
(2007) 10 J&K CK 0001
In the Jammu And Kashmir High Court

National Insurance Co.

APPELLANT

Vs

Mohammad Latief Kaloo and Others

RESPONDENT

Date of Decision : 01-10-2007

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (2008) 1 JKJ 123

Hon'ble Judges : Mansoor Ahmad Mir, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Mansoor Ahmad Mir, J.—By the medium of this writ petition, petitioner has questioned the orders dated 15.11.1998 and 20.7.1999

passed by the respondents 3 and 4 respectively, whereby, whereunder complaint-claim petition filed by respondents 1 and 2 came to be allowed

and writ petitioner insurer came to be directed to indemnify the claimants-respondents 1 and 2 by making payment of Rs. 88,000/- with 10%

interest from the date of surveyors report 24.3.1997 and Rs. 10,000/- came to be awarded as compensation.

2. Writ petition came to be admitted on 4.4.2002. Respondents 1 and 2 have filed the reply on 25.9.2004 and have resisted the petition on the grounds taken in the reply.

Heard. Considered.

3. The case of respondents 1 and 2 (claimants) before respondent No. 3 was that their residential house situated at Baghwanpora Sathoo

Barbarshah was damaged due to heavy floods and the house was insured with petitioner Insurance Company vide insurance policy, the details of

which are given in the impugned order as well as in the writ petition. Respondent No. 3 after having considered the case held that the surveyor

deputed by the Insurer (Writ petitioner) was not expert in the field and was an Electric Engineer, having no experience as civil engineer. The

respondents 1 and 2 (claimants) had utilized the services of a civil engineer and accordingly, his surveyor report/assessment came to be accepted.

4. The core question involved in this writ petition is whether the respondents 3 and 4 have rightly held that the survey report of civil engineer was

the only report to be relied upon and the report of the surveyor (retired electric engineer) having no experience as a civil engineer deputed by the

Insurer (Writ petitioner) could not be relied upon having no experience in the field (Civil Engineering).

5. There is a direct Division Bench Judgment of this Court on the point delivered in case Oriental Insurance Co. Ltd. v. Mohd Sadiq Gura CIA

No. 61/1998 on 02.09.1998. it is profitable to reproduce the relevant portion of the said Judgment hereunder:

...The official surveyor has not been produced before the Commission. He is a retired Electric Engineer having no experience as a Civil Engineer

while claimant's Surveyor is a Civil Engineer with vast experience in the field. Accordingly, his statement was liable to be accepted, satisfactory and

dependable proof to settle the claim between the parties. Ultimately, the Commission has allowed the claim to the extent of Rs. 3,16,000/- with

interest at the rate of 18% from the date of loss till the date of payment.

So far as the claim for loss is concerned, we find that Commission has given proper justification for awarding this amount on the basis of report of

Civil Engineer which according to us is more reliable dependable and acceptable but payment of 18% interest per annum is on the higher side. The

reasonable rate of interest, therefore, is 12% per annum payable from two months after receipt of report of official Surveyor which is 24.12.1995.

6. Keeping in view the fact that the writ petitioner-Insurer has relied upon the surveyor report of electric engineer, could not be made basis for

rejecting the claim of the claimants (respondents 1 and 2) based on survey report of a civil engineer. His statement was recorded and came to be

cross examined by the writ petitioner and writ petitioner failed to bring any material discrepancy or any other grounds or a point in order to hold

that his survey report cannot be acted upon. Thus only on this point, this writ petition merits dismissal.

7. Section 17 of the Jammu and Kashmir Consumer Protection Act, 1987 provides that if any person is aggrieved by any order of the State

Commission, he can prefer an appeal against the said order to the High Court. In terms of mandate of Section 17, the writ petitioner had a right of

appeal and had alternate efficacious remedy available. Thus, writ petition on this count also is not maintainable.

8. The Apex Court in *U.P. State Bridge Corporation Ltd. v. U.P. Rajva Setu Nisam S. Karamchari Sineh* AIR 2005 SC 3149 has held that

where alternate remedy is available, writ is not maintainable. It is profitable to reproduce para 17 of the Judgment, hereunder:

The only reasons given by the High Court to finally dispose of the issues in its writ jurisdiction which appears to be sustainable, is the factor of

delay, on the part of the High Court in disposing of the dispute. Doubtless the issues of alternative remedy should be raised and decided at the

earliest opportunity so that a litigant is not prejudiced by the action of the Court. Since the objection is one in the nature of a demurer. Nevertheless

even when there has been such a delay where the issue raised requires the resolution of factual controversies, the High Court should not, even

when there is a delay, short circuit the process for effectively determining the facts. Indeed the factual controversies which have arisen in this case

remain unresolved. They must be resolved in a manner, which is just and fair to both the parties. The High Court was not the appropriate forum for

the enforcement of the right and learned Single Judge in *Anad Prakash's* case had correctly refused to entertain the writ petition for such relief.

The Apex court also in case *Khimji Vidhu v. Premier High School* AIR 2000 SC 3495 held that writ jurisdiction cannot be exercised to upset pure

findings of fact. It is profitable to reproduce relevant portion of para 5 of the Judgment hereunder:

...These findings of fact could not have been interfered by the High court in exercise of its jurisdiction under Article 227 of the Constitution,

Jurisdiction under Article 227 of the Constitution must be sparingly exercised and may be exercised to correct errors of jurisdiction and the like but

not to upset pure findings of fact which falls in the domain of an appellate Court only. The High Court, thus, exceeded the jurisdiction vested in it

by upsetting finding of fact and the impugned order, suffers from a jurisdictional defect. On this short ground, the appeals must succeed and are

allowed. The Judgment of the High Court is set aside. The eviction ordered against the respondent is maintained.

9. Having glance of the above discussion, this writ petition merits to be dismissed and is, accordingly, dismissed.