A.F.R.
Reserved on 16.03.2023
Delivered on 06.04.2023

Court No. - 52

Case :- WRIT - C No. - 20577 of 2016

Petitioner :- L.I.C. Of India And Another

Respondent :- The Permanent Lok Adalat And Another

Counsel for Petitioner :- Pratik J. Nagar

Counsel for Respondent :- Sunil Kumar Singh, J.P.Singh,S.C.

Hon'ble Kshitij Shailendra,J.

1. The instant writ petition has been filed by the Life Insurance of India (herein-after referred to as "L.I.C."), challenging the impugned judgement and award dated 15.02.2016, whereby the Permanent Lok Adalat (herein-after referred to as "P.L.A.") has allowed the claim made by respondent No. 2 directing the L.I.C. to pay to the claimant-respondent a sum of Rs. 14,00,000/- (rupees fourteen lacs only) along with interest @ 9% per anum as covered by the Insurance Policy held by the insured, who was real brother of the claimant-respondent.

2. In short compass, the facts of the case, as pleaded in the writ petition, are that Thakur Prasad Singh, the brother of respondent No. 2, aged 47 years, was insured with the L.I.C. under Policy No. 297170129 dated 28-11-2011. Proposal of the said insured was accepted by the L.I.C. and Policy No. 297170129 dated 28-11-2011 was issued to him towards insurance of his life. Unfortunately, Thakur Prasad Singh died on 10-09-2012.

3. On receipt of information about the death of Thakur Prasad Singh, along with the claim papers, the L.I.C. made enquiries in the matter, whereupon, it stood revealed that prior to submitting the proposal for Policy No. 297170129 dated 28-11-2011, the assured was suffering from Enteric Fever and Urinary Tract Infection and was being treated for the same in Chitransh Hospital and Surgical Care Centre, Shivpur, Varanasi. Accordingly, the L.I.C., by its letter dated 28-11-2013, repudiated the claim of the respondent No.2.

4. After the claim was repudiated, respondent No.2 filed a Case No. 406 of 2014, (Kali Prasad Singh versus Life Insurance Corporation of India and others) before the Permanent Lok Adalat at Azamgarh for recovery of a sum of Rs.14,00,000/- (rupeees fourteen lac only) towards death claim of Late Thakur Prasad Singh.

5. Having coming to know about the filing of complaint, the L.I.C. filed its reply in the matter denying the averments made by respondent No.2 in his application and stating therein that the Corporation had repudiated the claim of respondent No.2. on account of the wrong declaration made in the proposal form. It was further stated that the contract of insurance being one of utmost good faith (uberima-fide), repudiation was rightly done by the L.I.C. for breach of utmost good faith and payment of premium by the brother of respondent No.2 and revival of

policies by the L.I.C. has no relevance qua the repudiation of policy. It was further stated that Section 45 of the Insurance Act authorizes the L.I.C. to repudiate the claim on the ground of fraud, misrepresentation or concealment of fact. Since the contract of insurance is a contract of utmost good faith, everything starts from submission of proposal form issued by the Insurance Company. The proposal form issued by the L.I.C. contains a declaration that the statements made in the form are true and correct to the best of the knowledge of the insured. Accordingly, the proposer/insured should not hide any fact in the proposal form. If the insured gives wrong information in the proposal form, the contract of insurance is vitiated. Further, on account of misstatement made by the deceased life-assured in reply to the questions in the proposal form with regard to his previous ailment, the life-assured had suppressed the facts, which were material for him to disclose. Accordingly, the contract of insurance became void and nothing was payable to the respondent No.2. It was further stated that the L.I.C. was not willing to settle the matter with the claimant.

6. After the parties led evidences in support of their respective claim and defence, the P.L.A., Azamgarh, by impugned judgment and award dated 15.02.2016, has allowed the claim and directed the L.I.C. to

pay to the claimant-respondent a sum of Rs. 14,00,000/- (rupees fourteen lac only) along with 9% interest per anum as covered by Insurance Policy.

7. A counter affidavit has been filed by the claimant-respondent No. 2 stating that his brother was insured with the L.I.C. under Policy No. 297170129 dated 28-11-2011 and before the said policy was issued, respondent's brother, Thakur Prasad Singh was thoroughly examined by the Doctor of the Corporation on 23rd of November, 2011. It is further stated that after the claim papers were submitted before the L.I.C., it, instead of allowing the claim, directed to conduct an enquiry. The said enquiry is shown to have been made on 10-12-2013 and, to make out a ground for repudiating the claim, the Enquiry Officer mentioned that prior to submitting the proposal for Policy dated 28-11-2011, the deceased (life assured) was suffering from Enteric Fever and Urinary Tract Infection and he was being treated for some time in Chitransh Hospital and Surgical Care Centre, Shivpur, Varanasi. The illness cited in the report has nothing to do with the lawful claim for the reason that the brother of respondent No.2 was insured with the L.I.C. after thorough medical examination/ check-ups conducted by the Doctors of L.I.C.

8. It is further stated in the counter affidavit that the basic object of the contract of insurance is to insure the life of the assured and the element of utmost good faith is equally applicable to the Corporation.

Here, the Corporation, on its own, presumed that there was a breach of good faith, while there was no breach of good faith, and the fact of the matter is that the brother of the respondent No.2 was insured after thorough medical check-up and the death was not on account of any prolonged illness, therefore, the order repudiating the claim of respondent No.2 was wholly illegal.

9. It is further stated in the counter affidavit that the life assured did not give any misstatement. So far as previous ailments are concerned, the assured is not required to give details of all previous ailments, like Typhoid and Fever etc. The purpose of disclosure is to inform the serious disease, if any. Moreover, self-declaration of assured is not sufficient for insurance. The Corporation before issuing policy, conducts medical examination of the person seeking insurance. Here, in the given case, the brother of respondent No.2 was medically examined by the Doctors of L.I.C. on 23-11-2011 and taking into account the said medical report, policy was issued. There was no suppression by the life-assured. It is usually seen that Insurance Corporation, instead of allowing the claim of the life-assured, takes a number of objections. Here, in the given case also the Corporation illegally and arbitrarily repudiated the claim of respondent No.2 on the basis of the report of his officer, which was not at all accepted by the respondent No.2.

10. The petitioner has filed a rejoinder affidavit. Insofar as the pleadings contained in paragraph 5 of the counter affidavit to the effect that the insured was thoroughly examined by the Doctor of the Corporation on 23.11.2011, whose medical examination report is annexed as annexure No. CA-1 to the counter affidavit, are concerned, it has been stated in paragraph No. 7 of the rejoinder affidavit that the averments made in paragraph No. 5 of the counter affidavit are not admitted as they stand, and the respondent No. 2 is put to strict proof of the averments made therein. It is stated in paragraph No. 7 that the deceased life-assured was examined by the Doctor of the L.I.C., is of no help to respondent No. 2. However, pleadings contained in rejoinder affidavit are substantially reiteration of the contention raised through the writ petition.

11. I have heard Shri J. Nagar, learned Senior Advocate assisted by Shri Pratik J. Nagar, learned counsel for the petitioners and Shri J.P. Singh, learned counsel for respondent No. 2.

12. Shri J. Nagar, learned Senior Advocate has raised the following **THREE ISSUES/CONTENTIONS** for consideration by this Court in the present writ petition:

(1) The claim made by respondent No. 2 had a valuation of Rs. 14,00,000/- (rupees fourteen lac only) and, therefore, as per section 22C of the Legal Services Authorities Act, 1987, the P.L.A. had no jurisdiction

to entertain and decide the case, because as per the second proviso to section 22 C (1) of the Act, the pecuniary limits of jurisdiction of the P.L.A. were confined to the matters, where the value of property in dispute was only Rs. 10,00,000/- (rupees ten lac only).

(2) The P.L.A. has failed to perform statutory duty cast upon it as per section 22 C (5) of the Legal Services Authorities Act, 1987, whereunder it was duty bound to hold conciliation proceedings before deciding the matter on merits.

(3) The claim of respondent No.2 was not entitled to be allowed as the deceased (insured) had, at the time of taking Insurance Policy, deliberately concealed his physical ailment, which subsequently stood revealed during the enquiry and, hence, the award of the P.L.A. is unsustainable.

13. This Court proceeds to deal with the aforesaid three contentions/issues as raised by Shri Nagar, learned Senior Advocate.

ISSUE/CONTENTION NO. 1 :-

14. Shri Nagar, learned Senior Advocate has, with reference to second proviso attached to section 22C (1) of the Legal Services Authorities Act, 1987, contended that the claim made before the P.L.A. was valued at Rs. 14,00,000/- (rupees fourteen lac only), whereas the

pecuniary limits of jurisdiction of P.L.A. were restricted and confined upto claims of Rs. 10,00,000/- (rupees ten lac only) and, therefore, the impugned order is unsustainable.

15. To this argument of Shri Nagar, Shri J.P. Singh, learned counsel for respondent No. 2, has vehemently argued that the said contention cannot be allowed to be raised by the petitioner for two main reasons. First, as per section 21 of the Code of Civil Procedure (herein-after referred to as "C.P.C."), such objection to the pecuniary limits of jurisdiction of P.L.A. must have been taken before the court below itself at the earliest available opportunity, and once the same was not raised, either through any plea in the written statement or otherwise, the same cannot be allowed to be agitated before the writ court for the first time. Secondly, As per the Notification No. S.O. 803(E), dated 20.03.2015, issued by the Ministry of Law and Justice (Department of Justice), the pecuniary limits of jurisdiction of P.L.A. were enhanced from Rs. 10,00,000/- (ten lacs only) to Rs. 1,00,00,000/- (one crore only) with effect from the date of publication of the said Notification in the Official Gazette.

16. For a ready reference, section 21 of the Code of Civil Procedure and Notification No. S.O. 803(E), dated 20.03.2015 issued by the Ministry of Law and Justice (Department of Justice) are being respectively quoted herein-below:

"***21. Objections to jurisdiction.-*** *(1) No objection as to the place of suing shall be allowed by any Appellate or Revisional Court unless such objection was taken in the Court of first instance at the earliest possible opportunity and in all cases where issues are settled at or before such settlement, and unless there has been a consequent failure of justice.*

(2) ***No objection as to the competence of a Court with reference to the pecuniary limits of its jurisdiction shall be allowed by any Appellate or Revisional Court unless such objection was taken in the Court of first instance at the earliest possible opportunity, and, in all cases where issues are settled, at or before such settlement, and unless there has been a consequent failure of justice.***

(3) No objection as to the competence of the executing Court with reference to the local limits of its jurisdiction shall be allowed by any Appellate or Revisional Court unless such objection was taken in the executing Court at the earliest possible opportunity, unless there has been a consequent failure of justice."

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Notification No. S.O. 803(E), dated 20.03.2015

In exercise of the powers conferred by the third proviso to sub-section (1) of Section 22-C of the Legal

> *Services Authorities Act, 1987 (39 of 1987) and in supersession of the Government of India, Ministry of Law and Justice (Department of Legal Affairs), Notification Number S.O. 2083(E), dated the 15th September, 2011, published in the Gazette of India, Extraordinary, Part II, Section 3, sub-section (i), dated the 15th September, 2011, the Central Government, in consultation with the Central Authority, hereby increases the limit of the value of the property in dispute for the purpose of determining the jurisdiction of Permanent Lok Adalat to* ***"one crore rupees" with effect from the date of publication of this notification in the Official Gazette."***

17. Shri Nagar, learned Senior Advocate has argued on behalf of the petitioner that since by virtue of section 22-D of the Legal Services Authorities Act, 1987, the Code of Civil Procedure, 1908 shall not be applicable to the proceedings under the said Act, the contention of Shri J.P. Singh to the effect that objection to the pecuniary limits of jurisdiction, if not raised at the initial stage, shall be treated to have been waived, is not acceptable.

18. Before dealing with the said argument of Shri Nagar, it would be appropriate to refer to section 22-D of the Legal Services Authorities Act, 1987 which, for a ready reference, is reproduced as follows:

> "***22-D. Procedure of Permanent Lok Adalat.-*** *The Permanent Lok Adalat shall, while conducting conciliation proceedings or deciding a dispute on merit under this Act, be guided by the principles of natural justice, objectivity, fair play, equity and other principles of justice, and shall not be bound by the Code of Civil Procedure, 1908 (5 of 1908) and the Indian Evidence Act, 1872 (1 of 1872)."*

19. The heading of the section 22-D speaks of "**Procedure of Permanent Lok Adalat".** The necessary implication of the words used in section 22 D of the Act, is that Permanent Lok Adalat will adopt its own procedure while dealing with the case and the procedure prescribed for trial of suits, as contained in the Code of Civil Procedure, would not be applicable.

20. However, it would be appropriate to mention that **Code of Civil Procedure, though named as procedure, is divided into two parts, i.e. substantive part and the procedural part.** The substantive part of the Code of Civil Procedure contains sections 1 to 158, whereas the procedural part is spread from Order I to Order LI. **Section 21** of Code of Civil Procedure, as referred to herein above, regarding bar/stage of taking objections with regard to pecuniary limits of jurisdiction, finds place in the "**substantive part**" of the Code of Civil Procedure and **not in the "procedural part"**. That is to say that section 22-D of the Legal Services Authorities Act, 1987

does not exclude applicability or significance of the substantive provisions of Code of Civil Procedure or their soul while considering any case, which is tried by Permanent Lok Adalat.

21. Even otherwise, section 22-D of the Act itself speaks that Permanent Lok Adalat shall be guided by the principles of Natural Justice, objectivity, fair play, equity and other principles of justice. In the opinion of this Court, words "**natural justice, objectivity, fair play and equity**" used in section 22-D of the Act, would mean that whatever objections are taken by any party to the litigation before the Permanent Lok Adalat, the rival parties must be aware of the same and must get an opportunity to rebut the same at appropriate stage. Meaning thereby, that a party cannot be taken by surprise and the objections, factual or legal, must be met during the course of the trial before the first court.

22. There is no dispute about the fact that the plea of alleged lack of pecuniary limits of jurisdiction of the P.L.A. was neither taken in the written statement nor was it otherwise raised on behalf of the petitioner, who was defendant in the proceedings before the P.L.A. Therefore, the effect of such omission would be fatal to the case of the petitioner, even if we ignore subsequent Notification dated 20th March, 2015, which was published in the Official Gazette on the same date as the argument of the learned Senior Advocate is to the effect that the case in reference was

instituted prior to issuance of the said Notification, and therefore, on the date of institution of proceedings, the P.L.A. was not competent to even register the case.

23. The Supreme Court, in the case of ***Om Prakash Agarwal (since deceased) through L.R. and others vs Vishan Dayal Rajpoot and another,*** reported in 2019 (14) SCC 526, has elaborately dealt with the effect of section 21 of C.P.C. upon proceedings with reference to the stage of objection to be raised in this regard. Paragraph Nos. 57, 58 and 59 of the said report are worth reproduction and, hence, are being reproduced as follows:

> *"57. The policy underlying Section 21 of Code of Civil Procedure is that when the case has been tried by a court on merits and the judgment rendered, it should not be liable to be reversed purely on technical grounds, unless it has resulted in failure of justice. The provisions akin to Section 21 are also contained in Section 11 of the Suit Valuation Act, 1887 and Section 99 of the Code of Civil Procedure. This Court had the occasion to consider the principle behind Section 21, Code of Civil Procedure and Section 11 of the Suit Valuation Act, 1887 in Kiran Singh v. Chaman Paswan AIR 1954 SC 340. In para 7 of the judgment following was laid down: (AIR p. 342)*
>
> > *"7.... The policy underlying Sections 21 and 99 of the Civil Procedure Code and Section 11 of the Suits*

> *Valuation Act is the same, namely, that when a case had been tried by a court on the merits and judgment rendered, it should not be liable to be reversed purely on technical grounds, unless it had resulted in failure of justice, and the policy of the legislature has been to treat objections to jurisdiction both territorial and pecuniary as technical and not open to consideration by an appellate court, unless there has been a prejudice on the merits. The contention of the appellants, therefore, that the decree and judgment of the District Court, Monghyr, should be treated as a nullity cannot be sustained under Section 11 of the Suits Valuation Act."*

58. One more submission which was raised in the said appeal was considered by this Court. One of the submission of the appellant who had instituted the suit in the subordinate court was that as per the revised valuation, the appeal against the decree of the subordinate Judge did not lie before the District Court but to the High Court, hence, the judgment of the District Judge in appeal should be ignored. The appeal in the High Court be treated as first appeal. It was contended that appellant has been prejudiced in the above manner. Rejecting the above submissions, this Court laid down following in paras 11 and 12: (Kiran Singh case, AIR p. 343)

> *"11. ... This argument proceeds on a misconception. The right of appeal is no doubt a substantive right, and its deprivation is a serious prejudice; but the appellants have not been deprived of the right of appeal against*

the judgment of the Subordinate Court. The law does provide an appeal against that judgment to the District Court, and the plaintiffs have exercised that right. Indeed, the undervaluation has enlarged the appellants' right of appeal, because while they would have had only a right of one appeal and that to the High Court if the suit had been correctly valued, by reason of the undervaluation they obtained right to two appeals, one to the District Court and another to the High Court. The complaint of the appellants really is not that they had been deprived of a right of appeal against the judgment of the subordinate court, which they have not been, but that an appeal on the facts against that judgment was heard by the District Court and not by the High Court. This objection therefore amounts to this that a change in the forum of appeal is by itself a matter of prejudice for the purpose of Section 11 of the Suits Valuation Act.

12. The question, therefore, is, can a decree passed on appeal by a court which had jurisdiction to entertain it only by reason of undervaluation, be set aside on the ground that on a true valuation that court was not competent to entertain the appeal? Three High Courts have considered the matter in Full Benches, and have come to the conclusion that mere change of forum is not a prejudice within the meaning of Section 11 of the Suits Valuation Act. Vide Kelu Achan v. Cheriya Parvathi Nethiar 1923 SCC Online Mad 356,

Moolchand Motilal v. Ram Kishen 1933 SCC Online All 2, and Ramdeo v. Raj Narain 1948 SCC Online Pat 91. In our judgment, the opinion expressed in these decisions is correct."

59. The above principle has been reiterated by this Court in Hira Lal Patni v. Kali Nath AIR 1962 SC 199 and Bahrein Petroleum Co. Ltd. v. P.J. Pappu AIR 1966 SC 634."

24. Similar view has been taken by the Supreme Court in the case of ***Subhash Mahadevasa Habib vs Nemasa Ambasa Dharmadas (Dead) by LRs. and others,*** reported in 2007 (13) SCC 650, reference to paragraph No. 34 whereof can be made, which reads as follows:

"*34. It may be noted that Section 21 provided that no objection as to place the suing can be allowed by even an appellate or revisional court unless such objection was taken in the court of first instance at the earliest possible opportunity and unless there has been a consequent failure of justice. In 1976, the existing Section was numbered as sub- Section (1) and sub-Section (2) was added relating to pecuniary jurisdiction by providing that no objection as to competence of a court with reference to the pecuniary limits of its jurisdiction shall be allowed by any appellate or revisional court unless such objection had been taken in the first instance at the earliest possible opportunity and unless there had been a consequent*

> *failure of justice. Section 21A also was introduced in 1976 with effect from 1.2.1977 creating a bar to the institution of any suit challenging the validity of a decree passed in a former suit between the same parties on any ground based on an objection as to the place of suing. The amendment by Act 104 of 1976 came into force only on 1.2.1977 when O.S. No. 4 of 1972 was pending. By virtue of Section 97(1)(c) of the Amendment Act, 1976, the said suit had to be tried and disposed of as if Section 21 of the Code had not been amended by adding sub-Section (2) thereof. Of course, by virtue of Section 97(3) if Section 21A had to be applied, if it has application. But then, Section 21A on its wording covers only what it calls a defect as to place of suing."*

25. Reference to another decision of the Supreme Court in the case of ***R.S.D.V. Finance Co. Pvt. Ltd. Vs Shree Vallabh Glass Works Ltd,*** reported in 1993 (2) SCC 130 , can also be made with reference to concept of **consequent failure of justice.**

26. Learned counsel for respondent No. 2 has also relied upon the judgment of Madras High Court in the case of ***Appat Krishna Poduval vs Lakshmi Nathiar and others,*** reported in AIR (37) 1950 Madras 751, in which it was held as under:-

"8. .....The learned District Munsif has dealt with this aspect of the case elaborately and I do not think it necessary to reiterate the reasons which he has given for rejecting the contention relying on the following observations in ***Kumaran Nambiar v. Ramunni****, 1988-1 M. D. J. 193: (A. I. R. (25) 1998 Mad. 257):*

> *"To treat want of territorial or pecuniary jurisdiction as amounting to incompetency, seems incompatible with the idea underlying the two statutory pro- visions mentioned above (S. 11, Suita Valuation Act and S. 21, Civil P C.). These sections provide that even had the objection not been waived, that is to say, had been taken in the Court of first instance, the presence of a further element is essential, viz. that* ***there has been consequent failure of justice****. The principle that they appear to embody is that these defects of jurisdiction are not fundamental in character and are no more than irregularities in the exercise of jurisdiction."*

9. In this case I do not see any justification for holding that there has been a failure of justice by reason of the claim not having been in respect of the entire amount due for all the three thavzahis but only in respect of two thavazhis represented by the plaintiffs and I do not see much substance in this point and especially when the petitioner who raised this point at the time of the trial but did not take it up in appeal."

27. Learned counsel for respondent No. 2 has also placed reliance upon the judgment of Supreme Court in the case of ***Kiran Singh and others vs. Chaman Paswan and others,*** reported in AIR 1954 SC 340 holding that-

> ……..
>
> *"With reference to objections relating to* ***territorial jurisdiction,*** *section 21 of the Civil Procedure Code enacts that no objection to the place of suing should be allowed by an appellate or revisional Court, unless there was a* ***consequent failure of justice****.*
>
> ***It is the same principle that has been adopted in section 11 of the Suits Valuation Act with reference to pecuniary jurisdiction****. The policy underlying sections 21 and 99 of the Civil Procedure Code and section 11 of the Suits Valuation Act is the same, namely, that when a case had been tried by a Court on the merits and judgment rendered, it should not be liable to be reversed purely on technical grounds, unless it had resulted in failure of justice, and* ***the policy of the Legislature has been to treat objections to jurisdiction both territorial and pecuniary as technical and not open to consideration by an appellate Court, unless there has been a prejudice on the merits.*** *The contention of the appellants, therefore, that the decree*

and judgment of the District Court, Monghyr, should be treated as a nullity cannot be sustained under section 11 of the Suits Valuation Act."

28. Further reliance has been placed reliance upon the judgment of the Supreme Court in the case of ***Koopilan Uneen's daughter Pathumma and others vs Unee's son Kuntalan Kutty (dead) by LRs and others,*** reported in AIR 1981 SC 1683 as well as the judgment of Supreme Court in the case of ***Harshad Chiman Lal Modi vs D.L.F. Universal Ltd. and another*** reported in AIR 2005 SC 4446 wherein same view has been taken. He has also placed reliance upon the judgment of Orissa High Court in the case of ***Surendra Mahanti vs Ghasiram Mahanti and others,*** reported in AIR 1996 Orissa 172 reiterating the same view in the light of miscarriage of justice and also upon the judgment of High Court of Himachal Pradesh in the case of ***Ajay Singh (deceased by Lrs.) and etc. vs Tikka Brijendra Singh and others etc.*** reported in AIR 2007 Himachal Pradesh 52, where the same proposition of law has been reiterated.

29. In this regard, concept of "**Waiver"** should also be reiterated which is **an intentional relinquishment of a known legal right**. In the present case, the petitioner had a legal right to raise objections regarding pecuniary limits of jurisdiction immediately after registration of the case, or even thereafter. However, for the reasons best known to it, the said

objection was admittedly not raised, and therefore, the same shall be deemed to have been waived.

30. Reference to judgement of Supreme Court in the case of ***ARCE Polymers Private Limited vs Alphine Pharmaceuticals Private Limited and others*** reported in 2022 (2) SCC 221, can be made, paragraph Nos. 16 and 17 of which read as follows:

> "*16. Waiver is an intentional relinquishment of a known right. Waiver applies when a party knows the material facts and is cognizant of the legal rights in that matter, and yet for some consideration consciously abandons the existing legal right, advantage, benefit, claim or privilege. Waiver can be contractual or by express conduct in consideration of some compromise. However, a statutory right may also be waived by implied conduct, like, by wanting to take a chance of a favourable decision. The fact that the other side has acted on it, is sufficient consideration.*
>
> *17. It is correct that waiver being an intentional relinquishment is not to be inferred by mere failure to take action, but the present case is of repeated positive acts post the notices under Sections 13(2) and (4) of the SARFAESI Act. Not only did the Borrower not question or object to the action of the Bank, but it by express and deliberate conduct had asked the Bank to*

compromise its position and alter the contractual terms. The Borrower wrote repeated request letters for restructuring of loans, which prayers were considered by the Bank by giving indulgence, time and opportunities. The Borrower, aware and conscious of its rights, chose to abandon the statutory claim and took its chance and even procured favourable decisions. Even if we are to assume that the Borrower did not waive the remedy, its conduct had put the Bank in a position where they have lost time, and suffered on account of delay and laches, which aspects are material. Action on the Subject Property was delayed by more than a year as at the behest of the Borrower, the Bank gave them a long rope to regularise the account. To ignore the conduct of the Borrower would not be reasonable to the Bank once third party rights have been created. In this background, the principle of equitable estoppel as a rule of evidence bars the Borrower from complaining of violation."

31. Shri J.P. Singh has further relied upon the judgment of Supreme Court in the case of ***Krishna Bahadur vs M/s Purna Threatre and others,*** reported in AIR 2004 SC 4282, paragraph Nos. 8 and 9 whereof are reproduced as under:

"*8. The principle of waiver although is akin to the principle of estoppel; the difference between the two,*

however, is that whereas estoppel is not a cause of action; it is a rule of evidence; waiver is contractual and may constitute a cause of action; it is an agreement between the parties and a party fully knowing of its rights has agreed not to assert a right for a consideration.

9. A right can be waived by the party for whose benefit certain requirements or conditions had been provided for by a statute subject to the condition that no public interest is involved therein. Whenever waiver is pleaded it is for the party pleading the same to show that an agreement waiving the right in consideration of some compromise came into being. Statutory right, however, may also be waived by his conduct."

32. Learned counsel for the respondent No.2 has also placed reliance upon the judgment of Supreme Court in the case of ***M/s Power Control Appliance and others vs Sumeet Machines Pvt. Ltd***. reported in 1994 (2) SCC 448. Paragraph No. 26 of the said judgement is reproduced as follows:

"*26. Acquiescence is sitting by, when another is invading the rights and spending money on it. It is a course of conduct inconsistent with the claim for exclusive rights in a trade mark, trade name etc. It implies positive acts; not merely silence or inaction such as is involved in laches. In Harcourt v. White (1860)28 Beav 303, Sr. John Romilly said: "It is important to distinguish mere negligence and acquiescence."*

Therefore, acquiescence is one facet of delay. If the plaintiff stood by knowingly and let the defendants build up an important trade until it had become necessary to crush it, then the plaintiffs would be stopped by their acquiescence. If the acquiescence in the infringement amounts to consent, it will be a complete defence as was laid down in Mouson (J. G.) & Co. v. Boehm (1884) 26 Ch D 406. The acquiescence must be such as to lead to the inference of a licence sufficient to create a new right in the defendant as was laid down in Rodgers v. Nowill, (1847) 2 De GM &G 614."

33. Shri J.P. Singh has, apart from arguing that the objection to pecuniary limits of jurisdiction was not raised by the petitioner before the court below, submitted that even if, at the time of institution of proceedings, the P.L.A., financial limits were confined to Rs. 10,00,000/- only (rupees ten lac only), there would not be any consequent failure of justice, if the claim of Rs. 14,00,000/- (rupees fourteen lac) has been finally allowed by the P.L.A. particularly, when the financial limits had already been enhanced to Rs. 1,00,00,000/- (rupees one crore), vide Notification dated 20th March, 2015.

34. I deal with this aspect of the matter and find that insofar as the effect of Notification dated 20th March, 2015 is concerned, admittedly, the case in reference was decided by the P.L.A. in the year 2016. That is to say that **it was entertained and judicial mind was applied**

on the facts and circumstances involved in the case at the time when the pecuniary limits of jurisdiction were already enhanced from Rs.10,00,000/- (rupees ten lac) to Rs.1,00,00,000/- (rupees one crore). Therefore, on the date of its decision, the P.L.A. had financial competence to adjudicate upon the claim of respondent No. 2, which has been accepted and allowed under the order impugned.

35. As per Black's Law Dictionary (7th Edition) by Bryan A. Garner, Editor in Chief, the word "**Entertain"** has been defined as "**to bear in mind or consider, to give judicial consideration to".** The New Lexicon Webster's Dictionary of the English Language defines the word "**Entertain"** as "**to give thought or consideration to"** and "**to have in one's mind".** The Chambers Dictionary (10th Edition) explains the word "**Entertain"** as "**to keep or hold in the mind"** and "**to receive and take into consideration".**

36. Expression "**Institute"** is not synonymous with the expression "**Entertain",** the Supreme Court in the case of ***Martin and Harris Limited vs Sixth Additional District Judge and others,*** reported in 1998 (1) SCC 732 interpreted the expression "Entertain" in section 21 (1) (a) of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972, to mean entertaining the ground for consideration for the purpose of adjudication on merits and not on any stage prior throughout.

37. A Division Bench of Calcutta High Court, in the case of ***Tufan Chatterjee vs Rangan Dhar,*** reported in AIR 2016 Calcutta 213, has elaborately explained the meaning of word “Entertain”. The decision of ***Tufan Chatterjee*** (supra) was considered by the Apex Court in a very recent decision in the case of ***ARCELOR Mittal Nippon Steel India Limited vs Essar Bulk Terminal Limited*** reported in 2022 (1) SCC 712, paragraph No. 38 whereof is worth reproduction, which reads as follows:

> *“38. Mr. Khambata referred to the meaning of “entertain” in Black's Law Dictionary (Bryan A. Garner, 8th edition, 2004), which is to "bear in mind or "to give judicial consideration to". Mr. Khambata also cited the judgment of a Division Bench of the Calcutta High Court in* ***Tufan Chatterjee v. Rangan Dhar,*** *2016 SCC Online Cal 483, authored by one of us, (Indira Banerjee, J.). In Tufan Chatterjee (supra), the word “entertain” was interpreted to mean “considering an application on merits, even at the final stage". Mr. Khambata argued that the interpretation of the term “entertain” by the Gujarat High Court in the judgment and order impugned, is consistent with the interpretation of the expression in Tufan Chatterjee (supra).”*

38. Once this Court finds that the plea of pecuniary limits of jurisdiction was neither taken in the written submission nor was argued before the P.L.A throughout the proceedings of the case in reference, this Court cannot allow the same to be raised for the first time in the present

writ petition. The situation would have been different, had the issue been with respect to "inherent lack of jurisdiction" of the P.L.A. and not with respect to its pecuniary limits, inasmuch as, in the previous case, the decree/judgment/award would have become without jurisdiction, which is not the situation in a case where difficulty in jurisdiction is co-related to the pecuniary limits.

39. In view of above discussion, it is clear that in any case, on the date when the impugned judgment and award was passed by the P.L.A., the Court was well within its financial/pecuniary limits of power, competence and jurisdiction to adjudicate the same, and therefore, the argument on issue No. 1, as raised by Shri Nagar, learned Senior Advocate, cannot be accepted and is hereby discarded.

ISSUE/CONTENTION NO. 2 :-

40. Shri J. Nagar, learned Senior Advocate has vehemently argued that the duty cast upon the P.L.A. under section 22-C (5), (6) and (7) of the Legal Services Authorities Act, 1987, to hold conciliation proceedings, has been avoided by the P.L.A., inasmuch as no conciliation proceedings were held before finally deciding the matter. In support of his submissions, learned Senior Advocate has placed reliance upon the following authorities:

- ***Bar Council of India vs Union of India***, 2012 (8) SCC 243
- ***Madhya Pradesh State Legal Services Authority vs Prateek Jain and another***, 2014(10) SCC 690
- ***Inter Globe Aviation Ltd. Vs N.Satchidanand***, 2011 (7) SCC 463
- ***State Bank of India, Dhanbad vs State of Jharkhand and another,*** 2009(2) AIR Jhar R 970
- ***Mithoolal Nayak vs Life Insurance Corporation of India,*** AIR 1962 Supreme Court 814;
- ***Smt. Krishna Wanti Puri vs The Life Insurance Corporation of India, Divisional Officer, New Delhi and another,*** AIR 1975 Delhi 19;
- ***Canara Bank vs G.S. Jayarama,*** Aironline 2022 SC 835;
- ***Life Insurance Corporation of India vs Syed Zaigham Ali and another***, (Writ-C No. 39879 of 2015 decided on 21.07.2015);
- ***Life Insurance Corporation of India (LIC) and another vs Permanent Lok Adalat and another,*** 2018 ADJ Online 0484;
- ***Nitin Kumar vs Oriental Insurance Company Limited and 3 others*** (Writ C No. 28999 of 2013 decided on 16.12.2021);

41. Per contra, Shri J.P. Singh, learned counsel for respondent No. 2 has argued that the P.L.A. has taken into consideration the stand taken by the petitioner in his written statement that right from the very beginning the defendant-petitioner had expressed its intention in clear words and conduct not to settle the matter and not to sit for any talks for conciliation. The pleadings contained in the written statement that "*महोदय हम विपक्षी को कोई सुलह नहीं करना है।*" are clear to this effect.

42. Shri J.P. Singh has further referred to paragraph No. 23 of the affidavit of Ram Kumar Singh, Manager (Law) of the Life Insurance Corporation, Regional Office, Gorakhpur filed in the proceedings before the P.L.A. stating on oath as follows:

> "*23- यह कि मैं,राम कुमार सिंह बहलफ बयान करता हूँ कि हम प्रतिवादीगण वादी से इस मामले मे किसी प्रकार का समझौता करने हेतु तैयार नहीं हैं*"

43. Shri Singh has also referred to the clear findings recorded by the P.L.A. that conciliation proceedings were held by the P.L.A. and sufficient opportunity of hearing was provided continuously to the parties, but on 10.04.2015, during the course of such conciliation proceedings, the defendant-petitioner had, in writing, given a statement that it did not want

to compromise/conciliate the matter, and therefore, the matter was heard on merits. The said findings are extracted hereunder:

> *"जहाँ पर सुलह वार्ता के बिन्दु पर भी पत्रावली का अवलोकन किया गया तो पाया गया कि पक्षकारों को पर्याप्त अवसर दिया जाता रहा, परन्तु विपक्षीगण द्वारा दिनांक 10.4.2015 को सुलह वार्ता के बिन्दु पर विपक्षी ने लिखित में यह कथन किया है कि "महोदय हम विपक्षी को कोई सुलह नहीं करना है" इस प्रकार पक्षों के मध्य सुलह वार्ता असफल रही है और पक्षों ने गुणदोष के आधार पर उभयपक्षों को तर्क पूर्वक बहस सुनी गयी तथा पत्रावली में उपलब्ध साक्ष्यों के अवलोकन करने के उपरांत स्थायी लोक अदालत की पीठ इस निष्कर्ष पर पहुंची है कि... ... ..."*

44. This Court has also perused the contents of **paragraph Nos. 23 and 24 of the present writ petition**, which read as follows:

> *"23. **That there is nothing on record to show that the Life Insurance Corporation of India ever agreed for settlement or negotiation** of dispute through Permanent Lok Adalat, as provided under the Legal Services Authorities Act, 1987.*

24. That the Permanent Lok Adalat cannot adopt the role of an Arbitrator or a Civil Court and proceed in the matter without consent of both the parties."

45. From the aforesaid, it is clear that not only in pleadings, but also in the affidavit of the Officer of L.I.C., and also, during the course of conciliation proceedings held by the P.L.A. and further before this writ court, consistent stand of the defendant-petitioner L.I.C. has been that it never wanted to settle or negotiate the dispute and that it even disputed the competence of P.L.A. to get the matter settled through negotiation.

46. There is no dispute about the proposition laid down in the Authorities cited by Shri Nagar as to the role of P.L.A. regarding conciliation, however, at the same time, the ratio laid down in the aforesaid Authorities has to be examined in the light of factual background of the present case, where this Court finds that written statement, affidavit, another written statement during the course of conciliation proceedings and also pleadings contained in paragraph Nos. 23 and 24 of the writ petition clearly infer that despite best efforts made by the respondent as well as by the P.L.A., the conciliation proceedings were not held due to stiff and stubborn attitude of the Corporation and its officials.

47. In this regard, importance of sub-sections (5) and (6) of Section 22-C of the Legal Services Authorities Act, 1987 cannot be ignored, which are reproduced for ready reference:

> "*(5) The Permanent Lok Adalat shall, during conduct of conciliation proceedings under sub-section (4),* ***assist the parties in their attempt to reach an amicable settlement*** *of the dispute in an independent and impartial manner.*
>
> *(6) It shall be* ***the duty of every party to the application to cooperate in good faith with the Permanent Lok Adalat in conciliation of the dispute*** *relating to the application and to comply with the direction of the Permanent Lok Adalat to produce evidence and other related documents before it."*

48. In view of aforesaid provisions of the Legal Services Authorities Act, 1987, the petitioner, before putting a blame on the P.L.A., should introspect itself in the light of pleadings and statements as referred to herein-above inasmuch as the words "**assist the parties in their attempt to reach an amicable settlement**" used in sub-section (5) of the Section 22C of the Act and the words " **it shall be duty of every party to the application to cooperate in good faith with the Permanent Lok Adalat in conciliation of the dispute**" make the legislative intent clear to the effect that conciliation proceedings can be held by the P.L.A. with the

cooperation of the parties to the lis and in case, one of the parties is adamant not to enter into talks of compromise or conciliation, the P.L.A. cannot be expected to whip a party to conciliate the matter. Therefore, under such circumstances, the judgment of P.L.A. on merits after recording such refusal by the parties, cannot be faulted on the ground that it should not have been passed on merits in violation of provisions of "conciliation".

49. In view of above discussion, the issue/contention No. 2 raised by Shri Nagar, learned Senior Advocate is also hereby discarded.

ISSUE/CONTENTION NO. 3 :-

50. It is with respect to merits of the claim made by respondent No. 2 and the contention of Shri Nagar, learned Senior Advocate is that at the time of taking the Policy No. 297170129 dated 28.11.2011, the deceased (assured) was suffering from Enteric Fever and Urinary Tract Infection and was being treated at Chitransh Hospital and Surgical Care Centre, Shuddhipur, Shivpur, Varanasi, and therefore, the L.I.C. was justified in repudiating the claim in exercise of powers under section 45 of the Insurance Act as the deceased had made concealment of his physical ailment, which was a material fact. He has argued that the policy was issued on 28.11.2011 and the assured died on 10.09.2012 and since the

death took place within two years from issuance of policy, the repudiation of the claim was according to law.

51. In support of his submission, Shri Nagar has relied upon the judgment of Supreme Court in the case of ***Mithoolal Nayak vs Life Insurance Corporation of India,*** reported in AIR 1962 Supreme Court 814, and has emphasised upon paragraph No. 7 of the report, which reads as follows:

> *"7. We shall presently consider the evidence, but it may be advantageous to read first Section 45 of the Insurance Act, 1938, as it stood at the relevant time. The section, so far as it is relevant for our purpose, is in these terms:*
>
> > *"No policy of life insurance effected before the commencement of this Act shall after the expiry of two years from the date of commencement of this Act and no policy of life insurance effected after the coming into force of this Act shall, after the expiry of two years from the date on which it was effected, be called in question by an insurer on the ground that a statement made in the proposal for insurance or in any report of a medical officer, or referee, or friend of the insured, or in any other document leading to the issue of the policy, was inaccurate or false, unless the insurer shows that such statement was on a material matter or suppressed facts which it was material to disclose and that it was fraudulently made by the*

policy-holder and that the policy-holder knew at the time of making it that the statement was false or that it suppressed facts which it was material to disclose.

x x x x x x"

It would be noticed that the operating part of S. 45 states in effect (so far as is relevant for our purpose) that no policy of life insurance effected after the coming into force of the Act shall, after the expiry of two years from the date on which it was effected, be called in question by an insurer on the ground that a statement made in the proposal for insurance or in any report of a medical officer, or referee, or friend of the insured, or in any other document leading to the issue of the policy, was inaccurate or false; the second part of the section is in the nature of a proviso which creates an exception. It says in effect that if the insurer shows that such statement was on a material matter or suppressed facts which it was material to disclose and that it was fraudulently made by the policyholder and that the policy-holder knew at the time of making it that the statement was false or that it suppressed facts which it was material to disclose, then the insurer can call in question the policy effected as a result of such inaccurate or false statement. In the case before us the policy was issued on March 13, 1945, and it was to come into effect from January 15, 1945. The amount insured was payable after January 15, 1968, or at the

death of the insured, if earlier. The respondent company repudiated the claim by its letter dated October 10, 1947. Obviously, therefore, two years had expired from the date on which the policy was effected. We are clearly of the opinion that S. 45 of the Insurance Act applies in the present case in view of the clear terms in which the section is worded, though learned counsel for the respondent company sought, at one stage, to argue that the revival of the policy some time in July, 1946, constituted in law a new contract between the parties and if two years were to be counted from July, 1946, then the period of two years had not expired from the date of the revival. Whether the revival of a lapsed policy constitutes a new contract or not for other purposes, it is clear from the wording of the operative part of S. 45 that the period of two years for the purpose of the section has to be calculated from the date on which the policy was originally effected; in the present case this can only mean the date on which the policy (Ex. P-2) was effected. From that date a period of two years had clearly expired when the respondent company repudiated the claim. As we think that S. 45 of the Insurance Act applies in the present case, we are relieved of the task of examining the legal position that would follow as a result of inaccurate statements made by the insured in the proposal form or the personal statement etc. in a case where S. 45 does not apply and where the averments made in the proposal form and in

the personal statement are made the basis of the contract."

52. Shri Nagar has also relied upon a judgment of Delhi High Court in the case of ***Smt. Krishna Wanti Puri vs The Life Insurance Corporation of India, Divisional Officer, New Delhi and another,*** reported in AIR 1975 Delhi, 19 in support of his contention that even if the Doctor of the Corporation had reported medical condition of the assured as fit, the same would not be a decisive factor to allow the claim. He has referred to paragraph Nos. 42 and 43 of the said judgment, which are reproduced as follows:

"*42. The plaintiff's Counsel lastly urged that before the deceased was insured he was examined by as many as three doctors of the Corporation Dr. Uppal, Dr. R. N. Rohatri and Dr. Kartar Singh. All these doctors: appeared in the witness on behalf of the Corporation. It is true that all of them deposed that in the opinion the deceased was fit to be insured at the time of their examination but their evidence does not advance the case of the plaintiff. The corporation did not know that there was a fraudulent suppression of facts by the deceased. The terms of the policy make it clear that the averments made as to the state of health of the insured in the Proposal form and the personal statement were the basis of contract between the parties and the circumstances that Dharam Pal Puri*

had taken Pains to conceal that he had ever been treated for this serious ailment by Dr (Miss) S. Padmavati when in fact he had been treated only a few months before the took out the first policy dated October 12, 1959, shows that the fraudulent suppression and concealment had an important bearing in obtaining the consent of the Corporation.

43. On the whole case my conclusion is that the declarations made by the deceased in the Personal statement were on a material matter and that he suppressed fraudulently facts which were material to disclose and that the deceased knew at the time of making the statement that it was false and that he suppressed facts which it was his duty to disclose."

53. Per contra, the contention of Shri J.P. Singh, learned counsel for respondent No.2 is that on merits, the grounds of repudiation cannot be sustained for the simple reason that admittedly, the cause of death of the policy-holder was not at all the disease cited in the order of repudiation. On the contrary, the cause of death was heart attack. Attention has been drawn to Supreme Court's judgment dated 05.10.2015 passed in Civil Appeal No. 8245 of 2015 (Arising out of S.L.P.(C)No. 13589 of 2015 (***Sulbha Prakash Motegaonkar and others vs Life Insurance Corporation of India***), where the Insurance Company had repudiated the claim of the policy holder on the ground that he was

suffering from lumbar spondilitis with PID with sciatica. The Supreme Court held that element of the disease was not a life threatening disease and it could not be cause of death of the insured.

54. Shri J.P. Singh has argued that since in the present case also, the diseases cited in the order of repudiation were not life threatening disease, and admittedly, the death of the insured occurred due to heart attack, non-disclosure of the fact that the insured was hospitalized for few days in the hospital before taking the policy, could not be a valid ground for repudiating the claim. He has further argued that even otherwise, here the insured had not taken policy for the first time in 2011, rather he had taken first policy in 2004 and had been continuously depositing the installments of the policies and it is not the case that when the insured purchased the policy, he was bed ridden. On the contrary, before accepting the policy, the insured was medically examined by the Medical Examiner of L.I.C. and the confidential report of the Medical Examiner of L.I.C. dated 23-11-2011 has already been brought on record as Annexure CA-1, in which, there was nothing adverse to the insured, therefore, the order of repudiating the claim cannot be sustained.

55. This Court proceeds to consider the rival contentions made at the bar regarding merits of the claim of respondent No. 2.

56. A perusal of the impugned order dated 28.11.2011, whereby the L.I.C. had repudiated the claim of respondent No. 2, shows that it was on the ground that assured had remained hospitalized in Chitransh Hospital and Surgical Care Centre, Shivpur, Varanasi for the period w.e.f. 12.10.2011 to 17.10.2011 (five days), while he was suffering from Enteric Fever and Urinary Tract Infection. For a ready reference, the ground for rejection of claim by the L.I.C. is extracted herein-below:

"उपरोक्त पालिसी जो स्व० ठाकुर प्रसाद सिंह के जीवन पर जारी की गई थी, के सम्बन्ध में आप द्वारा प्रस्तुत मृत्यु दावा के अन्तर्गत हमने पालिसी के समस्त दायित्वों को निरस्त करने का निर्णय इस आधार पर लिया है कि स्व० पालिसीधारक पालिसी लेने के पूर्व दिनांक 12.10.2011 से 17.10.2011 तक Enteric Fever & UTI यानि टाइफायड एवं मूत्रीय पथ संक्रमण की बिमारी की इलाज हेतु चित्रांस हास्पीटल एवं सर्जिकल केयर सेन्टर शुद्धीपुर शिवपुर वाराणसी में भर्ती रहा। बीमाधारक बीमा प्रस्ताव पत्र दिनांकित 30.11.2011 भरते समय जान बूझकर इस महत्वपूर्ण तात्विक तथ्य को छिपाकर धोखे से बीमा संरक्षण प्राप्त कर लिया गया था।

हमारे पास यह मानने एवं प्रमाणित करने हेतु पर्याप्त साक्ष्य उपलब्ध है जिससे प्रमाणित होता है कि स्व० बीमाधारक पालिसी लेने के पूर्व से Enteric Fever & UTI यानि टाइफायड एवं मुत्रीय पथ

संक्रमण की बिमारी से पीड़ित था किन्तु बीमा प्रस्ताव भरते समय बीमारी सम्बन्धी तथ्य को छिपाकर धोखे से बीमा संरक्षण प्राप्त कर लिया था।"

57. I have perused the annexure C.A.-1 to the counter affidavit, which is a copy of medical examiner's confidential report dated 23.11.2011 and such examination was done by the Doctor of the Corporation itself, where everything regarding health of the assured was mentioned to be fine.

58. I have also perused the prescription/diagnosis made by the Chitransh Hospital and Surgical Care Centre, Shivpur, Varanasi forming part of Annexure No. 3 to the writ petition, which is a report/form filled up and prepared by the Investigating Official of the Corporation. A perusal of the said report reveals that the official visited the Hospital concerned on 10.10.2013, i.e. one year after the death of assured and, insofar as the cause of death as mentioned in the said report is concerned, the same has been described as **heavy pain in the chest felt by assured on 10.09.2012 when he died during the course of treatment in Hospital of Dr. R.N. Dwivedi, situated in front of the house of the deceased**. The said noting is found in answer to question No. 11 contained in the form in the following words:

"मृतक बीमेदार 10.09.2012 को सीने में तेज दर्द शुरू हुआ उनके घर वाले घर के सामने डा0 आर0 एन0 द्विवेदी के अस्पताल मे ले गये । इलाज के दौरान उनकी मृत्यु हो गई । आत्म हत्या की कोई सम्भावना नहीं है।"

59. Further, insofar as physical ailment of the assured w.e.f. 12.10.2011 to 17.10.2011 in Chitransh Hospital and Surgical Care Centre, Shivpur, Varanasi is concerned, a noting is found in the form as answer to question No. 12 in the following words:

"मृतक बीमेदार पालिसी लेने से पूर्व बुखार होने के कारण चित्रांश हस्पताल वाराणसी मे 12.10.2011 से 17.10.2011 तक इलाज करवाया। प्रपत्र फाइल में संलग्न है।"

60. From perusal of the entire facts and material available on record regarding physical ailment of the assured, I find substance in the arguments of Shri J.P. Singh, learned counsel for respondent No. 2 that the sufferance of the deceased from fever in October, 2011 and five days' hospitalization due to the same at Chitransh Hospital and Surgical Care Centre, Shivpur, Varanasi, could not be taken as a ground for repudiating the claim of respondent No. 2 after the death of assured, which occurred after one year on 12.09.2012, particularly, when the Fever or Enteric

Fever cannot be treated as a life threatening disease, moreso, when cause of death has been described by the Investigating Official of the Corporation itself, as sudden severe pain in the chest of the deceased on 10.09.2012, when he died the same day during treatment in a Hospital situated in front of his house.

61. Insofar as the judgement cited by Shri Nagar regarding period of death or the opinion of the Doctor, in the case of ***Mithoolal Nayak*** (supra) is concerned, there the Supreme Court was dealing with the matter and examining the provisions of section 45 of the Insurance Act, in the light of peculiar facts of that case, where challenge was made in respect of a lapsed policy with reference to two years period. The effect of concealment of material fact was also examined and repudiation of claim by the Life Insurance Corporation was found to be justified. However, with due respect the case of ***Mithoolal Nayak*** (supra) would be of no help to the petitioner as the case in hand is neither a case of lapsed policy nor in view of the aforesaid discussion, this Court finds that non-mentioning of sufferance of fever one year prior to death of the assured was a fact material to decide the claim. Therefore, section 45 of Insurance Act, cannot come in the way of respondent No. 2 to claim desired relief in the factual matrix of the present case.

62. Insofar as the judgment of Delhi High Court in the case of ***Krishna Wanti Puri*** (supra) is concerned, it was a case where three Doctors of the Corporation examined the assured and appeared in the witness box of the Corporation stating that the deceased was in a fit medical condition. The Corporation did not know that there was a fraudulent suppression of the facts by the deceased. The case before the Delhi High Court was where the assured was suffering from serious ailment i.e., *Mitral Stenosis with Auricular Fibrillation*, which was described as a type of *rheumatic heart disease*, which, according to the Insurance Corporation, in that case, was deliberately concealed by the assured. It was in the peculiar factual background of the said case that the Delhi High Court came to the conclusion that the said serious ailment was a material fact, which was deliberately and fraudulently suppressed by the assured at the time of taking the policy.

63. However, in the present case, it has elaborately been discussed that medical opinion furnished by the Doctor of the Corporation as contained in the certificate filed as annexure No. CA-1 to the counter affidavit, when compared to the subsequent report of the Investigating Official of the Corporation, clearly established that cause of death, which occurred on 10.09.2012, had absolutely no co-relation with the fever suffered by the assured one year ago, and therefore, non-disclosure of

such a Fever/Enteric Fever/Urinary Tract Infection cannot be treated as suppression of a material fact while deciding the claim made by the respondent No. 2. Therefore, the facts of the case in the case of ***Mithoolal Nayak*** (supra) ***and Smt. Krishna Wanti Puri*** (supra) are distinguishable.

64. In view of above discussion, the issue/contention No. 3 raised by Shri Nagar, learned Senior Advocate also does not have any force and is hereby discarded.

65. While I am fully satisfied that grounds raised by the petitioner Life Insurance Corporation of India challenging the impugned award of Permanent Lok Adalat do not have any substance, the claim made by the respondent No.2 has rightly been allowed by the Permanent Lok Adalat under the order impugned.

66. In view of above discussion, I do not find any good ground to interfere with the impugned judgement and award of Permanent Lok Adalat dated 15.02.2016. Consequently, the writ petition fails and is accordingly **dismissed,** however, without imposing any costs.

67. In the present writ petition, an interim order was passed on 06.05.2016 staying the operation of the impugned award dated 15.02.2016 subject to condition of making deposit of the entire amount by the L.I.C. as awarded along with upto date interest with a further stipulation that the

amount so deposited shall be kept in a fixed deposit with a nationalized Bank. **Therefore, the amount deposited by the Life Insurance Corporation under the said interim order shall positively be released in favour of respondent No. 2 within a period of two months** from the date a certified copy of this judgment and order is produced before the court below. The court below shall also ensure that nationalized Bank, in which the amount has been invested in pursuance of the interim order dated 06.05.2016, shall be directed and informed to release the same **along with interest accrued upto date** in favour of respondent No.2 within a period of two months.

Order Date :- 06.04.2023

Sazia