance company and the plaintiff company to verify and submit a report after taking into account the record, which had earlier been reviewed by the surveyors V.N. Sarin and Co. Pvt. Ltd. & M/s. J.D. Gulshan and Co. The witness, in answer to various questions put in this regard, repeatedly maintained the basis of claim of Rs. 18 lakhs as assessed by surveyors M/s. A.F. Ferguson & Co. and was as per the accounts, which were available with the plaintiff. A submission was made by the learned counsel for the plaintiff that the report of M/s. A.F. Ferguson & Co. was not produced by the defendant despite directions given by the court and thus, an adverse inference is to be drawn against the



defendant that this surveyor company had given report in favour of the plaintiff and against the defendant.

18. I will further discuss about this a little later, but, for the present, it is pertinent to note that the report, if any of M/s. A.F. Ferguson & Co. could not be the basis of the filing of the suit, which was filed in 1983 and the appointment, if any, of M/s. A.F. Ferguson & Co. was in the year 1991-92 and no such report could exist at the time of filing of the plaint.

19. The joint surveyors M/s. V.N. Sarin and Co. Pvt. Ltd. & M/s. J.D. Gulshan and Co. submitted their reports dated 20th and 21st September, 1982. Same has been proved as Ex. PW 1/4. It was not the case of the plaintiff that the basis of claim of Rs. 18 lakhs was on the reports of these joint surveyors. PW 1 stated that they have relied upon some part of this report though, he was evasive and could not state as to on which part of this report, the plaintiff has relied. In answer to a question that no documentary evidence was filed along with the plaint to substantiate or support their claim of Rs. 18 lakhs as made in the plaint, PW 1 stated that he has no idea about this. He again maintained the basis of claim of Rs. 18 lakhs to be the report of M/s. A.F. Ferguson & Co., which, as noted above, was not existing at the time of the filing of the plaint. Now, having seen that there was neither any assessment finalized at Rs. 16 lakhs, nor there was any report assessing claim at Rs. 18 lakhs by M/s. V.N. Sarin and Co. Pvt. Ltd. & M/s. J.D. Gulshan and Co. nor there existed any report of M/s. A.F. Ferguson & Co., the basis of the claim of Rs. 18 lakhs as set up in the plaint, is apparently not substantiated.

20. The learned counsel for the plaintiff relying upon the cases of Pradip Buragohain Vs. Pranati Phukan, and Union of India (UOI) Vs. Ibrahim Uddin and Another, , vehemently argued that since the report of M/s. A.F. Ferguson & Co. has not been produced despite the direction given by the court and undertaking given by the defendant, an adverse inference is to be drawn against the defendant. On the other hand, the submission of the learned counsel for the defendant in this regard is that a team of joint surveyors had already given its reports, and there was no question of M/s. A.F. Ferguson & Co. to be appointed as surveyors. It is submitted that if there was any such report, the plaintiff could have obtained the same from M/s. A.F. Ferguson & Co. It is submitted that though under some misconception, it was stated that the same would be filed, but, as there was no such report, none could be filed.

21. Again coming to the report of joint surveyors M/s. V.N. Sarin and Co. Pvt. Ltd. & M/s. J.D. Gulshan and Co., it would be seen that since the complete records were not produced by the plaintiff, the surveyors after waiting for about five months had to labour hard to make the assessment involving some guess work. From the report however, it is evident and also not disputed that the plaintiff did reluctantly participate in the proceedings conducted by these surveyors. In their report, the surveyors have assessed the loss in respect of the stocks and machinery giving due consideration to estimated salvage. The

surveyors had arrived at different figures, one based on their assessment and the other as per the representations made by the plaintiff. They have assessed the loss of stocks at Rs. 5,37,419/- and that of the machinery (covered in the policy) at Rs. 55,410/-. They have also assessed the loss on the fixed and movable assets (not covered in the policy) at Rs. 1,65,400/-. These are the assessments which are made by them as per their calculations, the basis of which have been given in details in the report. However, as per the representations made by the plaintiff, which were reported to be neither rational nor acceptable, the surveyors assessed the loss of stocks at Rs. 12,44,844/-, loss of fixed and movable assets at Rs. 2,10,761/-. In this way, the surveyors had assessed a total loss of Rs. 5,92,829/- towards stock and machinery (covered in the policy) as against the assessment of Rs. 14,55,605/- (Rs. 12,44,844/- plus Rs. 2,10,761/-) assessed as per the representations made by the plaintiff.

22. The plaintiff in fact, has not at all disputed the correctness of the reports of joint surveyors. A suggestion in this regard was put to DW 1 A.K. Gupta that the defendant had appointed M/s. V.N. Sarin and Co. Pvt. Ltd. & M/s. J.D. Gulshan and Co. as joint surveyors and they have given their reports, copy of which is Ex. PW 1/4. A specific question was put to DW 1 that the assessment of loss of the plaintiff in the present case was carried only by M/s. V.N. Sarin and Co. Pvt. Ltd. & M/s. J.D. Gulshan and Co., to which, DW 1 admitted to be correct that the assessment was made by these joint surveyors. Another suggestion was put that the defendant had accepted the said reports of the joint surveyors, to which, it was stated by DW 1 that the surveyors' reports are always subject to the terms and conditions and exceptions of the policy. In answer to another question as to what the defendant did after the receipt of report of the joint surveyors, DW 1 stated that in the mean, a complaint was received that fire was pre-planned and not accidental, and the said complaint was being investigated. From all this, it comes out to be admitted case that a team of joint surveyors was the only one, which gave the report of assessment of losses.

23. From the above, it comes out to be that as per the joint surveyors, the losses which were suffered by plaintiff and which were covered by the policy were to the tune of Rs. 5,92,829/-, though the plaintiff had been representing the losses to be at Rs. 14-15 lakhs. However, since there was nothing produced by the plaintiff to substantiate the basis of its representation either before these surveyors or before the court, the plaintiff at the most, could be said to have suffered the losses to the tune of Rs. 5,92,829/- (or say Rs. 9,93,000/-)

24. The next question that remains to be discussed is that as per the defendant, the fire was not accidental, but, was all pre-planned. The defendant in this regard has relied upon the complaint made by some of the employees of the plaintiff's company alongwith the affidavits of some of the employees, which are to the effect that the fire was preplanned and not accidental and that the goods, which were stored there, were not more than Rs. 4 lakhs being rejected or waste

etc. Admittedly, at the time of fire, there was some labour problem going on in the plaintiff's factory. Neither the complainants nor the employees whose affidavits are filed, have been examined and thus, no credence can be given to this part of the case of the defendant.

25. From the above discussion, I come to the conclusion that as per the joint surveyors team appointed by the defendant, the plaintiff suffered losses to the tune of Rs. 5,93,000/- (approx.) of the stock and the machinery which was as per the insurance policy. Now coming to the plea of the plaintiff that since the report of M/s. A.F. Ferguson & Co. was not produced, an adverse inference is to be drawn against the defendant. As is noted above, the defendant has denied there being any question of appointment of M/s. A.F. Ferguson & Co. as Surveyors. Admittedly, the final assessment report that was given on which reliance is placed by the plaintiff also is of the Joint Surveyors M/s. V.N. Sarin and Co. Pvt. Ltd. & M/s. J.D. Gulshan and Co., Firstly, there could not be any question of appointment of second Surveyor as the same was not permissible as per Section 64UM(3) of the Insurance Act in the absence of there being any reasons for appointment of a Surveyor after the final report of the joint Surveyors. Though, at one point of time a statement was given by the defendant in the Court that the report will be produced, but the same has been categorically denied by the learned counsel for the defendant. From all this it appears that the appointment, if any, of M/s. A.F. Ferguson & Co. was not for the assessment of the losses, but, at the most could be said to be for verification. As there was no report of M/s. A.F. Ferguson & Co., nor there could be any, there was no question of drawing any adverse inference against the defendant. The reliance placed by the plaintiff on the cases of Pradip Buragohain (supra) and Ibrahim Uddin & Anr. (supra) is misplaced.

26. Now from the above discussion the conclusion comes out to be that as per the joint surveyors' report, the plaintiff suffered losses to the tune of about Rs. 5,93,000/-. This is the report which was also accepted by the plaintiff and is seen to have been prepared in good faith with due application of mind. Nothing has been pointed out by the plaintiff that there was any error or ill-motive or non application of mind by the joint surveyors. If that being so, the insurance company is expected to accept the report of these surveyors and in this view of the matter, the plaintiff is found to be entitled to the claim of the said amount of Rs. 5.93 lakh from the defendant.

27. With regard to the plea of the plaintiff regarding interest, from my above discussions based on the evidence of the parties on record and having regard to the conduct of the plaintiff, I do not see the plaintiff to be entitled to any interest. The reliance placed by the plaintiff on the decisions of Secretary, Irrigation Department, Government of Orissa and others Vs. G.C. Roy, and Sovintorg (India) Ltd. Vs. State Bank of India, New Delhi, and also M/s. Chengalrayan Co-operative Sugar Mills Vs. Oriental Insurance Co. Ltd. and Another, is also misplaced as the facts of these cases are entirely distinguishable

from the facts of the instant case. Thus, the suit of the plaintiff is decreed for a sum of Rs. 5,93,000/- (Rupees Five Lakh Ninety Three Thousand only) with future interest @ 12 per cent from the date of this judgment till the date of payment. A decree be prepared accordingly.