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**(2012) 12 P&H CK 0033**

**In the Punjab And Haryana At Chandigarh**

**Case No :** Regular Second Appeal No. 2344 of 2012

United India Insurance Co. Ltd. and Another

APPELLANT

Vs

M/s. B.J. Duplex Boards Limited

RESPONDENT

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**Date of Decision :** 07-12-2012

**Acts Referred:**

**Citation :** (2013) 2 ACC 15 : AIR 2013 P&H 36 : (2013) 169 PLR 501

**Hon'ble Judges :** L.N. Mittal, J

**Bench :** Single Bench

**Advocate :** V. Ramswaroop, for the Appellant; Mrigank Sharma, for the Respondent

**Final Decision :** Dismissed

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## Judgement

L.N. Mittal, J.—Defendants-United India Insurance Company and its Senior Branch Manager have approached this Court by way of instant second appeal after suit of respondent-plaintiff M/s. B.J. Duplex Boards Limited has been decreed partly by both the Courts below. Plaintiff-respondent filed suit against defendants/appellants for recovery of Rs. 1.85 crores. Goods of the plaintiff lying in its premises were insured with the defendants for Rs. 2,22,00,000/- vide insurance policy issued on 31.03.1999 for one year. Fire occurred in the premises of the plaintiff on 18.11.1999 resulting in destruction of its goods. The plaintiff laid insurance claim with the defendants. Defendants surveyor assessed the loss to the plaintiff at Rs. 1,49,34,011/-. However, the defendants have paid Rs. 45,38,808/- only being the amount of loss that occurred in covered area of first class construction but repudiated the claim of plaintiff for the loss that occurred in covered area of second class construction and in open area, necessitating the filing of the suit for recovery of the balance amount.

2. The defendants alleged that rightful claim of the plaintiff has already been paid and the plaintiff is not entitled to any further amount. It was pleaded that vide earlier policy dated 08.11.1998 for Rs. 25,00,000/- (in fact for Rs. 50,00,000/-) which lapsed on 07.11.1999 i.e. before the incident of fire, loss of

goods in first class construction only was insured and, therefore, the plaintiff has been compensated for the loss of goods lying in first class construction area and remaining claim has been rightly repudiated.

3. Courts below have decreed the suit of the plaintiff for recovery of Rs. 1,02,34,288/- being the balance amount as per surveyors report. Feeling aggrieved, defendants have filed this second appeal.

4. I have heard learned counsel for the parties and perused the case file.

5. Counsel for the appellants vehemently contended that as per insurance policy Exhibit P-2 for Rs. 50,00,000/- for the period from 08.11.1998 till 07.11.1999, only the goods lying in first class construction of the plaintiff were insured and therefore, the plaintiff is not entitled to compensation for the goods which were lying in second class construction, or in open area. The contention is completely frivolous and meritless. Insurance policy Exhibit P-2 had already lapsed on 07.11.1999 i.e. before the fire incident. Said policy has; nothing to do with the claim of the plaintiff. On the contrary, defendants had issued insurance policy Exhibit P-3 covering the period from 31.03.1999 till 30.03.2000 for Rs. 2,22,00,000/-. Relevant clause of the said policy is reproduced hereunder:

Rs. 2,22,00,000/- on stock of all kinds of raw materials or imported raw materials or semi/finished goods or finished goods in process or all kinds of chemicals or stores or spares & engineering items whilst lying and/or stored or kept at the above address

6. A bare perusal of the aforesaid clause reveals that all goods lying at the address of the plaintiff were covered irrespective of covered area or open area and irrespective of first class construction or second class construction. Thus entire premises including open area of the plaintiff were covered by policy Exhibit P-3 which was operative when the fire incident occurred. In view thereof, claim of the plaintiff for the goods lying in second class construction area and open area has been rightly decreed.

7. It is worth mentioning that in the grounds of appeal, aforesaid relevant clause of the insurance policy has been wrongly reproduced by adding words "Built of Ist Class construction, used for mfg. of Duplex Board, Insured against fire policy "C" Flood & EQ.", which do not exist in insurance policy Exhibit P-3. Thus the appellants tried to mislead this Court by misquoting the aforesaid clause of the insurance policy. Appellants are warned to be careful.

8. Counsel for the appellants also contended that the plaintiff had accepted the amount paid by the defendants regarding first class construction area in full and final settlement of its claim. However, the plaintiff cannot be non-suited on this ground because the plaintiff was forced to accept the said amount as full and final settlement because otherwise, the defendants would not have even paid the said amount. The amount was paid by defendants to plaintiff on 12.01.2001 and immediately thereafter, the plaintiff made protest to the defendants on

15.01.2001 i.e. without any delay. Consequently the plaintiff cannot be denied its rightful claim merely because it accepted the part amount paid by the defendants by making statement of full and final settlement. For the reasons aforesaid, I find no merit in this second appeal. Concurrent finding recorded by the Courts below partly decreeing the suit of the plaintiff is fully justified by the insurance policy Exhibit P-3. Claim of the plaintiff for the amount for which the suit has been decreed was repudiated by the defendants without any justification whatsoever, on completely frivolous grounds. This tendency of the insurance companies has to be deprecated. There is no ground to interfere with the concurrent finding recorded by the Courts below in favour of the plaintiff as there can be no other interpretation of the relevant clause of the policy Exhibit P-3. Reference by defendants/appellants to insurance policy Exhibit P-2 which had already lapsed before the fire incident is completely unwarranted and uncalled-for. No question of law, much less substantial question of law, arises for adjudication in this second appeal. Accordingly the appeal is dismissed.