(2002) 01 PAT CK 0078

In the Patna High Court

Case No : L.P.A. No. 110 of 2002

Purnima Enterprises APPELLANT

Vs

The Oriental Insurance Company Ltd. and Another RESPONDENT

Date of Decision : 23-01-2002

Acts Referred:

Citation : (2002) 01 PAT CK 0078

Final Decision : Dismissed

Judgement

1. This letters patent appeal has been filed against the order dated 8 January 2002 on First Appeal No. 162 of 2000: The Oriental Insurance Co. Ltd. v. M/s Purnima Enterprises.

2. The court has heard submissions on behalf of the Appellant notwithstanding the aspect that the appeal as a letters patent appeal against a judgment in a civil appeal or an interim order and/or stay order may not be maintainable. It needs to be made clear at the outset that the order which has been challenged in appeal is a stay order. The appeal is still pending. The portion which aggrieves the Appellant in the present letters patent appeal is reproduced:

Having heard learned Counsel for the parties, this Court directs that there be stay of further proceedings of Execution Case No. 1/2001 pending before the Subordinate Judge V, Muzaffarpur arising out of Title Suit No. 59 of 1992, during the pendency of this appeal, on Appellants-Company paying the amount, which was initially offered by them and admittedly not accepted by the Respondent, with up-to-date interest at the rate of 12% per annum within two weeks and depositing the entire remaining decretal amount in fixed deposite earning maximum interest in any nationalised Bank in the name of the Company itself by way of the Bank guarantee in favour of the Respondent to be finally released according to the final outcome of this appeal.

3. Basically the conditions of the stay order are to the effect that (a) of the amounts which the Insurance Company had initially offered, which the Appellant

may have declined to receive, be paid with up-to-date interest at the rate of 12% and (b) of the amounts which may have been awarded in the claim or the suit as being part of the decree may be deposited in a fixed deposit earning maximum interest in any nationalised Bank in the name of the Insurance Company itself by way of the Bank guarantee in favour of the Respondent to be released upon the outcome of the appeal.

4. Regard being had to the circumstances that the matter itself arises out of a contract of insurance this is a circumstance of fact and not one of issue of any rights which may have flown to whomever they may accrue arise out of an insurance policy, which was taken out by the Appellant from the insurance company, the Respondent. It is a matter of interpretation whether an insurance policy is a mere insurance against loss or is a contingency policy.

5. Arguments were addressed of a claim to a definite amount guaranteed to the insurer as a matter of right. This is not so. Whether the rights of parties rest on a contract of guarantee or one of indemnity is a matter to be seen on merit. While the Appellant claims an assured sum, on which submissions were made the issues point to a contract under an insurance contract. If the finality is on a contract of indemnity then the matter is of risk covered and the assessment of damages.

6. At this stage, it is not for this Court, to spell out the contract whether the claimer was one of indemnity or guarantee. The issues are already pending in the first appeal.

7. In the circumstances, the Court finds that there is neither a prima facie case that the order of the learned judge be stayed nor any balance of convenience in favour of the Appellant nor an irreparable loss. The amount which is the subject matter of a deposit to earn interest is an amount, the assessment of which is under a contract of insurance to cover a risk on the happening of an event. This a matter of evaluation, not similar to a contract whose performance is to be enforced for a specified sum on a pronote, cheque or a negotiable instrument, a bank guarantee or a contract of sale. The merits are pending in the appeal.

8. Two cases were cited by Mr. Shashi Shekhar Dwivedi, senior counsel for the Appellant, in re. the matter M/s. Mehta Teja Singh and Co. v. Grindiays Bank Ltd. (1982) 3 S.C.C. 1999 and the other was Sulleh Singh and Others Vs. Sohan Lal and Another, The first case appears to rest on a contract between the Appellant and Bank. The second case is by Appellants as vendees of the land in suit. The vendors had sold the land to the Appellants for a specific amount. The transaction was by a registered deed of sale. Regard being had to the facts and circumstances of the present case, where admittedly the terms of an insurance contract on a risk covered is in for an interpretation, the ratio of the cases cited do not apply.

9. In the circumstances, this Court is not inclined to interfere with the stay order, which has been passed.

10. Dismissed.

