Life Insurance Corpn. Of India vs Shri Raj Kumar Rajgarhia & Anr. on 23 February, 1999

Equivalent citations: AIR1999SC2346, (1999)2CALLT56(SC), [1999]96COMPCAS376(SC), JT1999(2)SC24, (1999)121PLR836, RLW1999(3)SC455, 1999(1)SCALE599, (1999)3SCC465, 1999(1)UJ568(SC), AIR 1999 SUPREME COURT 2346, 1999 AIR SCW 2447, 1999 (2) ALL CJ 1130, 1999 (121) PUN LR 836, 1999 (2) ADSC 212, 1999 (1) SCALE 599, 1999 (3) SCC 465, 1999 ADSC 2 212, (1999) 1 PUN LR 836, 1999 (1) UJ (SC) 568, (1999) 2 JT 24 (SC), 1999 (2) JT 24, (1999) 2 CALLT 56, (1999) 3 RAJ LW 455, (1999) 3 RECCIVR 247, (1999) 2 SUPREME 245, (1999) 2 ICC 327, (1999) 1 SCALE 599, (1999) 36 ALL LR 42, (1999) 3 CIVLJ 859, (1999) 96 COMCAS 376

Bench: G.T. Nanavati, N. Santosh Hegde

ORDER

C.A. NO. 3781/82

Santosh Hegde, J.

1. In this appeal challenge is to the judgment of the Calcutta High Court made in C.A. No. 256/78 dated 7th July, 1982 wherein the appellate Bench of the High Court reversed the judgment of the High Court delivered in the trial side in Suit No. 356/73 and decreed the suit of the plaintiff.

2. For convenience in this appeal, we will refer to the parties by their original status in the trial court.

3. Plaintiff in the suit are the assigns of the insurance policy issued by a General Insurance Company which is now merged with defendant viz. Life Insurance Corporation of India.

4. On 7th April, 1955, one Smt. Bhagwandei Rajgarhia submitted a proposal and declaration for insurance of her life with one Ruby General Insurance Company for a sum of Rs. 1,27,000/- which proposal was accepted by the Insurance Company. On 5.5.1955, the Insurance Co. in consideration of the premium paid and to be paid, granted to the assured a policy bearing No. 97403 commencing from 1.3.1955 and agreeing to pay to her assigns, executors, administrators, nominees or other

representatives-in-interest, the said sum on her death. The said assured, Smt. Bhagwandei Rajgarhia on 11.5.1967 applied for a loan/advance against the said policy to the tune of Rs. 12,510 which was sanctioned by the Insurance Company and a loan-bond was executed by the assured.

5. On 11.3.1968, the assured duly assigned the said policy absolutely in favour of the plaintiff and a notice of the said assignment was given to the defendant-appellant by a letter dated 11.3.1968 which was duly registered by the defendant-appellant in its books.

6. By virtue of the provisions of the Life Insurance Corporation Act, 1956, the assets and liabilities of the Ruby Insurance Co. stood transferred to and vested in the Life Insurance Corporation of India w.e.f. 1.9.1956. By a letter dated 27.5.1965, the said assured Smt. Bhagwandei Rajgarhia sought confirmation from the defendant regarding the position of the said policy when the surrender value so proposed to be utilised was exhausted, so that she could keep the policy in force. By a letter dated 23/28th June, 1965, the defendant intimated the assured that at the time of the said reply the said policy was protected under the automatic non-forfeiture clause found in the insurance policy till May 23, 1969. In the meantime, it is to be noted that the assured had paid premium up to 1967. It was contended by the plaintiff in the suit that the plaintiffs kept on assuring the assured that the policy was sufficiently protected under the said automatic non-forfeiture clause. On 25.5.1970, the said assured Smt. Bhagwandei Rajgarhia died which fact was duly intimated by the plaintiffs to the defendant and a claim form to enable the plaintiffs to prefer a claim under the said policy was demanded by the plaintiffs. By a letter dated 4.7.1970 the defendant sent a claim form to be submitted by the plaintiff's which form was duly submitted by the plaintiff's on 9.7.1970. It was also averred in the plaint that by a letter dated 29.7.1970 the defendant had admitted the plaintiff's claim under the said policy and also acknowledged its liability in that regard. Along with the letter dated 29.7.1970, the defendant had also enclosed a claim discharge voucher and requested the plaintiff's to submit the same properly signed, dated and witnessed. The plaintiff's duly submitted to the defendant the claim discharge voucher and sought for the payment due under the policy. But by a letter dated 21.8.70 the defendant, for the first time, repudiated its liability for the said sum of Rs. 1,02,813.71 which was the sum, according to the plaintiff's, payable after deducting the unpaid premium, interest thereon and also the interest and principal amount payable under the loan bond. The defendant informed the plaintiff's that the policy in question was not in force on the date of death of the assured since the assured had not paid the premium due up to date and that the surrender value of the policy was not sufficient to cover the total amount due from the assured. As such, on the date of death of the assured, the policy stood completely lapsed.

7. In view of the above (sic) taken by the defendant, the suit came to be filed before the High Court of Calcutta under its ordinary original civil jurisdiction. The learned Single Judge trying the suit framed as many as 7 issued which are as follows :

> 1. Did the assured duly keep the policy alive and in force as alleged in paragraph 8 of the plaint?
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> 2. Was the surrender value of the said policy as on 13th January, 1968 more than sufficient to pay premium or premium under the policy since 1968 and upto 1st

March, 1970 and interest thereon and interest on advance up to 25th May, 1970 as alleged in paragraph 26 of the plaint ?

3. (a) Was the letter dated 26th of July, 1970 admitting the claim of the plaintiff written under mistake as alleged in paragraph 23 of the written statement ?

(b) Was the statement prepared as mentioned in paragraph 32 of the plaint by mistake as alleged in paragraph 23 of the written statement ?

(c) If so, was the mistake detected as alleged in paragraph of the written statement ?

4. Was the defendant not entitled to deduct the advance of Rs. 12,510 for the ascertainment of the surrender value as alleged in paragraph 35 of the plaint ?

5. In ascertaining the net surrender value was on 1st June, 1969 was the defendant entitled to deduction of the indebtedness as alleged in paragraph 2(d) of the written statement and was it sufficient to cover in full the unpaid quarterly premium and was the net surrender value utilised to give cover for a proportionate period and was the policy treated as lapsed with effect from 1st June, 1969 ?

6. Is the defendant (sic) from insisting that the said policy lapsed during the life time of the assured as alleged in paragraph 40 of the plaint?

7. To what relief, if any, is the plaintiff entitled ?

8. Before the trial Judge, the plaintiffs examined one witness while the defendant did not examine any witness but the documents were marked on admission of the parties. On consideration of the oral and documentary evidence adduced before the trial court, the court came to the conclusion that the defendant is not under any obligation to accept and/or to pay the claim because it is found that after proper calculation under the non-forfeiture system, the net surrender value of the policy had exhausted and the policy had lapsed and all liabilities of the insurer had terminated before the death of the assured occurred. This finding was based on the fact that as the quarterly premium not having been paid in time on 1.6.1969 after deduction of the loan together with up-to-date interest and other charges, the balance of the amount was not sufficient to cover in full the unpaid quarterly premium due on 1.6.1969. As a result, the available surrender value was completely exhausted and the policy was treated as having been lapsed w.e.f. 1.6.1969 and the liability of the insurer had terminated prior to death of the assured. The learned trial Judge also came to the conclusion that the terms and conditions contained in the loan bond did not become part of the terms and conditions of the original insurance policy and that the letter dated 29.7.1970 admitting the claim of the plaintiff's was written under mistake and wrong calculations which was not in accordance with the various terms of the agreement, and after considering the various terms of the insurance policy and clauses of the loan bond, the claim of the plaintiff's was negatived by the learned trial Judge and the suit came to be dismissed.

9. On appeal, the appellate Bench which heard C.A. No. 256/78 differed with the finding of the learned trial Judge and came to the conclusion that the only amount which had become payable on the death of the assured was the premium due, interest on premium due and the interest payable on the loan which even, according to the defendant, amounted to Rs. 12,676.29 only while the surrender value payable as on the date of death of the assured was Rs. 15,875.50. Hence,.there was sufficient find available on the death of the assured to adjust the dues of the assured towards the premium dues, interest thereon and the interest on loan payable. Hence, the policy could not have been treated as having lapsed. The appellate court while interpreting Clause 4 of the loan bond came to the conclusion that since the defendant had not enforced its right under the said clause for repayment of the principal amount of loan, the said amount of Rs. 12,510 had not become due on the date of death of the assured. Hence, the same could not have been added on for the purpose of calculating the total amount due from the assured while adjusting the amount due from the surrender value. It came to the conclusion that it was open to the defendant to have exercised its right under Clause 4 of the loan bond, giving stipulated time to the assured to repay the said loan amount with interest due, and having not chosen to do so, it was not open to the defendant to add on the said principal amount of loan to the other dues for the purpose of adjusting the same towards the surrender value. In view of the said finding the appellate court allowed the appeal, setting aside the judgment and decree of the learned trial Judge and decreed the suit with costs for a sum of Rs. 1,02,813.71. It, however, negatived the claim of the plaintiffs for the pendente lite interest on the said sum. A future interest of 6% per annum on the decreed amount however was granted.

10. In this appeal before us on behalf of the defendant it was contended that as per the automatic non-forfeiture clause found in the terms of the policy, the defendant was entitled to deduct not only the premium becoming due when not paid within the days of grace but all other amounts due to the Company by way of loans, premia, interest or otherwise. Therefore, when so calculated, the amount due from the assured on her death exhausted the surrender value. Hence, the policy in question had automatically lapsed prior to death of the assured and the claim of the plaintiffs is not sustainable in law. It was contended on behalf of the plaintiffs that the judgment under appeal does not call for interference and that the defendant had no right to add the principal amount of the loan to the amount due under the automatic non-forfeiture clause without having invoked their right under Clause 4 of the loan bond. It was also contended on behalf of the plaintiffs that the principal amount under the loan having not become due and payable, there was no obligation on their part to repay the said amount at the time of death of the assured.

11. We have heard learned Counsel for the parties. There is no dispute between the parties that if the principal amount of loan is not to be taken into account while calculating the dues from the assured for the purposes of adjusting the surrender value, then the policy of the assured would not have lapsed. Therefore, only question for our consideration is whether the principal amount of the loan had become due and payable on the relevant date.

12. For the purpose, it is necessary to examine some of the clauses of the insurance policy and the loan bond which are extracted below:

13. In insurance policy, the following clauses are to be considered :

Surrender value. After at least three annual premiums have been paid but in respect of policy on which premiums are payable for a term not exceeding 10 years after two annual premiums have been paid, this policy is in force, can be surrendered for its cash value which will be quoted on application. The minimum guaranteed surrender value of the Policy inclusive of any subsisting reversionary bonus already attached to the Policy shall be 30% of the premiums paid excluding the first year's and extra premium, if any. Any debt standing against the Policy will be the first charge on the surrender value. Loan : Loans will be granted at 6.25% per cent interest per annum compounded half yearly on security of the policy, otherwise unencumbered, up to 90 per cent of the Surrender Value for a sum not less than Rs. 50/- and in multiples of Rs. 5 No. loan will be granted under policies with minor beneficiaries or assignees.

Automatic Non-forfeiture : If during the period this policy has a surrender value, a premium becoming due be not paid within the days of grace, the amount of surrender value according to the Company's scale of determining the same, after deducting all moneys due to the company for loans premiums, interest or otherwise will be applied without any request on the part of the policyholder towards premiums as they fall due, provided the clear surplus surrender value is sufficient to cover the unpaid premium. The Company will have a first charge on the Policy for the premiums so advanced with interest at 6.25 per cent per annum compounded half yearly.

14. The terms of the loan bond which require consideration for the purpose of deciding the above points are as follows :

1. That the said policy shall be held by the said Corporation, their successors and assigns as security for the repayment of the said advance and of the interest thereon as hereinafter mentioned and of all expenses which may be incurred in connection therewith;

2. That the said advance shall not be repaid within a period of six months from the date on which the loan is settled;

3. To pay interest to the said Corporation, their successors and assigns at the office mentioned in the said schedule at the rate of 6% per annum compounding half yearly on the said advance, the first payment of interest to be made on the date specified in the said schedule.

4. When called upon to make repayment at the said office of the said advance with all interest which may be due thereon on being given three months notice to that effect.

5. That the Corporation, their successors and assigns shall not be bound to accept repayment of the said advance unless tendered in full.

> 6. That in the event of failure to repay the said advance when required as aforesaid or to pay interest in terms of these presents on the dates hereinbefore mentioned or within one calender month after each due date respectively the said policy shall be held without the necessity of any notice being given to be forfeited to the said Corporation, their successors and assigns, the Corporation shall be entitled to apply the surrender value allowable in respect of the said policy in terms of their Regulations and Conditions in Payment of their said advance, interest and expenses, the balance, if any, of such surrender value to be accounted for to the party entitled thereto.

15. It is the common case of the parties that surrender value of the policy as calculated under the terms of the policy on the relevant date was Rs. 15,875.50 and the amount due from the assured on the said date without adding the principal amount of loan was Rs. 12,676.29. The bone of contention between the parties, therefore, is whether on the relevant date the principal amount of loan had become due and payable.

16. The loan in question was advanced to the assured under the terms and conditions of the insurance policy read with the terms of the loan bond Neither the insurance policy nor the loan bond specifically fixed a period of repayment of the loan in question. On the contrary, the second term of the loan bond specifically says : "the said advance shall not be repaid within a period of six months from the date on which the loan is settled." While Clause 3 thereof obligates the borrower to pay interest to the Corporation @ 6% per annum compounding half yearly on the said advance, it also stipulates that the first payment of interest should be made on the date specified in the said Schedule. Therefore, it can be said that so far as the interest on loan is concerned, the due date is as specified in the Schedule while in regard to the repayment of the principal amount of loan, Clause 4 of the loan bond specifies that the same shall be paid when called upon to make repayment at the said office of the said advance with all interest which may be due thereon on being given 3 months' notice to that effect. It is not the case of the defendant that they had invoked the right under this clause giving the time stipulated therein, and thereby the loan amount with interest had become due and payable on the relevant date. On the contrary, the defendant relies solely on the automatic non-forfeiture clause in the insurance policy to establish its right to adjust the principal amount of loan also. Therefore, the contention of the defendant is that in view of the words used in the insurance policy "all moneys due to the Company" it has the right to adjust the principal amount of the loan also whenever a situation arises for invoking automatic non-forfeiture clause. The defendant also contends that it being a public authority, a liberal and wider meaning should be attributed to the expression "moneys due" as found in the automatic non-forfeiture clause of the insurance policy. Reliance was placed also on the meaning of the words "amount due" and "amount payable" as found in various dictionaries. But, we are of the opinion that it is not always possible to be guided by the meaning of the words as found in the dictionary while resorting to interpret the actual meaning of a word found in an agreement between the parties. In our opinion, while construing the meaning of a particular word found in an agreement between the parties the intention of the parties to the document in question will have to be given necessary weightage and it is not possible to give a wider and liberal meaning merely because one of the parties to the said agreement is a public authority. As stated above, the defendant advanced the loan amount under an

authority given to it in terms of the insurance policy. Since the loan in question is in the nature of an advance of the security of the policy, under the terms of the policy as well as the loan bond, the defendant is only authorised to recover the principal amount of loan either while settling the amount due under the policy or if it so desires, by invoking its right under Clause 4 of the loan bond. In the instant case, since the defendant had not invoked its right under Clause 4 of the loan bond, in our opinion, it must be construed that the loan amount became payable only when the defendant's obligation to pay the assured amount had occurred which in the instant case, was on the death of the assured. This view of ours is further supported by the fact that even though according to the defendant the policy lapsed on 1.6.1969 (the relevant date) a date much prior to the death of the assured the defendant did not take any steps to recover the loan amount by invoking Clause 4 of the loan bond. This only shows that even the defendant did not understand that the loan amount had become due and payable on the relevant date. At this stage, it is also to be noted that as per Clause 4 of loan bond the borrower was to be given three months' time to discharge the loan if the Company wanted to loan to be discharged. This clause being in the nature of an agreement between the parties until such notice period is given to the plaintiffs, it cannot be said that the principal amount of loan had become due and payable. Therefore, the words "all moneys due" found in the automatic non-forfeiture clause will have to be construed to mean such amounts which have become not only due but also payable under the terms of the agreement. If so construed, then in our opinion so far as the principal amount of loan is concerned, same had not become due and payable on the relevant date and defendant is not entitled to deduct the same from the surrender value.

17. In our opinion, there is also no force in the argument of the defendant that a liberal and wider meaning should be given to the expression "amount due and payable" because one of the parties to the agreement is a public authority. This view of ours is also supported by a decision of this Court in the case of Smt. Shashi Gupta v. L.I.C. AIR 1995 SC 1367 wherein it is held that while interpreting the terms of the insurance policies if two views are possible, courts will not (sic) accept the one which favours the policy holders.

18. If it is so held then it is an admitted fact that on the relevant date as well as on the date when the original assured died, the surrender value available on the policy of the assured was more than sufficient to adjust the premium due, the interest on the belated payment of premium and also the interest that had become payable on the loan amount. Therefore, there was no question of the insurance policy in question having automatically lapsed even prior to the death of the assured. We are in unison with the finding recorded by the appellate Bench in this regard. Hence, this appeal fails and the judgment and decree of the appellate court is confirmed but without costs.

2. C.A. No. 8588 of 1983 :

> 19. In this appeal, the plaintiffs have challenged the judgment of the appellate Bench of the Calcutta High Court which had rejected the prayer of the plaintiffs for grant of pendente lite interest on their claim. Such rejection being based on the facts and circumstances of the case, we are of the opinion that there is no error in exercise of discretion on the part of the appellate court. Therefore, this appeal also fails and is hereby dismissed. No costs.