



2025:DHC:5798



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment reserved on: 07.07.2025

Judgment delivered on: 18.07.2025

+ CM(M) 2509/2024

THE NEW INDIA ASSURANCE CO. LTDPetitioner

versus

M/S INTERWEAVE FASHIONS (P) LTDRespondent

Memo of Appearance

For the Petitioner: Mr. J P N Shahi, Advocate.

For the Respondent: Mr. Manoj Singh, Advocate.

CORAM:

HON'BLE MR. JUSTICE MANOJ JAIN

JUDGMENT

MANOJ JAIN, J

1. M/S Interweave Fashions (P) Ltd (respondent No.1 herein) had taken a Fire Insurance Policy from New India Assurance Co. Ltd. (hereinafter referred to as Insurance Company).
2. The policy covered its stocks, building, plant and machinery for the period from 16.05.2005 to 15.05.2006. The risk covered was of Rs. 92 lacs, which included insurance of stock as well.
3. Sum insured towards stock was of Rs. 60 lacs.
4. On 23.09.2005, when the abovesaid Insurance Policy was valid and subsisting, an incident of fire took place at the plant of respondent No.1, resulting in damage to their stocks, machinery and building.
5. According to M/S Interweave Fashions (P) Ltd (hereinafter referred to as complainant), the total loss was to the tune of Rs. 16,40,991/-.
6. The Insurance Company, in order to assess the loss and to investigate



the claim received from the complainant, appointed a Surveyor (*M/s Atul Kapur and Company*).

7. On the basis of report of such Surveyor, the Insurance Company remitted a sum of Rs. 2,20,339/- directly to Punjab National Bank, the banker of the complainant, in respect of the fire claim in question, as full and final settlement of said claim.

8. Feeling aggrieved, a complaint was filed by the complainant (CC No. 1133/2006) before learned District Consumer Disputes Redressal Forum, New Delhi.

9. Such complaint was allowed on 15.05.2009.

10. The fire in question is not in dispute.

11. On account of fire in question, unfortunately, two of the workers of complainant company lost their lives and the supposed cause of the fire was electric short-circuit which resulted in garments catching fire due to the inflammable solvents/petrol lying there, meant for cleaning purposes.

12. The issuance of insurance policy is also not denied by the Insurance Company.

13. According to the complainant, the total loss was of Rs. 16,40,991/- lacs and their stock of 5,138 garments was destroyed in fire.

14. The entire issue revolves around the number of garments.

15. Fact remains that the Surveyor inspected the fire affected room which was found almost totally destroyed and there was no salvage of garments and stock. One drycleaning machine and portion of building was also found badly affected. Therefore, it also noted that the quantity of the garments could not be physically identified, being badly burnt.

16. Though, according to complainant the loss was of 5,138 garments, the



Surveyor, on the basis of the enquiry made from the concerned production in-charge and, presuming some tinkering with the record, formed a view that the loss was only of 1500 pieces, which were lying in the fire-affected area.

17. It was in the abovesaid backdrop that the loss was, eventually, assessed as Rs. 4,73,097/- instead of Rs.16,40,991/- lacs.

18. The evidence was led by both the parties before the learned District Forum. *While allowing the complaint, learned District Forum observed that the Insurance Company was the paymaster of the Surveyor and such Surveyor could not have displeased his such master.* It also observed that such report was not binding on the forum. It also recorded that Surveyor had also admitted, in its Report, that the loss, on account of fire, was to the tune of Rs. 16,40,991/- and, therefore, it could not have been reduced.

19. It noted that Surveyor had nowhere mentioned the reasons for reducing the claim to a meagre amount and, resultantly, insurance company was directed to pay the balance amount in terms of the claim lodged by the complainant. The complainant was given an additional sum of Rs. 1,00,000/- towards deficiency in service, mental agony and harassment and another sum of Rs. 10,000/- was paid towards cost of litigation.

20. On appeal filed against the abovesaid order by Insurance Company, the learned State Commission went on to hold that the report given by the Surveyor had been overlooked and the District Forum had not given any proper reason for not accepting the same. It also observed that the report was exhaustive and did not appear to be one-sided and in view thereof, it allowed the appeal filed by the Insurance Company. As regards compensation, it observed that it was not a case where compensation was to be granted and that only interest was to be granted and, therefore, while allowing the appeal



and directing the payment of the balance amount, it also directed the Insurance Company to pay such amount with interest @ 10% per annum from the date of lodging the complaint till the date of payment.

21. Aggrieved by the abovesaid order passed learned State Commission, both the parties i.e. New India Assurance Co. Ltd and complainant, filed revision petitions which were registered as Revision Petition No. 344/2013 and Revision Petition No. 366/2013 respectively.

22. Both the abovesaid Revision Petitions have been disposed of *vide* common order dated 19.04.2023 and as per such order passed by learned National Consumer Disputes Redressal Commission (in short "NCDRC"), the order passed by the learned District Forum has been revived and the order passed by learned State Commission has been set aside.

23. Primarily, such order is under challenge.

24. Insurance Company challenged such order, earlier also, by filing a writ petition before this Court. It was, however, withdrawn on 01.09.2023 with liberty to file review before learned NCDRC. Such review was dismissed on 11.10.2023 holding that there was no error apparent on record and that the Insurance Company merely wanted re-appreciation of evidence, which was not permissible.

25. Such order is also under challenge.

26. However, there are few other important facts which also need to be mentioned.

27. Though, learned NCDRC had allowed the revision filed by complainant and revived the order passed by learned District Forum, complainant also filed review with prayer to grant interest, which had not been granted by the learned District Forum. Such review was dismissed by



learned NCDRC on 05.06.2023. Complainant challenged such dismissal before Hon'ble Supreme Court but was directed to approach this Court for appropriate relief. It filed a writ petition under Article 226 of Constitution of India before this Court which was treated as one filed under Article 227 of Constitution of India. Such petition was dismissed on 03.01.2024 holding that view taken by learned NCDRC was a plausible one, not warranting any interference.

28. Fact remains that the complainant has challenged the above order of this Court and his SLP is pending adjudication.

29. There is no denying the fact that scope of interference under Article 227 of Constitution of India has to be under exceptional circumstances.

30. Insurance Company, the petitioner herein, is required to effectively demonstrate existence of manifest error of a kind, resulting in complete miscarriage of justice.

31. Re-appraisal of evidence cannot be expected, while invoking supervisory jurisdiction.

32. The limited grievance raised herein is that there was no reason to have discarded the report of surveyor and that such fact was not rightfully pondered upon by learned NCDRC.

33. Thus, clearly, Insurance Company is seeking re-appraisal of evidence which is not permissible.

34. No doubt, the claim was substantially reduced by the Insurance Company on the basis of the report of surveyor.

35. Written synopsis has also been filed by both the sides.

36. It is clear from such synopsis that the complainant-company had examined one Mr. Satish Rakyan in order to substantiate its claim and, in his



affidavit, he referred to the objections taken by the surveyor which, according to him, were frivolous and were even duly replied to by the complainant in detail. He deposed that the Surveyor visited the premises of the complainant again and all the queries raised by him were duly replied to, to his satisfaction and copies of challans for 5,138 pieces were duly provided to the Surveyor but despite that, the claim was processed for a lesser amount in an arbitrary manner.

37. In such a situation, when the complaint was pending before learned District Forum, Insurance Company, in its defence evidence, should have submitted the affidavit of such Surveyor.

38. Admittedly, Insurance Company did not submit any affidavit of concerned Surveyor at the evidence-stage, the Insurance Company should have examined its surveyor in its defence as the entire case was based upon the report given by him and instead of examining him, one Divisional Manager submitted his affidavit and thus the best evidence has, somehow, been held back.

39. Evidently, omission in this regard goes against the Insurance Company.

40. This Court, therefore, does not find any compelling reason to interfere with the matter, particularly when the view in question seems to be a plausible view.

41. However, learned District Forum was not justified in commenting that Surveyor, being on pay-roll of Insurance Company, could not have displeased them and, therefore, given his report in their favour.

42. Surveyors cannot be branded as puppets.

43. They work impartially and independently and, such surveyors and



loss-assessors, are mandated to comply with *code of conduct* in respect of their duties, responsibilities and other professional requirements, as specified in the regulations made under Insurance Act, 1938 and therefore, surveyor cannot be castigated in such a general and vague manner.

44. This Court, therefore, does not endorse such sweeping remarks.

45. However, the report of surveyor cannot either be said to be the sole deciding and governing factor.

46. The Hon'ble Supreme Court in *National Insurance Company Ltd. Vs. Hareshwar Enterprises*: 2021 SCC OnLine SC 628 has observed that, though the assessment of loss by any approved surveyor is a prerequisite, the report of surveyor is neither final word nor conclusive and that such report is not binding and, it is for the adjudicating authority to assess whether the evidence is credible and whether it can be relied upon or not while further holding that report can be relied upon only if it inspires confidence. Here, such report was not relied upon by the District Forum and National Commission.

47. As noted already, there does not seem to be any manifest error of law or any slip-up in exercise of jurisdiction. Insurance Company cannot expect this Court to sit as an appellate court and to re-appreciate the evidence, particularly when the view of learned NCDRC seems to be a plausible one. In *Omaxe Buildhome (P) Ltd. v. Ibrat Faizan* : 2022 SCC OnLine Del 944 this Court observed as under:

“13. Needless to say, any party that invokes the jurisdiction of this Court under Article 227 of the Constitution subjects itself to the rigour of the provision. There can be no gainsaying the position, correctly urged by Mr Pal, that the jurisdiction of the High Court, under Article 227, is not appellate but merely supervisory. The parameters within which such jurisdiction is required to be exercised stand crystallised



in the decisions of the Supreme Court in Estralla Rubber v. Dass Estate (P) Ltd. [Estralla Rubber v. Dass Estate (P) Ltd., (2001) 8 SCC 97] , Garment Craft v. Prakash Chand Goel [Garment Craft v. Prakash Chand Goel, (2022) 4 SCC 181 : (2022) 2 SCC (Civ) 424] and Puri Investments v. Young Friends & Co. [Puri Investments v. Young Friends & Co., 2022 SCC OnLine SC 283]...”

48. In *Garment Craft (supra)*, Hon’ble Supreme Court has observed that the High Court, while exercising supervisory jurisdiction, does not act as a court of first appeal to re-appreciate, re-weigh the evidence or facts upon which the determination under challenge is based. It observed that supervisory jurisdiction is not to correct every error of fact or even a legal flaw when the final finding is justified or can be supported and, thus, High Court is not to substitute its own decision on facts and conclusion, for that of the *fora* below.

49. Moreover, the present petition seems to be in the nature of counterblast as the present petition has been filed only after the Insurance Company received notice of SLP filed by the complainant. Importantly, the execution petition has already been disposed of as satisfied though aspect of grant of interest is pending adjudication and the Hon’ble Supreme Court is awaiting the outcome of the present petition.

50. Be that as it may, finding no reason, much less a compelling one to interfere with the impugned order, the petition is dismissed.

**(MANOJ JAIN)
JUDGE**

JULY 18, 2025/sw/SS