

IN THE SUPREME COURT OF INDIA  
 CIVIL APPELLATE JURISDICTION  
 CIVIL APPEAL NO. 6940 of 2004

A.P. KHADI & VILLAGE INDUSTRIES BOARD .....APPELLANT  
 VERSUS  
 M/S. UNITED INDIA INSURANCE CO. LTD. ....RESPONDENT

O R D E R

Heard Mr. Raju Ramachandran, Senior Advocate  
 appearing for the appellant. Despite service of  
 notice, no one appears for the respondent. of

2. The appellant is aggrieved by the repudiation of its insurance claim by the respondent, the insurance company, and seeks to challenge the judgment of the High Court that declined to uphold its claim and rejected its appeal filed against the order passed by the Trial Court.
  
3. The appellant held an insurance policy against damages that it might suffer on account of rioting. It used to renew the policy from year to year. At the material time the policy was due to expire on August 21, 1984. For its renewal, the appellant sent the cheque for the amount of premium to the respondent, the insurance company, on August 20, 1984 under 'certificate of posting'. On September 09, 1984, a rioting took place in the city of Hyderabad, where the appellant had its showroom and emporium. In an act of arson by the rioters, the appellant's showroom and emporium suffered extensive damage. On the same day, a verbal intimation was given to the insurance company about the losses suffered by the appellant and on the following day (September 10, 1984) the respondent sent a team for inspection of the damages to the appellant. Later on, the appellant received a communication dated September 29, 1984 from the respondent (copy at Annexure P-3 at page 21 of the paper-book) stating that the premium cheque for renewal of the policy was received in their office as late as on September 27, 1984. The respondent, accordingly, returned the cheque along with the aforesaid communication stating that the policy was not in force on the date of the fire and they were not on the risk and the loss was not registered in their books.
  
4. The above sequence of dates makes it evidently clear that on the date the appellant suffered damages to its property on account of rioting, it was not covered by a subsisting and enforceable insurance policy and hence, the respondent, the insurance company had no liability to make good the loss suffered by the appellant.
  
5. Mr. Ramachandran, however, laid great stress on the fact that the respondent had got the damage suffered

by the appellant inspected on September 10, 1984. He contended that by having the loss suffered by the appellant inspected by the insurance company had assumed the risk of liability to pay the damages. In support of the submission, Mr. Ramachandran relied upon the explanation to Section 64VB of the Insurance Act, 1938. The proviso relied upon by him reads as under:

"64VB. No risk to be assumed unless premium is received in advance. - (1) No insurer shall assume any risk in India in respect of any insurance business on which premium is not ordinarily payable outside India unless and until the premium payable is received by him or is guaranteed to be paid by such person in such manner and within such time as may be prescribed or unless and until deposit of such amount as may be prescribed, is made in advance in the prescribed manner.

(2) For the purposes of this section, in the case of risks for which premium can be ascertained in advance, the risk may be assumed not earlier than the date on which the premium has been paid in cash or by cheque to the insurer.

Explanation.- Where the premium is tendered by postal money order or cheque sent by post, the risk may be assumed on the date on which the money order is booked or the cheque is posted, as the case may be."

(emphasis added)

6. Mr. Ramchandran submitted that the explanation was an enabling provision and it allowed the insurer to assume the risk on and from the date on which the cheque is posted. He further submitted that the fact that the insurance company had got the damage suffered by the appellant inspected on September 10, 1984 clearly indicated that it had assumed the risk in terms of the explanation to 64VB and, therefore, it was no longer open to it to repudiate the appellant's claim.
7. We feel that the appellant is trying to put undue stress on the inspection made on September 10, 1984. The insurance company is a large organization and it naturally operates through different sections and different offices. When the team came for inspection they were simply responding promptly and efficiently on the call of someone whom they believed to be an old customer. The inspection team might not even be aware whether or not there was any valid, subsisting and enforceable policy held by the appellant on the date of the arson or on the date of the inspection. The appellant has absolutely no evidence to show that before sending the inspection team the respondent was aware that the cheque for renewal of the policy was dispatched by the appellant on August 20, 1984 and possessed with that knowledge they took a conscious decision to assume the risk in terms of section 64VB of the Act. Actually the evidence is to the contrary.

It is the definite case of the respondent that the cheque sent by the appellant was received in their office on September 27, 1984 and hence, the policy was not in force on the date of the fire and they were not on the risk. There is no reason for the Court not to accept the stand taken by the respondent in the absence of any evidence to the contrary.

8. We, thus, find no merit in the appeal. It is dismissed accordingly.

9. Since there is no representation on behalf of the respondent/insurance company, there shall be no order as to costs.

.....J  
(AFTAB ALAM)

.....J  
(R.M. LODHA)

NEW DELHI,  
AUGUST 03, 2010  
ITEM NO.101

COURT NO.12

SECTION XIIA

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS  
CIVIL APPEAL NO(s). 6940 OF 2004

A.P. KHADI & VILLAGE INDUSTRIES BOARD Appellant (s)

VERSUS

M/S. UNITED INDIA INSURANCE CO. LTD. Respondent(s)

(With office report)

Date: 03/08/2010 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE AFTAB ALAM  
HON'BLE MR. JUSTICE R.M. LODHA

For Appellant(s)

Mr. Raju Ramachandra, Sr. Adv.  
Mrs. Rekha Pandey, Adv.  
Mr. Shiv Prakash Pandey, Adv.

For Respondent(s)

UPON hearing counsel the Court made the following  
O R D E R

The Civil Appeal is dismissed in terms of the signed order.

(N.S.K. Kamesh)  
Court Master

(S.S.R. Krishna)  
Court Master

(signed order is placed on the file)