
(2002) 08 MP CK 0006
In the Madhya Pradesh High Court
Case No : LPA No. 207 of 1996 (G)

Oriental Insurance Co. Ltd.

APPELLANT

Vs

M/s Krishna Enterprises

RESPONDENT

Date of Decision : 27-08-2002

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2003) 1 MPJR 95

Hon'ble Judges : R.B. Dixit, J; Chandresh Bhushan, J

Bench : Division Bench

Advocate : R.V. Sharma, for the Appellant;

Final Decision : Allowed

Judgement

R.B. Dixit, J.

Respondent (in present appeal), moved a writ petition under Article 226 of the Constitution of India before learned Single Judge of this Court, based on the facts that the petitioner, who is respondent in this appeal had exclusive showroom for the sale of Titan Watches and got his stock lying in the shop insured with the appellant against theft and fire. The claim has been made against theft which took place in the shop in the night intervening 12th and 13th November, 1994 It is not disputed that the theft took place as mentioned, hereinabove and the insurance cover was for Rs. 9,00,000/-. Petitioner submitted claim for a sum of Rs. 7,48,780/- and statement of stock was furnished. The claim was settled on 12th June, 1995 and petitioner was held entitled to a sum of Rs. 6,30,405/-, and it is also not disputed that a cheque in this regard was issued which was also encashed.

The only dispute before the writ Court was whether, the claim was to be decided taking into consideration the sale price of stock or the purchase price of the stock. The difference between two prices being Rs. 1,80,275/- was claimed along with the interest.

Appellant/respondent contested the claim and also raised preliminary objection that such dispute cannot be decided in exercise of powers envisaged under Art. 226 of the Constitution of India. However, learned Single Judge, by the impugned order brushed aside the objections by taking into consideration various decisions on the point. Learned counsel for the appellant submits that none of the decisions referred to in the impugned order are applicable in the instant case as most of the decisions relate to the matters wherein, some breach of fundamental right was committed and compensation was awarded on account of breach of such fundamental right. It is further submitted that none of these cases relate to any contractual liability or any matter pertaining to insurance.

In a decision of Division Bench of this Court, in the case of A.G. Paul Vs. Hindustan Steel Ltd. reported in 1978 1 MPWN 333, wherein, it has been observed that it is well settled that purely contractual rights cannot be enforced by the writ petition under Article 226 of the Constitution of India.

The Hon. Apex Court in the case of Life Insurance Corporation of India and Others Vs. Kiran Sinha, reported in 1985 ACJ 657, has made it clear that the High Court could not in any circumstances, direct payment of money claimed under Insurance policy in a petition filed under Article 226 of the Constitution of India. It was further observed that the only remedy available to the respondent in such cases, was a suit before the civil Court.

Taking into consideration the facts and circumstances of the case, coupled with the implications arising under the aforesaid decisions of this Court, as well as of the Apex Court we are of the opinion that the order of learned Single Judge, is vitiated in law.

Consequently, the appeal is allowed and the impugned order is set-aside.