

**HIGH COURT OF JAMMU AND KASHMIR  
AT JAMMU**

CIMA No. 632/2010

CMA Nos. 937/2010 and 591/2012

Date of decision: 28.08.2012

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National Insurance Co. Ltd.

v.

M/s Harjit Rice Mills.

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Coram:

***Hon'ble Mr. Justice M. M. Kumar, Chief Justice***

***Hon'ble Mr. Justice Muzaffar Hussain Attar, Judge***

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**Appearing counsel:**

For the appellant(s):      Mr. J. A. Kawoosa, Advocate  
   Mr. Kamal Gupta, Advocate

For the respondents:      Mr. Vishnu Gupta, Advocate

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i) Whether approved for Law Journal ?      **Yes**

ii) Whether approved for publication in Press?

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Muzaffar Hussain Attar:

1. Paddy bags, which were stacked in the mill premises of the respondent, were destroyed as same were engulfed in fire. The fire incident took place in the year 1992. The Canara Bank which had advanced loan for the purchase of stocks had obtained insurance cover from the appellant company for the benefit of the respondent. The appellant company in terms of insurance contract had undertaken to indemnify the respondent in the event of loss suffered to the extent of Rs. 15.00 lacs. Respondent informed the appellant-insurance company about the loss suffered and also

informed the concerned Police Station about the fire incident. On receipt of information, the appellant appointed Surveyor, namely M/s SSB Surveyors and Consultants, who visited the spot and after getting the consent of the respondent assessed the loss at Rs. 8,96,500/-, which was to be indemnified by the appellant. The report of the surveyor appointed by the appellant did not mature into settlement of the claim of the respondent and after more than 15 months from the date of the incident, the appellant hired services of private security agency, namely, M/s Dogra Placement and Security, to investigate the genuineness of the claim. The said security agency submitted its report, wherein, it was stated that the electric short circuit was not the cause of the fire which broke out in the premises of the respondent, but was due to some mischievous act. It was also reported that the quantity of stock alleged to have been damaged could not be physically stacked in the godown of the respondent Mill. On the basis of this report the appellant repudiated

claim and information in this regard was sent to the Canara Bank.

2. Respondent filed the complaint before the J&K State Consumers Redressal Commission (for short "Commission"). The Commission vide its order dated 17.01.1997 directed the appellant to pay the respondent sum of Rs. 8,96,500/- along with interest @ Rs. 18% Per annum. The interest was to be paid from the date of loss till the final payment was made. The award passed by the Commission was challenged before this court in a Statutory Appeal under Section 17 of the J&K Consumer Protection Act, 1987 (for short **"Act of 1987"**). The CIMA No. 31/1997 was disposed of by this court vide judgment dated 12.07.1999 and the award of the Commission was modified, inasmuch as, interest rate was reduced from 18% to 12% per annum and it was ordered that same shall be payable from 01.01.1994. The appellant challenged the judgment of this court before the Hon'ble Supreme Court by way of SLP, which was decided by the Hon'ble Supreme Court on

25.07.2005. The orders passed by this court as also by the Commission were set aside and matter was remanded to the Commission. After the remand of the case, the Commission passed the award on 27.08.2010, whereunder, appellant was directed to pay the amount of Rs. 896500/- with interest at the rate of 6% per annum which interest was directed to be computed after two months from the date of surveyors report. Respondent was also awarded litigation expenses in the sum of Rs. 10,000/- . The payment of amount of Rs. 2.00 lacs which the respondent had received in pursuance of the orders of the Hon'ble Supreme Court was ordered to be deducted from the award amount. The Commission in its award/order directed for recovery of the amount of interest as well as litigation expenses from the pay/pensionary benefits of the officers/officials of the company in the manner it is provided in the award/order. It is this order, which is called in question, in this statutory appeal.

3. Mr. Kawoosa, learned counsel appearing for the appellant-company invited the attention of the court to the judgment of the Hon'ble Supreme Court passed in this case which is reported in (2005) 6 SCC 45. Learned counsel referred to paragraph 6 of the judgment. Learned counsel submitted that the Hon'ble Supreme Court was of the view that the Commission should have given an opportunity to the appellant to prove the investigation report. Learned counsel also submitted that Hon'ble Supreme Court ruled that Section 64-UM of the Insurance Act would not stand in the way of the appellant in establishing that the claim was fraud or that it was a case of deliberately causing fire, so as to lay foundation for an insurance claim. The Hon'ble Supreme Court further observed that the Commission did not apply its mind to the grievance of the appellant that the first police investigation was reported to be perfunctory and a fresh proper investigation was recommended. It was also observed that discrepancy in the capacity of Godown and

the possibility that what was lost was paddy husk, should have been the reason for the Commission to make proper enquiry before deciding to accept the surveyors report in this case. The Hon'ble Supreme Court further observed that High Court, as appellate authority, had the duty to satisfy itself that no fraud was involved and the claim was genuine and sustainable. Learned counsel also submitted that author of the report of the private investigating agency was examined by the appellant before the initial award was passed and that without considering the report and without applying its mind to the entire conspectus of the case, the impugned award has been passed. Learned counsel extensively referred to the report of the private investigating agency and submitted that the Engineer, who was involved by the said private agency, had opined that the Godown of the respondent had not the capacity of stacking the stocks, which were alleged to have been destroyed in the fire incident. Learned counsel, accordingly, submitted that

claim of the respondent is a fraud claim and submitted that impugned award deserves to set aside and the complaint filed by the respondent merits dismissal.

4. Mr. Gupta, learned counsel appearing for the respondent submitted that no material/evidence was placed before the Commission by the appellant for production of which opportunity/liberty was given by the Hon'ble Supreme Court while allowing the appeal of the appellant. Learned counsel submitted that when the incident of fire was reported to both the insurance company and to the police concerned, the matter was enquired into by the surveyor appointed by the appellant company and also by the police concerned. Learned counsel submitted that police concerned, while conducting the investigation, involved the Government Engineer also so as to enter into proper satisfaction about the claim of the respondent. Learned counsel submitted that both the Surveyor appointed by the appellant as also the police concerned, a Statutory

authority, after conducting proper verification/investigation came to the conclusion that the fire broke out because of short circuit and 3000 paddy bags stacked in the Godown of the respondent were damaged. Learned counsel submitted that the reference made in the report of the private agency about the recommendations of the Dy.S.P. cannot be relied upon as the area where fire took place did not come within his territorial jurisdiction and that he had not signed any report and no such material was produced before the Commission. Learned counsel, accordingly, submitted that the appeal be dismissed.

5. Before dealing with the submissions of the learned counsel for the parties, it is apt to reproduce the paragraphs 6 and 7 of the judgment of Hon'ble Supreme Court passed in this case:

6. We are of the view that the State Commission should have given an opportunity to the appellant before us to prove the investigation report. Section 64-UM of the Insurance Act cannot stand in the way of the Insurance Company in establishing that the claim was a fraud on the



Company, or that it was a case of deliberately causing a fire so as to lay the foundation for an insurance claim. Similarly, the Commission did not apply its mind to the aspect highlighted that the first police investigation was reported to be perfunctory and a fresh, proper investigation had been recommended. Similarly, the discrepancy in the capacity of the godown and the possibility that what was lost was only or mainly paddy husk, should have persuaded the Commission to make a proper enquiry before deciding to accept the surveyor's report in this case. The High Court, in our view, has failed to exercise its appellate jurisdiction properly. It failed to see that it had the duty as the Appellate Authority to satisfy itself that no fraud was involved and that the claim was genuine and sustainable. We are of the view that adequate prima facie material was available to warrant a proper enquiry on that question. In this situation, we are satisfied that interference is called for in this appeal.

7. We are satisfied that the proper course to adopt is to set aside the decisions of the High Court and the State Commission and to remand the claim for a fresh enquiry and decision by the Commission. Since, we are of the view that a proper enquiry and a fresh decision by the initial authority itself is called for, we refrain from discussing the relevant aspects argued before us, so as to ensure that no prejudice is caused to either side. Now that the claim comes within the limit of the pecuniary jurisdiction of the State Commission, we are satisfied that the proceedings can be remanded to the State Commission itself for a proper decision on all questions involved including the question of the cause of fire. We, therefore, allow this appeal and setting aside the decisions of the High Court and that of the State Commission, remand the claim of the respondent herein to the

State Commission for an investigation de novo. The State Commission will give the parties effective opportunity to lead whatever evidence they may want and decide the claim afresh, including its sustainability, on the basis of the evidence that may be adduced. The parties will appear before the State Commission on 19-09-2005. We make no order as to costs.”

6. The edifice of a society, which is governed by rule of law, is founded on the virtues and the principles of honesty, fairness and justice. Amongst other negative aspects, “**fraud**” is anti-thesis to these virtues and ideals of life. The benefit which is born from the bosom of ‘fraud’ cannot be permitted to be retained by any person. Any benefit secured by fraudulent means on its discovery, has to culminate in action of denuding and stripping-off, the beneficiary of all such benefits. The ‘fraud’, it is said, denudes even the Court judgments and orders of its force. In essence any judgment/order obtained even from legally constituted Tribunals/Forums will be rendered inconsequential on the proof of same having been obtained by practicing fraud. The efforts to obtain benefits through fraudulent means have to be repelled and

scuttled with all permissible lawful force. When it is alleged that the fraudulent claim is made before a duly constituted Tribunal/Forum, then person, who alleges the same, has to prove it in accordance with settled legal norms. It is one thing to allege that the claim is based on fraud, but such a claim in order to mature into positive results has to cover that distance in accordance with the settled principles of law.

7. In this case, it is alleged by the appellants that claim of the respondent, that his stocks in trade were damaged, because of fire which broke out due to short circuit, was not correct and fraudulent claim was made to secure illegal benefits. In order to enable the Commission to record such a finding, a duty was cast on the appellant to lead evidence in support of such a claim. Before the Commission there was evidence of the Surveyor appointed by the appellant-company itself as also the report of the police investigation agency. The Surveyor was appointed immediately after the incident took

place and the police also swung into action immediately after the occurrence was reported to it. The appellant did not accept the report of its own surveyor but after a period of almost fifteen months the services of the private detective agency were hired and report of this agency shrouded the claim of the respondent in suspicion. The claim of the respondent was repudiated by the appellant on the basis of said report. The Hon'ble Supreme Court after making observations at paragraph 6 of its judgment (supra), at paragraph 7 while setting aside the decision of this court and the Commission, remanded the claim for fresh enquiry and decision of the Commission. Hon'ble Supreme Court took a view that for a proper enquiry and a fresh decision by the commission, it is refraining from discussing the relevant aspects argued before it so as to ensure that no prejudice is caused to either side. The matter was, accordingly, remanded to the Commission for an appropriate decision on all questions involved, including the question of cause of

fire. The commission was directed to give parties effective opportunity to lead whatever evidence they may want and decide the claim afresh. It was further directed that sustainability of the claim shall also be considered on the basis of evidence that may be adduced. After remanding the matter to the Commission, the appellant filed amended written statement, but did not lead any fresh or further evidence in support of their objections. Commission did not rely upon the report of the M/s Dogra Agency, inter alia, for the reason that: (a) it was a private agency; (b) licensed investigator was not entrusted with the job for conducting investigation; (c) service of the M/s Dogra Agency were hired to investigate the matter after a gap of 15 months from the date of occurrence; and (d) no fresh evidence was lead by the appellant.

8. The conjoint reading of paragraphs 6 and 7 of the judgment of Hon'ble Supreme Court, whereunder, the matter was remanded to the Commission for *de novo* investigation, leads to irresistible conclusion that despite availability

of report of M/s Dogra Agency before the Hon'ble Supreme Court, the assertion of the appellant that the claim of the respondent is founded on fraud was not accepted, but the matter was referred to the Commission and the Commission was directed to give effective opportunity to the parties to lead whatever evidence they may want. Admittedly, appellant did not lead any fresh/further evidence after the remand of the matter by the Hon'ble Supreme Court. Appellant had only filed an amended statement.

9. It is settled principal of law that pleading of the parties get transformed into a lawful decision when it is supported and substantiated by legal evidence. Mere filing of pleadings in absence of their proof by leading evidence would be inconsequential in law. The appellants though were granted opportunity by the Hon'ble Supreme court to lead evidence in support of their claim, failed to seize the opportunity. The report of M/s Dogra Agency couldn't be said to be of clinching nature, so as to enable the Commission to

formulate a view that the claim of the respondent is based on fraud. The evidence which was brought before the Commission in the shape of the report of the Surveyor appointed by the appellant company and of the concerned police agency did prove that the claim of the respondent was bona-fide and genuine and that stocks in trade which were lying in godown of the respondent did suffer damage because of the fire which broke out due to electric short circuit. M/s Dogra Agency on the other hand proceeded to investigate the matter after fifteen months of the incident. At such a distance of time, it does not stand to reason that M/s Dogra Agency could have come to conclusion which would engulf the claim of the respondent by suspicion that his stocks in trade were not damaged by fire in the manner it was claimed by him. Report of M/s Dogra Agency is based on hearsay evidence as Engineer to whom reference is made in the report has not filed any affidavit before the Commission in support of the claim of the appellants. In

absence of the affidavit of the Engineer upon whose opinion part of the report of M/s Dogra Agency is based, same cannot be accepted. The other most important aspect which is reflected in the impugned award is that vigilance wing of the appellant company investigated the claim of the complainant, but same, however, was not produced before the Commission and the Commission has also stated that it does not figure in any record. The appellant when it got the matter investigated through its own vigilance wing should have brought it to the notice of the Commission. Withholding of the said report from the Commission and this court leads to irresistible conclusion that the said report if produced before this court or the Commission would have definitely helped the claim of the respondent. The claim of the appellant that Dy.S.P. of a different area had recommended for fresh investigation of the case is contradicted by the learned counsel for the respondents by stating that such report was never signed by the said authority, is also



accepted, inasmuch as, the said alleged recommendation has not been brought to the notice of the commission. For what reason the appellant-company did not accept the report of their surveyor appointed by it, has not been put forth. In the aforementioned factual scenario, when the appellant despite having been granted opportunity by the Hon'ble Supreme Court to lead evidence to prove its allegations that the respondent claim is based on fraud, did not lead any evidence to prove the same, the award/decision of the Commission, impugned in this appeal, cannot be allowed to collapse on the unsubstantiated assertion of fraud.

10. For our above stated reasons, this appeal, being merit-less, is dismissed.

(Muzaffar Hussain Attar)	(M. M. Kumar)
Judge	Chief Justice

Jammu:  
28.08.2012  
Paramjeet