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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of Decision: 8th May, 2024

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CS(COMM) 359/2024 & I.A. 9894/2024
DELHI INDUSTRIAL CORPORATION Plaintiff
Through: Mr. Prem Kishore Seth, Adv.
(M:9811055345)
versus

NATIONAL INSURANCE CO LTD Defendant
Through: None.

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J.(Oral)

1. This hearing has been done through hybrid mode.

I.A. 9894/2024 (for exemption)

2. This is an application seeking exemption from filing dim copies of documents. Allowed, subject to all just exceptions. Application is disposed of.

CS(COMM) 359/2024

3. Let the plaint be registered as a suit.

4. The present suit has been filed on behalf of the Plaintiff-Delhi Industrial Corporation *inter alia* seeking recovery of Rs. 3,40,92,720/- including interest @ 15% p.a. on the principal amount of claim till date.

5. The amount relates to an insurance claim against the Defendant wherein the case of the Plaintiff is that it had availed the Standard Fire and Special Peril Policy for the period 8th May, 2018 till 7th May, 2019. The coverage has been extended thereafter.

6. As per the Plaintiff, it is a firm dealing in the business of import and



export of synthetic and natural rubber products since 1st April, 2011. In 2018 the Plaintiff started storing its goods in a godown situated at Khasra No. 65, Khirki Village, opposite M-72, Malviya Nagar, New Delhi (*hereinafter, 'godown'*) and obtained a Standard Fire Special Perils Policy (*hereinafter, 'insurance policy'*) from the Defendant-National Insurance Company Ltd to cover the risk of its goods lying in the said godown. The insurance policy is stated to be valid from 8th May, 2018 to 7th May, 2019.

7. According to the Plaintiff, on 29th May, 2018 a fire broke out in a truck which was parked outside the godown of the Plaintiff firm. The fire is stated to have spread, thereby causing substantial loss to the goods of Plaintiff stocked in the godown. Subsequently, on receipt of information about the alleged loss, the Defendant registered the claim and deputed a Surveyor- M/s Proclaim Insurance Surveyor and Loss Assessors Pvt. Ltd. (*hereinafter, 'Surveyor'*) to carry out a survey and assessment of the loss caused thereto.

8. The allegation of Plaintiff is that even after providing all cooperation to the Surveyor and the Defendants, the Surveyor deliberately delayed to submit its report to the Defendants. Further, in clear violation of the IRDA guidelines, the Surveyor failed to share the loss assessment as well as the survey report with the Plaintiff. According to the Plaintiff, the surveyor's report was submitted. However, the copy of the same was not provided to the Plaintiff. The Plaintiff subsequently claims to have obtained the same through RTI.

9. The case of the Plaintiff is that despite timely notification, the Defendant insurance company delayed processing of the claim for over a year. The Plaintiff provided all necessary documentation and cooperated



with surveys, but the insurance company ultimately denied liability on 31st March, 2021, alleging policy breaches. The Plaintiff asserts that they were not provided with policy terms and that the denial was unjustified. A legal notice was served upon the Defendant on 30th August, 2022, demanding payment, but the insurance company did not comply. It is stated that denial of the claim was arbitrary and without legal basis, highlighting the insurance company's unreasonable conduct throughout the claim settlement process. The Plaintiff claims a sum of Rs. 3,40,92,720/- with interest.

10. The Plaintiff had earlier also filed a suit being **CS(COMM) 148/2023** titled '**Delhi Industrial Corporation v. National Insurance Co. LTD. and Anr**' which was dismissed as withdrawn due to non-availing of the mandatory procedure under Section 12A of the Commercial Courts Act, 2015. Vide order dated 30th October, 2023, 75% of the court fee was refunded to the Plaintiff. The said order is extracted below:

1. This is an application filed by the plaintiff seeking leave of this Court to withdraw the suit so as to enable the plaintiff to invoke pre-institution mediation in terms of Section 12A of the Commercial Courts Act, 2015 ('the Act') and then file a fresh suit on the same cause of action, if necessary.

2. Taking into account that the suit as presently filed is likely to fail on account of the plaintiff not having invoked pre-suit mediation, permission to withdraw the suit, as prayed for, is granted to the plaintiff with liberty to file a fresh suit on the same cause of action, if the need so arises after availing of the pre-suit mediation in terms of Section 12A of the Act.

3. The application, accordingly, stands disposed of.

4. Since the suit is being permitted to be withdrawn at the initial stage and that too with liberty to file a fresh



suit on the same cause of action if the need so arises, it is directed that 75% of the Court fees be refunded to the plaintiff forthwith.

5. The next dates fixed before the Court and before the learned Joint Registrar (Judicial) stand cancelled.

11. Thereafter, Section 12A of the Commercial Courts Act, 2015 was availed of by the Plaintiff. However, the Delhi High Court Legal Services Committee gave a report dated 12th March, 2024 of the mediation being a non-starter. The relevant portion of the report is set out below:

“Despite several opportunities, the opposite party has failed to submit their willingness for the participation in the pre-institution mediation proceedings. It is thus prima facie appears that opposite party is not willing to participate in the pre-institution mediation proceedings. In view thereof and in view of 3(6) of the notification dated 03.07.2018 issued by the Department of Legal Affairs, Govt. of India, this pre-institution mediation file be treated as non-starter.”

12. Issue summons in the suit to the Defendant through all modes upon filing of Process Fee.

13. Let the written statement to the plaint be filed within 30 days. Along with the written statement, the Defendant shall also file an affidavit of admission/denial of the documents of the Plaintiffs, without which the written statement shall not be taken on record.

14. Liberty is given to the Plaintiff to file replication within 15 days of the receipt of the written statement(s). Along with the replication, if any, filed by the Plaintiff, an affidavit of admission/denial of documents of the Defendant, be filed by the Plaintiff, without which the replication shall not



be taken on record. If any of the parties wish to seek inspection of any documents, the same shall be sought and given within the timelines.

15. It is made clear that any party unjustifiably denying documents would be liable to be burdened with costs.

16. A similar suit is also already pending being *CS(COMM) 358/2021*. Accordingly, list along with *CS(COMM) 358/2021* before the Joint Registrar on 10th July, 2024.

17. List before the Court on 19th September, 2024.

PRATHIBA M. SINGH
JUDGE

MAY 8, 2024

dj/rks

(corrected & released on 13th May, 2024)