2021 INSC 412

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.7033 OF 2009

National Insurance Company Ltd. ….Appellant(s)

Versus

M/s. Hareshwar Enterprises (P) Ltd. & Ors. ….Respondent(s)

J U D G M E N T

A.S. Bopanna,J.

1. The appellant (insurer) who was arrayed as respondent No.1 in the complaint filed before the National Consumer Disputes Redressal Commission, New Delhi ("NCDRC" for short) in O.P. No.102/2003 is before this Court in this appeal being aggrieved by the order dated 27.03.2009. The respondent No.1 (insured) was the claimant before NCDRC. The plant and machinery in the factory owned by respondent No.1 was charged in favour

of respondent No.2 as security, while the stock in trade was hypothecated in favour of respondent No.3 (Thane Jan Sahakari Bank) for discharge of loan obtained from them. Since the respondent No. 2 and 3 are entitled to adjust the claim towards their outstanding dues, they are arrayed as parties to the proceedings.

2. Through the order dated 27.03.2009 impugned herein, the NCDRC has allowed the complaint in part and directed the insurer to pay the sum of Rs.79,34,703/- with interest at 12 % per annum. Out of the said amount, a sum of Rs.49,56,897/- is ordered to be apportioned in favour of respondent No.2 (Maharashtra State Financial Corporation) and the balance amount of Rs.29,77,806/- is ordered to be paid to the respondent No.3 (Thane Jan Sahakari Bank Limited). The total amount awarded is against the claim of Rs.1,25,25,319/- made by the respondent No.1 (Insured).

3. The brief facts leading to the claim before the NCDRC is that the respondent No.1 was engaged in the business of manufacture of polyethylene, plastic films

and other similar packaging materials. The respondent No.2 had advanced loan to the respondent No.1 against security of its building, plant and machinery. The respondent No.3 had also advanced money to the respondent No.1 for procurement of stock in trade, which was accordingly hypothecated to them. In order to cover the risk of fire, flood and earthquake to the factory building and also the plant and machinery, the respondent No.1 secured insurance policies from the appellant. One policy was to cover the risk during the period 05.02.1999 to 04.02.2000. Another policy in respect of the risk to the stock in trade was also secured which was for the period of 17.09.1999 to 16.09.2000. The respondent No.1 was accordingly carrying on its business in the factory premises while on 06.11.1999 fire broke out causing total destruction of the plant and machinery, raw material as also finished and unfinished goods. The respondent No.1 intimated the appellant regarding the fire incident on 07.11.1999.

4. The appellant accordingly appointed M/s. H. Manna and Company and Virendra Padmasi Shah

jointly as surveyors to assess the loss. The surveyors visited the site on 09.11.1999. On having obtained the documents and records submitted their interim report on 23.03.2000 and the final report on 13.03.2001 to the insurer. The surveyors through the said report had assessed the loss at Rs.1,06,00,000/- excluding the loss of business and other losses. The insurer, however, did not settle the claim nor repudiate the same. Instead, the insurer through their letter dated 22.06.2001 informed the respondent No.1 regarding appointment of Om Nityanand Enterprises as investigators to look into the claim. It is in that view, since the repeated request and demand ultimately made through the legal notice had not been complied with by the appellant, the respondent No.1 filed the complaint before the NCDRC. As already noted, the NCDRC after considering the matter in detail has arrived at its conclusion and has passed the order allowing part of the claim.

5. Mr. Vishnu Mehra, learned counsel for the appellant at the outset contended that very proceedings before the NCDRC was not sustainable since the claim

was filed beyond limitation. In this regard, the learned counsel has referred to Section 24A of the Consumer Protection Act, 1986 ('Act 1986' for short) which provides the limitation to file the complaint within two years from the date on which the cause of action has arisen. In that light, it is contended that the fire incident had taken place on 06.11.1999, but the respondent No. 1 had filed the complaint before the NCDRC on 26.03.2003 which is way beyond the period of two years provided under the said provision. In order to buttress his submission the learned counsel has relied on the decision reported in the case, ***State Bank of India vs. B.S. Agriculture Industries (I)*** (2009) 5 SCC 121 with specific reference to paragraphs 11 and 12. A perusal of the said decision no doubt would indicate that it has been held by this Court that the provision is peremptory in nature and requires the consumer forum to see before it admits the complaint that it has been filed within two years from the date of accrual of cause of action.

6. Having noted the contention, on the provision as contained, there is no ambiguity whatsoever. However,

what is required to be taken note is that the provision indicates that the complaint is required to be filed within two years from the date on which the '**cause of action**' has arisen. In that context, another decision relied on by the learned counsel for the appellant in the case, ***Kandimalla Raghavaiah and Company vs. National Insurance Company and Another*** (2009) 7 SCC 768 with specific reference to para 18 would indicate that the term '**cause of action'** though not defined in the Act, but it is of wide import and it would have different meaning in different context while considering limitation. It has been held therein that pithily stated '**cause of action'** means, cause of action for which the suit is brought and which gives occasion for and forms the foundation of the suit. Reliance is placed on this case by the learned counsel since in the said case, which was also in respect of a fire incident it was held that the date of accrual of cause of action has to be a date on which the fire breaks out. However, what cannot be lost sight is that, such conclusion was reached in the cited case since the fire in tobacco godown took place

22/23.03.1988 and the bank in whose favour the stocks had been hypothecated was informed about it by the appellant on 23.03.1988 itself, but insofar as the claim, the matter had rested there till 06.11.1992 when for the first time the appellant addressed the letter to the insurance company and sought for claim form. The facts therein, if noted would indicate the reason for which this court had indicated that the date on which the fire broke out is the date of accrual of cause of action since it did not move forward in any other manner. It has not been laid in strait jacket. The cause of action will remain flexible to be gathered from the bundle of facts arising in each case.

7. In contradistinction, in the instant case as noted the fire incident had occurred on 06.11.1999. The appellant had informed the insurer on 07.11.1999, where after the joint surveyors were appointed and on verification had submitted their final report on 13.03.2001. Despite said report, the insurer through their letter dated 22.06.2001 had appointed an investigator but did not proceed to either accept the

claim or repudiate the same. In that background, a perusal of the complaint filed by the respondent No.1 before the NCDRC would indicate that the cause of action has been mentioned in para 21 as follows:-

> **"21. <u>CAUSE OF ACTION</u>**
>
> The cause of Action arose for the first time when property belonging to the Complainant was destroyed in the fire on 6.11.1999. Then it continued from time to time when the survey was complete and the Complainant was not paid the claim amount. It arose when the legal notice on behalf of Complaint was issued and same was replied by advocate on behalf of the Opponent No. 1. Hence the present Original Petition is in limitation. The Advocate for the complainant issued legal notice on 5.1.2003 demanding money from opposite party No. The copy of the said letter is annexed hereto and marked as Annexure P/13."

Further, in the reply filed on behalf of the insurer before the NCDRC reference is contained that correspondence was exchanged between the investigator appointed by the insurer and the respondent No.1 through the letters dated 07.03.2002, 05.04.2002, 03.05.2002, 03.06.2002 and 13.07.2002.

8. If in the above context the fact situation herein is noticed, though the fire incident occurred on

06.11.1999, the same merely provided the **cause of action** for the first time to make the claim but the same did not remain static at that point. On the other hand, the process of joint survey though had concluded with its final report on 13.03.2001, the letter dated 22.06.2001 addressed by the insurer to the respondent No.1 regarding appointment of the investigator had created a fresh cause of action and kept the matter oscillating. Thereafter, the matter did not rest at that but there was repeated action being taken by the investigators seeking for details. When the same did not conclude in an appropriate manner, the respondent No.1 (Insured) got issued a legal notice dated 05.01.2003 to which reply was issued, when in fact the repudiation was gathered and the complaint was filed. Even if the date on which the process of intimation of appointment of the investigator through the letter dated 22.06.2001, received by the respondent No.1 is taken into consideration, from that date also the complaint filed on 26.03.2003 is within time. There was no need for the NCDRC to pass any separate order at the outset

to hold the claim to be within limitation and then proceed when it is clear on the fact of it. As such the consideration of the complaint on merits by the NCDRC was justified. The contention therefore urged by Mr. Vishnu Mehra, learned counsel on that ground is accordingly rejected.

9. On the merits of the claim, a perusal of the impugned order dated 27.03.2009 passed by the NCDRC indicates that the NCDRC has made detailed reference to the report submitted by the joint surveyors, dated 13.03.2001 and has ultimately allowed the claim, in part. In the surveyor report dated 13.03.2001 consideration was made to two parts; firstly, the assessment of loss relating to the stock of LDPE plastic, powder, granules, tubings and films as contained in clause 8.1 of the report. Next, the loss caused due to the destruction of plant and machinery is assessed in clause 8.2 and the sum of Rs.46,60,459/- being the depreciated value has been awarded for loss of plant and machinery. In respect of the said claim the respondent No.2 (Maharashtra State Financial Corporation) is

interested. In that regard, the learned counsel for the appellant, as also the learned counsel for respondent No. 1 and 2 are agreed that there is no serious dispute with regard to the consideration made either by the surveyors or the NCDRC on the aspect of plant and machinery. The same having not been a major issue before the NCDRC, need not be gone into in these proceedings.

10. In that view of the matter the only question on merits which needs consideration herein is with regard to the loss assessed towards destruction of the stock-in-trade in the fire incident. On this aspect, the learned counsel for the appellant while contending that the NCDRC has committed an error in relying on the surveyor report as sacrosanct without giving credence to the investigation report has referred to the decision in the case, ***New India Assurance Company Limited vs. Pradeep Kumar*** (2009) 7 SCC 787 and referred to para 21 and 22 which read as hereunder: -

"21. Section 64-UM(2) of the Act, 1938 reads:

"64-UM. (2) No claim in respect of a loss which has occurred in India and requiring to be paid or settled in India equal to or exceeding twenty thousand rupees in value on any policy of insurance, arising or intimated to an insurer at any time after the expiry of a period of one year from the commencement of the Insurance (Amendment) Act, 1968, shall, unless otherwise directed by the Authority, be admitted for payment or settled by the insurer unless he has obtained a report, on the loss that has occurred, from a person who holds a licence issued under this section to act as a surveyor or loss assessor (hereafter referred to as "approved surveyor or loss assessor"):

Provided that nothing in this sub-section shall be deemed to take away or abridge the right of the insurer to pay or settle any claim at any amount different from the amount assessed by the approved surveyor or loss assessor."

The object of the aforesaid provision is that where the claim in respect of loss required to be paid by the insurer is Rs.20,000/- or more, the loss must first be assessed by an approved surveyor (or loss assessor) before it is admitted for payment or settlement by the insurer. Proviso appended thereto, however, makes it clear that insurer may settle the claim for the loss suffered by insured at any amount or pay to the insured any amount different from the amount assessed by the approved surveyor (or loss assessor).

22. In other words although the assessment of loss by the approved surveyor is a pre-requisite for payment or settlement of claim of twenty thousand rupees or more by insurer, but surveyor's report is not the last and final

> word. It is not that sacrosanct that it cannot be departed from; it is not conclusive. The approved surveyor's report may be basis or foundation for settlement of a claim by the insurer in respect of the loss suffered by the insured but surely such report is neither binding upon the insurer nor insured."

11. In the said decision, it is no doubt held that though the assessment of loss by an approved surveyor is a prerequisite for payment or settlement of the claim, the surveyor report is not the last and final word. It is not that sacrosanct that it cannot be departed from and it is not conclusive. The approved surveyor's report may be the basis or foundation for settlement of a claim by the insurer in respect of loss suffered by insured but such report is neither binding upon the insurer nor insured. On the said proposition, we are certain that there can be no quarrel. The surveyor's report certainly can be taken note as a piece of evidence until more reliable evidence is brought on record to rebut the contents of the surveyor's report.

12. The learned counsel for the appellant has also relied on the decision in the case, ***National Insurance***

Company Limited vs. Harjeet Rice Mills (2005) 6 SCC 45 with reference to paragraphs 5, 6 and 7. In the facts arising in the said case the insured was seeking to rely on the surveyor's report to bind the insurer in view of the provisions contained in Section 64-UM (c) of the Insurance Act, 1938. The Insurer had however sought to rely on the investigation report. The State Commission refused to look into report of the private investigator. In that circumstance, this court was of the view that the State Commission should have given an opportunity to the insurer to prove the investigation report. In the said case, the very nature of the fire incident was in dispute from the very inception. The claimant had contended that the fire was caused by a short circuit, which was seriously disputed by the insurer and an investigation in that regard had been held. It is in that light, a conclusion was to be reached by the forum adjudicating the claim as to whether any fraud was committed in making the claim with reference to the very nature of the incident. In that circumstance, even though at the first instance, there was an

investigation held by the police, the private investigation held by the insurer would have been relevant to decide the question. As such, in the said circumstance it was imperative that the investigator's report was to be considered threadbare and a decision ought to have been arrived at.

13. On the other hand, in the instant facts there is no serious dispute with regard to the fire incident. Even going by the contention put forth, it is noted that the loss caused by destruction of the plant and machinery in the fire incident is not much of an issue. The dispute raised insofar as the loss caused to the raw-materials/stock is by contending that the purchase of stock during the months of August, September and October 1999 is shown excessive as compared to the stock position from April to July 1999. In that circumstance, in the facts and circumstances herein whether the investigation report was an indispensable document or as to whether the survey report is exhaustive enough to arrive at a conclusion on that aspect is the issue.

14. Having noted the said decisions, we are of the opinion that the same cannot alter the position in the instant case. On the proposition of law that the surveyor's report cannot be considered as a sacrosanct document and that if there is any contrary evidence including investigation report, opportunity should be available to produce it as rebuttal material, we concur. However, the issue to be noted is as to whether the surveyor's report in the instant case adverts to the consideration of stock position in an appropriate manner and in that circumstance whether an investigation report which is based on investigation that was started belatedly should take the centre stage. The fact remains that the surveyors report is the basic document which has statutory recognition and can be made the basis if it inspires the confidence of the adjudicating forum and if such forum does not find the need to place reliance on any other material, in the facts and circumstance arising in the case. If in that light, the surveyors report, on which reliance has been placed by the NCDRC is taken note insofar as the assessment

relating to the loss due to destruction of stock, the consideration of the same has been adverted in clause 8.1.1 and the stock position as declared to the bank has been referred to in clause 8.1.3. The learned counsel for the appellant as also the learned counsel for the respondents has made detailed reference and taken us through details contained in the report.

15. The consideration made by the surveyors to ascertain the correctness of the details relating to the stock indicates that reference is made to the value of the stock declared to the bank; value of the stock as per audited manufacturing account and balance sheet for the year ended 31.03.1999; the explanation offered for the purchase made during the months of August 1999 to October 1999. In that regard, the surveyors have also visited the source from which the LDPE was procured during September 1999 to 04.11.1999. It is on making such verification and inquiries, the surveyors arrived at the conclusion as follows: -

> "8. 1. 8 Though the purchases and sales were found to be in order as per records, we could not accept the total quantity of 73585 kgs claimed by the Insured. Opening stock considered for arriving at

this balance is higher as compared to quantity declared to bank. For assessing the quantity we have taken Stock quantity as on 30.04. 99 as per Bank declaration and then made addition/ deduction for purchase & sale quantity during the period 1.5.99 to 6.11.99. Accordingly the quantity of stock as on date of loss worked out as follows:

	Kgs.
Stock Quantity as on 30.4.99	5,367.75
Add : Purchases from 1.5.99 to 6.11.99	1,14,155.60
	1,19,523.35
Less : Sales from 1.5.99 to 6.11.99	
Balance Quantity on 6.11.99	75,444.73
	44,078.62

8.1.9 We have valued the stock as per the latest purchase rate viz. At market value. The last purchases made by Insured prior to loss was on 4. 11. 99. The rate including Octroi is Rs.68.238 per kg. The rate matches with the selling price fixed by IPCL. Further the entire quantity was considered to be raw material avoiding any addition of Insureds own manufacturing cost.

8 .1.10 Salvage : There was small quantity of remnants of the burnt stock, in lump/me ted form. Considering the limited quantity which could be extracted and its scrap value we have deducted 1% as salvage value.

8.1.11 The Loss Assessed for Stock is as follows

Cost of 44078.620 Kgs. of LDPE	
@ Rs. 68.238 per kg.	Rs. 30,07,885

Less : Salvage value 1%	Rs. 30,079

Loss Assessed	Rs. 29,77,806

16. Thus, a perusal of the surveyor's report would indicate that the same is not perfunctory but has referred to all aspects, discarded what was not reliable and the assessment has been made thereafter. In that background, as noted, the fire incident had occurred on 06.11.1999 and the surveyors had visited the site on 09.01.1999 itself and the interim as also the final report were submitted on 23.03.2000 and 13.03.2001 to the insurer after due deliberations. The insurer did not take any steps immediately but after much delay appointed the investigator on 22.06.2001 and had not concluded the said process though the respondent No.1 had made repeated request. The insured had approached the NCDRC and it is in the said proceedings, for the first time the insurer seeks to rely on the investigator's report. Therefore, in the facts and circumstances herein the surveyors report was submitted as the natural process, the conclusion reached therein is more

plausible and reliable rather than the investigation report keeping in view the manner in which the insurer had proceeded in the matter. Hence, the reliance placed on the surveyor's report by the NCDRC without giving credence to the investigation report in the facts and circumstances of the instant case cannot be faulted. In that view, the conclusion reached on this aspect by the NCDRC does not call for interference.

17. One other aspect of matter which arises for consideration herein is with regard to the rate of interest. The learned counsel for the appellant contended that the interest rate at 12% per annum is excessive. The learned counsel for the respondent, however, contended that there was delay in payment of the amount payable to the respondent No.1 which was necessary to be compensated appropriately and the NCDRC was justified in that regard. Having considered this aspect, the rate of interest to be awarded in a normal circumstance should be commensurate so as to enable the claimant for such benefit for the delayed payment. There is no specific reason for which the

NCDRC has thought it fit to award interest at 12% per annum. Therefore, the normal bank rate or thereabout would justify the grant of interest at 9% per annum. Accordingly, the amount as ordered by the NCDRC shall be payable with interest at 9% per annum instead of 12% per annum. To that extent, the order shall stand modified.

18. It is to be noted that this Court while admitting the appeal and granting stay of the order, it was made subject to deposit 50% of the amount before the National Commission. The second and third respondents were permitted to withdraw the same in the ratio of 60:40 subject to their furnishing, security to the satisfaction of the Commission. The appellant shall therefore deposit the balance amount within six weeks, before the National Commission and the disbursement shall be made in the ratio to constitute the payment of the full amount awarded. The second and third respondents shall be permitted to withdraw the same.

19. In terms of the above, the appeal is allowed in part.

20. Pending application, if any, shall stand disposed of.

.....J.
(HEMANT GUPTA)

.....J.
(A.S. BOPANNA)

New Delhi,
August 18, 2021