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

\+ RFA 453/2022

NEW INDIA ASSURANCE CO LTD ..... Appellant
Through: Mr. Deepak Jaiswal, Advocate

versus

M/S AKUMS DRUGS & PHARMACEUTICALS LTD. ..... Respondent
Through: Mr. Ramesh Kumar, Advocate

CORAM:
HON'BLE MR. JUSTICE GAURANG KANTH

<u>O R D E R</u>

% **16.09.2022**

The hearing has been conducted through hybrid mode (physical and virtual hearing).

<u>CAV 290/2022</u>

Mr. Ramesh Kumar, Advocate appeared on behalf of the caveator.

Accordingly, the caveat stands discharged

<u>C.M. No. 41005/2022 (exemption)</u>

Exemption allowed, subject to all just exceptions.

Application stands disposed of.

<u>C.M. No. 41006/2022 (condonation of delay of 73 days in filing the appeal)</u>

Present application has been filed by the appellant seeking condonation of delay of 73 days in filing the present appeal.

For the reasons stated in the present application, the same is allowed.

Delay of 73 days in filing the present appeal is condoned.

Application stands disposed of.

RFA 453/2022 and C.M. No. 41004/2022 (stay)

The appellant (original defendant) is aggrieved by the impugned judgment and decree dated 11.03.2022 passed by learned Additional District Judge -10 in Suit No. 169/2016 titled as M/s. Akums Drugs & Pharmaceuticals Ltd. Vs. The New India Assurance Co Ltd., whereby the learned Trial Court was pleased to decree the suit in favour of the respondent (original plaintiff).

Learned counsel for the appellant submits that survey report submitted by the surveyors appointed under Section 64 UM under the Insurance Act, 1938 is an important piece of evidence and in the absence of any cogent evidence and material, the same cannot be brushed aside or departed with.

In the present case, the surveyors in his report in clear terms has concluded that the rain water entered into the store room from the rooftop through the broken and rusty drainage system and damaged the stocks.

The respondent failed to lead any independent evidence to establish and prove their claims or to challenge the findings and observations made by the surveyors.

Learned counsel for the appellant further argues that the learned Trial Court failed to appreciate that the Court while construing the terms of the insurance policy is not expected to venture into extra liberalism which may result in rewriting of contract and granting of claim which is not covered under the insurance policy.

It is also the contention of learned counsel for the appellant that the learned Trial Court erred in awarding interest @ 18 per cent per annum contrary to the law laid down by the Hon'ble Supreme Court in the case of ***Kaushmuma Begum Vs. New India Assurance Co. Ltd***. reported as ***(2001) 2 SCC 9***.

This matter requires consideration.

Notice.

Learned counsel for respondent has appeared on caveat and accepts notice on behalf of respondent.

Subject to the appellant depositing the entire decretal amount with upto date interest within four weeks with the Registrar General of this Court, there shall be a stay of the operation of the impugned judgment dated 11.03.2022.

The Registry is directed to keep the said amount so deposited in an interest bearing FDR with an auto renewal facility.

List on 13.02.2023

GAURANG KANTH, J

SEPTEMBER 16, 2022

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