

D/L. 14.
November 30, 2023.
MNS.

WPA No. 22596 of 2023

M/s Rajnandini and another
Vs.
State of West Bengal and others

Mr. Amitava Ghosh,
Mr. Sreekumar Chakraborty

... for the petitioners.

Mr. Sanjay Paul

...for the Insurance Company.

Mr. Abhishek Banerjee,
Ms. Parna Roy Choudhury

...for the Bank

1. The affidavit-of-service filed in Court today be kept on record.
2. Learned counsel for the Insurance Company seeks to file an affidavit-in-opposition to the writ petition.
3. However, in view of the primary materials relied on by the parties being annexed to the writ petition, such prayer is refused.
4. The grievance of the petitioners is that fire broke out at the shop of the petitioners, upon which an insurance claim was made.
5. On an earlier occasion, despite the claim of the petitioners, the same was not being

processed by the Insurance Company, for which an order was passed in a writ petition directing the Insurance Company to process the claim of the petitioners.

6. However, thereafter despite the Divisional Fire Officer, Paschim Medinipur Division, West Bengal Fire & Emergency Services having given a report which palpably substantiates that fire broke out in the petitioners' ground floor garment shop on the relevant date, the Insurance Company has repudiated such claim on frivolous grounds.
7. Learned counsel appearing for the Insurance Company submits that the petitioners have made a money claim, for which the appropriate remedy of the petitioners lies before the civil court. In view of such availability of equally efficacious alternative remedy, the writ petition ought to be dismissed.
8. It is further submitted that disputed questions of fact, which are involved in the matter, cannot be entertained by the writ court upon taking evidence.
9. A perusal of the report dated September 13, 2022, authored by the Divisional Fire Officer

of the Paschim Medinipur Division, West Bengal Fire & Emergency Services, annexed at page 28 of the writ petition, indicates that as per the said report, fire broke out in a ground floor garment shop of a two storied building containing ladies garments. Most of the ladies' garments, according to the report, were badly damaged due to heat and water. As such, the Fire Services Authorities, who are disinterested parties, in a report contemporaneous with the incident, clearly disclosed that a fire had actually broken out in the petitioners' ground floor shop on the relevant date.

10. In the impugned repudiation dated August 28, 2023, also annexed to the writ petition at page 43, the Insurance Company, apparently relying on an investigation report by an internal investigator of the Insurance Company, refused to honour the claim of the petitioners on the following grounds :

- 1. After 04 days of incident, you have lodged a written intimation to Kotwali P.S about the incident.*
- 2. Local shopkeepers were do not know anything about the fire in this ship.*

3. *After the fire you took some burn garments in your own car and threw these into kangsabati river and took some burn garments to your house which is quite ridiculous.*

4. *After opening few bales at your house, some kerosine smelled found.*

11. A bare perusal of the said grounds shows that the same are patently frivolous and flimsy. The first ground, for example, is that the petitioners had lodged intimation to the concerned Police Station after four days of the incident. Nothing hinges on such delay of four days insofar as the Insurance claim is concerned, nor does the said miniscule delay *per se* vitiate the allegation of the petitioners that the fire had actually broken out at the petitioner's shop on the relevant date.

12. The second ground that local shopkeepers did not know anything about the fire in the shop is a palpable misstatement, apparently founded on the investigation report, since the report of the West Bengal Fire & Emergency Services clearly vindicates the stand of the petitioners in that regard.

13. The third and fourth grounds of refusal are not only flimsy but border on the ridiculous. The third ground is that after the fire broke out, the petitioners took some burnt garments in their car and threw those into the Kangsabati river and took some burnt garments to their house which according to the Insurance Company is "quite ridiculous". The fourth ground is more absurd, being that after opening few bales at the petitioners' house, some kerosene smell was found.

14. Such grounds are not tenable for a valid refusal of the claim of the petitioners.

15. There is nothing at all to indicate any foul play, as the allegations of the Insurance Company that kerosene smell was found from the bales which were at the petitioners' house referred to much after the date of the incident and could not have any bearing on the fire. Read as a whole, the grounds of repudiation by the Insurance Company are absurd.

16. Hence, the said grounds of repudiation cannot be sustained.

17. However, since as rightly pointed out by the Insurance Company, the writ court cannot assess the actual amount of damages, the

Insurance Company ought to be given a second chance to assess the actual amount payable to the petitioners on the basis of the loss suffered by the petitioners.

18. Hence, WPA No. 22596 of 2023 is allowed, thereby setting aside the repudiation of the petitioners' claim for insurance dated August 28, 2023 by the Insurance Company. The Insurance Company shall, upon assessing the loss actually suffered by the petitioners due to the fire by giving an opportunity to the petitioners to produce relevant documents and other materials to substantiate such loss, decide on the quantum of compensation/insurance claim payable to the petitioners on the basis of the insurance policy of the petitioners.

19. For such purpose, the Insurance Company shall give an opportunity to the petitioners to produce relevant documents and give a personal hearing to the petitioners within three weeks from date. Thereafter, the Insurance Company shall proceed to assess the loss in terms of the above direction within three weeks thereafter. After the expiry of the above mentioned six weeks, the Insurance

Company shall immediately take steps to disburse to the petitioners the amount of claim which according to the assessment of the Insurance Company the petitioners are entitled to under the concerned insurance policy.

20. There will be no order as to costs.

21. Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)