

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

FIRST APPEAL NO. 694 OF 2017

(Against the Order dated 22/12/2016 in Complaint No. 60/2013 of the State Commission
Haryana)

1. M/S. AADITYA INTERNATIONAL
THROUGH ITS PROPRIETOR KULDEEP RAJ ARORA,930
SECTOR 28
FARIDABAD
HARYANA

.....Appellant(s)

Versus

1. NEW INDIA ASSURANCE CO. LTD.
THROUGH ITS BRANCH MANEGER AAKASH
THRATERS COMPLEX, MOHAN ROAD,
BALLABHGARH,121004
FARIDABAD
HARYANA

.....Respondent(s)

BEFORE:

**HON'BLE MR. JUSTICE RAM SURAT RAM MAURYA,PRESIDING
MEMBER
HON'BLE BHARATKUMAR PANDYA,MEMBER**

FOR THE APPELLANT : MS. VISHAAKSHI GOEL, ADVOCATE
 MR. MANMOHAN GOEL, ADVOCATE
 MR. ARCHIT MITTAL, ADVOCATE

FOR THE RESPONDENT : MR. SALIL PAUL, ADVOCATE
 MR. SAHIL PAUL, ADVOCATE
 MR. SANDEEP DAYAL, ADVOCATE

Dated : 07 August 2024

ORDER

1. Heard Ms. Vishalakshi Goel, Advocate for the appellant and Mr. Salil Paul, Advocate for the respondent.
2. Above appeal has been filed against the order of State Consumer Disputes Redressal Commission, Haryana dated 22.12.2016, passed in CC/60/2013, dismissing the complaint.
3. As per office report, the appeal has been filed with a delay of 27 days. The appellant has filed IA/5089/2017 an application for condonation of delay. For the reasons mentioned in the application, IA/5089/2017 is allowed and delay condoned.
4. The complainant (appellant) is a partnership firm engaged in the business of dying and printing of fabrics in the name of Aaditya International located at a rented plot No.73, Sector-24, Faridabad, Haryana. The fabric of different customers/parties is held in trust by the complainant and returned back after processing the work. The complainant firm has taken

two insurance policies from the opposite party (1) policy No.312701/46/09/04/00000173 covering the risk from burglary for stock in trade, furniture, fixtures and fittings for sum insured of Rs.41/- lacs and (2) policy No.312701/11/09/11/00000283 Standard Fire and Special Perils Policy covering the risk for plant & machinery and accessories, electrical installations, furniture, fixture & fittings stock and stock in process including raw materials, finished/semi-finished goods owned or held in trust at the above location for sum insured of Rs.86/- lacs. The policies were valid from 24.12.2009 to 23.12.2010. The complainant got the policies renewed from 24.12.2010 to 23.12.2011 with the same terms and conditions. In the night of 5/6.11.2011 at about 2.00 am a devastating fire broke out due to electric short circuit in the premises of the complainant at plot No.73, Sector-24, Faridabad. At that time the employees were working in the factory. The fire was so extensive that it extended to the fabric on machine and destructed the entire unit including machinery, goods, stocks held in trust. The police and the fire authorities were informed immediately. The fire tenders could control the fire by 6.00 till then the stock, goods, stock held in trust, plant and machinery, FFF, stock of fabrics had burnt into ashes. The complainant intimated the incident to the opposite party, who appointed M/s J.C. Gupta & Co. Pvt. Ltd. as surveyor. He visited the spot on 07.11.2011, took photographs and collected the documents from the complainants. Thereafter, the surveyor made several visits and collected several documents from the complainant. The complainant submitted a claim of Rs.7561748/- (Rs.4155288/- for stock and Rs.3406460/- for plant and machinery). Although the salvage had no commercial value, the complainant was made to accept the salvage value of Rs.65000/-. As the complainant was in dire need of money, it accepted the salvage value. The surveyor assessed the loss of Rs.2946966/- to the plant and machinery. As the complainant was paying electricity charges as well as rent to the tune of Rs.1.5 lacs per month, it sent various letters and reminders the opposite party to expedite the claim. With regard to the fire policy, the opposite party did not honour the claim relating to the stock held in trust on the ground that the stock held in trust was not covered under the policy. In the fire policy for the period 24.12.2009 to 23.12.2010 the stock held in trust was covered under the policy. The policy was renewed by the opposite party for the period 24.12.2010 to 23.12.2011 without any change. However in policy there is no mention about the stock held in trust, which is a mistake on the part of the opposite party due to which the complainant has suffered a loss of Rs.4112113/-. In regard to the loss of plant & machinery the opposite party has paid an amount of Rs.1659635/-, which was received by the complainant under protest. Rs.1521825/- is still payable by the opposite party. The complainant sent a legal notice to the opposite party on 20.11.2012 for payment of the balance amount but in vain. Then the complainant filed consumer complaint No.60 of 2013 with the State Commission.

5. The opposite party contested the complaint by filing the written statement on the ground that when the policy was renewed for the period 24.12.2010 to 23.12.2011 the stock held in trust was not included, therefore, the loss suffered due to the stock held in trust was excluded from the claim. Balance claim of Rs.1659635/- was paid to the complainant. There was no deficiency in service on the part of the opposite party and the complaint is liable to be dismissed.

6. State Commission, by judgment dated 22.12.2016 held that there was deficiency in service on the part of the respondent (opposite party) and dismissed the complaint.

7. We have considered the arguments of the counsel for the parties and examined the record. The date of incident, cause of fire and the validity of the insurance policy on the date of incident have not been disputed by the parties. The only dispute is whether the complainant is entitled for indemnification of loss caused to the stock held in trust. The appellant alleged that the policy in question was only a renewed policy of the earlier policy under which stock held in trust was covered. The opposite party cannot remove the stock held in trust from the insurance coverage without the consent of the complainant. The opposite party stated that they have allowed the claim as per terms and conditions of the policy and the Court cannot change or rewrite the terms and conditions of the policy. It is not disputed by the respondent that in the proposal form the complainant has covered the risk to the goods held in trust and in the original policy loss to the goods in trust was covered. It is also not the case of the respondent that the goods held in trust were covered in the original policy by receiving additional premium. Thus, the insurance company cannot be permitted to exclude anything while renewing the policy. Supreme Court in **United India Insurance Company Limited Vs. Manubhai Dharmasinhbhai Gajera, (2008) 10 SCC 404 and Jacob Punnen Vs. United India Insurance Company Limited, (2022) 3 SCC 655**, held that the Insurer cannot unilaterally make a change in the renewal of the policy. The insurance company cannot take benefit of its own wrong. The State Commission erred in dismissing the complaint on the wrong premise, therefore, the impugned order is liable to be set aside.

ORDER

In view of above discussions, the appeal is partly allowed and the impugned order of the State Commission dated 22.12.2016 is set aside. The opposite party is directed to pay an amount of Rs.3093021/- as assessed by the surveyor for loss to the stock, with interest @ 9% from 14.09.2012 (the date of approval of the claim) within a period of two months from the date a certified copy is produced before it.

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RAM SURAT RAM MAURYA
PRESIDING MEMBER

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BHARATKUMAR PANDYA
MEMBER