
(2010) 12 DEL CK 0061

In the Delhi High Court

Case No : Regular First Appeal No. 585 of 1998

Shri Surinder Singh Bhasin

APPELLANT

Vs

United India Insurance Company Ltd.

RESPONDENT

Date of Decision : 20-12-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 12 Rule 8, 96

Citation : (2010) 12 DEL CK 0061

Hon'ble Judges : Valmiki J Mehta, J

Bench : Single Bench

Advocate : Sanjiv Bahl, Eklavya Bahl and Ajay Shekhar, for the Appellant; K.L. Nandwani, for the Respondent

Final Decision : Allowed

Judgement

Valmiki J Mehta, J.—The Appellant by means of the present appeal u/s 96 of the Code of Civil Procedure, 1908 (CPC) impugns the judgment and decree dated 30.7.1998 dismissing the suit for recovery filed against the Respondent insurance company, and which claim was filed on account of theft of the insured machinery.

2. The trial Court dismissed the suit by holding that the insurance policy was not proved and the FIR did not contain the description of the stolen property. It was found that there was no shed existing where the goods allegedly were kept. The suit of the Appellant-Plaintiff was accordingly dismissed while deciding issue Nos. 2, 3 and 4. Since the findings on these issues are relevant for determination of the appeal, the said findings are reproduced as under:

7. ISSUES No. 2,3 & 4 Issue No. 2,3 and 4 are interconnected thus all the issues are taken together. The issues are to show cause of action burglary committed in the premises of the Plaintiff and to prove its entitlement. To prove the issues the Plaintiff has produced PW1 Plaintiff himself who deposed that he purchased a machinery from M/s Gee Bee Enterprises for sum of Rs. 60,000/-. He further proved the insurance covered from the Defendant company and the receipt is

Ex.PW1/1 and the other receipt is Ex.PW1/2. He further stated that no insurance covered nor insurance policy was issued to him. The machinery was kept in the premises No. 114-C Mathura Road and two big machines could not be placed in store and were kept out of the room and a theft was committed. He further relied upon the statement of Sh. G.B. Singh PW2 who deposed that the Plaintiff was supplied with the machineries bill was submitted to the State Bank of India Branch as the payment was to be made by the said Bank and Bank made the payment. PW3 Paramjit Singh is working as Clerk cum Cashier in the State Bank of India who deposed that the Plaintiff had been given the loan to the tune of Rs. 1 lakh and the loan was to be granted against the pledge of goods lying in the Plaintiff premises. The goods which were clubbed with the bank was insured with the United India Insurance Company. The Insurance company did not supply policies insured the pledged goods to the Plaintiff. The PW4 is Shri A.K. Khanna who deposed that his job of the surveyor assigning to him by the various insurance company since 1938 and he was alleged that the burglary loss then visited the place and prepared the surveyor report and forward of the requirement document. Next witness produced is Krishan Kumar the record clerk of the record room who produced the summon record of the suit No. 156/84 in re. Gurcharan Singh v. State Bank of India. The next witness is Dharamvir Singh H.C. who prove the copy of the FIR and stated that the case was closed as untraced. The last witness is Constable Davinder Singh who prove the untraced report of the FIR.

8. The Defendant produced DW1 Surinder Kumar Gotwal Assistant Manager of the Defendant company who deposed that he contacted the surveyor who had surveyed alleged claim. No business was carried out by Surpreet Electricals. The Plaintiff has failed to support his claim before the Defendant and before the surveyor. The Plaintiff has made the statement at C-114 Mathura Road there was a shed but the said statement was wrong as the surveyor could not find him, such shed at Mathura Road. There was no theft had taken place to the insurance company. There is no description on the alleged stolen property into FIR. The letter of liquidation was issued to the Plaintiff on 15.10.82. I have carefully gone through the evidence from the evidence led by the Plaintiff the fact is established that the Plaintiff wanted to have the loan tax from the State Bank of India and the goods were hypothecated with the bank as per the requirement of the bank the insurance policy was required for the goods under hypothecated to be insured so the Plaintiff paid a premium and got the receipt. On 1.12.80 and on 3rd/4th a report was lodged with the police for theft. The police file case as untraced. The Plaintiff made a claim with the Defendant who sent the surveyor and the Defendant rejected the claim of the Plaintiff has not a genuine one. The Plaintiff has alleged that no insurance policy was issued to him so with regard to the insurance prove the insurance he has produced receipt of the premium paid. The receipt does not give the description of the goods under the insurance and the Plaintiff has miserably failed to produced and to got the produced the Defendant the insurance policy giving the description of the goods under the

insurance. The Plaintiff has failed to prove that which was the stock of goods under the insurance. There is nothing on record from which it can be presumed that the goods mentioned in the FIR were the same goods insured with the Defendant. The Plaintiff has claimed the amount and entitlement as per the terms and conditions of the insurance policy but no terms and conditions has been proved by the Plaintiff by which he is entitled to recover the amount. In the absence of the material showing the description of the goods under insurance policy from no stretch of imagination it can be presumed that the goods under insurance were stolen. Consequently it is held that the Plaintiff has failed to prove that he got a cause of action to made the claim for the goods and the same were stolen and Plaintiff is entitled for the claim from the Defendant. Consequently the issue is decided against the Plaintiff and in favour of the Defendant.

3. A reading of the facts of the present case as also the impugned judgment and decree shows that this is not a case where there can be any doubt as to the machinery which was purchased was a bogus transaction inasmuch as the machinery which was purchased and which was thereafter stolen was financed by the State Bank of India which paid the amounts for the purchase of the machinery. It is also not a case where the Respondent insurance company ever enquired from the State Bank of India or was in correspondence with the State Bank that the machinery in fact was not purchased by the funds provided by the Bank. Not only that, the admitted facts which emerge from the record are that at no point of time the insurance premium was sought to be refunded on the ground that a valid policy was not taken. Before the trial court not only the policies in question were not filed by the Respondent insurance company but also the survey report of its surveyor was not filed. The theft in question could have been doubted by an insurance company if the machinery was never purchased. It is not the case of the insurance company that the machinery was not purchased. The stand of the insurance company that there was no shed existing at the site is a stand taken with respect to para 6 of the plaint and which denial in the written statement is only a general denial. Once the machinery has been purchased, and the same was insured on directions of the bank which financed the same, and the insurance company which has received the premium has not disputed the grant of the insurance cover the judgment of the trial Court is clearly therefore illegal and perverse on the face of it. I may note that ordinarily the insurance company ought to have filed the insurance policy as also the survey report of its own, however, in spite of due service of a notice under Order 12 Rule 8 CPC (Ex.PW1/14) yet, the necessary documents deliberately were not filed by the insurance company. The most glaring fact is that the survey report prepared at the instance of the insurance company, because it was the insurance company at whose instance the surveyor was sent, has not seen the light of the day. The surveyor stepped into the witness box as PW-4 and stated that he had submitted the survey report to the Respondent insurance company but his records have been destroyed and thus he could not produce the copies with him. I therefore

find it very surprising to say the very least that why should an insurance company suppress the survey report.

4. The Appellant summoned the records from the Police Department and the witnesses of the police who deposed as PW-6 and PW-7 specifically stated that the records with respect to the subject FIR were not available/destroyed. Once the non-production of the original FIR is with a reason, the trial Court ought to have relied upon the secondary evidence being the photocopy of the FIR filed, because it is not the case of the Respondent insurance company that the FIR is a forged and fabricated document. A reference to this FIR, a more legible copy of which has been taken during the course of arguments from the counsel for the Appellant, shows that 11 machineries in total were reported to be stolen.

5. The conclusions which emerge from the above stated facts are as under:

(i) Machineries were in fact purchased by financing the same from State Bank of India which paid for the same directly to the seller.

(ii) The machinery was hypothecated with the bank and therefore at the direction of the bank, insurance was taken of the machineries.

(iii) The Respondent insurance company duly received the premium for the insurance policies and at no stage rejected the policies on the ground that machineries were not purchased by the Appellant as financed by the State Bank of India.

(iv) The photocopy of the FIR filed, which though marked is really a proved document because originals were summoned from the police department and the same were found to have been destroyed, shows that the various items of machinery are mentioned in the FIR as having been reported as stolen.

These determinative aspects are conspicuous by their absence in the relevant discussion in impugned judgment and decree and which clearly show that the Respondent company was bound to pay the amount under the insurance policy. In my opinion, the honesty of the Appellant is in fact writ large, because, it is not the case of the Appellant that entire insured machineries were stolen but the claim has been lodged for only part of the machineries which were stolen from the premises of the Appellant.

6. Ordinarily, this Court would not have interfered with the impugned judgment and decree, however, once grave injustice and prejudice is shown to be caused to an Appellant, the appellate Court would seek to exercise its powers to remedy the injustice and set aside the wrong caused.

7. Accordingly, the impugned judgment and decree is set aside. The suit of the Appellant-Plaintiff for recovery of Rs. 40,688.75/- is decreed with pendente lite and future interest @ 9% per annum simple. The appeal is accordingly allowed, leaving the parties to bear their own costs. Trial Court record be sent back.