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**HIGH COURT OF ANDHRA PRADESH AT AMARAVATI**

**W.P.No.24779 of 2023**

Between:

M/s. VANTAGE SPINNERS PVT LTD  
having its Registered Office at R S NO 50 53/2  
Hanuman Junction Road, Gollapalli Village  
Nuzvid Mandal, Eluru District, Andhra Pradesh  
Represented by its Director Smt Nandamuri Meena Latha  
and two others.

...Petitioners.

**AND**

The Union of India,  
Rep. by its Principal Secretary,  
Finance and Commerce,  
Sastri Bhavan, New Delhi and 6 others

...Respondents

DATE OF JUDGMENT PRONOUNCED: 13.02.2025

**SUBMITTED FOR APPROVAL:**

**HONOURABLE SRI JUSTICE VENKATESWARLU NIMMAGADDA**

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|---|--------|
| 1. Whether Reporters of Local newspapers may be allowed to see the Judgments? | Yes/No |
| 2. Whether the copies of judgment may be marked to Law Reporters/Journals?    | Yes/No |
| 3. Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? | Yes/No |

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**JUSTICE VENKATESWARLU NIMMAGADDA**

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**\* HONOURABLE SRI JUSTICE VENKATESWARLU NIMMAGADDA**

**+ W.P.No.24779 of 2023**

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# M/S VANTAGE SPINNERS PVT LTD  
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.. Respondents

<GIST:

>HEAD NOTE:

! Counsel for petitioner: Sri Navdeep Singh, learned counsel  
representing Sri A.S.K. Bhargav, learned  
counsel for the Petitioners.

Counsel for respondents: 1) Sri Y.V. Anil Kumar, for Respondent No.1  
2) Sri V. Srinivasa Rao, learned Standing  
Counsel for Respondent Nos.4 and 5

? CASES REFERRED:

1. MANU/SC/0121/2023
2. 2024 INSC 164= MANU/SC/0161/2024
3. 2020 INSC 140= MANU/SC/0131/2020
4. 2024 INSC 296 = MANU/SC/0300/2024
5. 2023 INSC 1022 = MANU/SC/1262/2023
6. Appeal Suit No.645 of 2008
7. W.P(C) No.8916 of 2020
8. (2002) 2 SCC 1
9. 2001 (2) SCC 160,

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APHC010479202023



**IN THE HIGH COURT OF ANDHRA PRADESH  
AT AMARAVATI  
(Special Original Jurisdiction)**

**[3329]**

THURSDAY ,THE THIRTEENTH DAY OF FEBRUARY  
TWO THOUSAND AND TWENTY FIVE

**PRESENT**

**THE HONOURABLE SRI JUSTICE VENKATESWARLU  
NIMMAGADDA**

**WRIT PETITION NO: 24779/2023**

**Between:**

M/s Vantage Spinners Pvt Ltd and Others

**...PETITIONER(S)**

**AND**

The Union Of India and Others

**...RESPONDENT(S)**

**Counsel for the Petitioner(S):**

1. AKULA SRI KRISHNA SAI BHARGAV

**Counsel for the Respondent(S):**

1. SRINIVASA RAO VUTLA

2. Y V ANIL KUMAR (Central Government Counsel)

**THE HONOURABLE SRI JUSTICE VENKATESWARLU NIMMAGADDA**

**WRIT PETITION NO: 24779/2023**

**This Court made the following:**

**ORDER:**

The instant Writ Petition is filed under Article 226 of the Constitution of India by the Petitioners for the following relief:

“..to issue a writ or direction more in the nature of or writ of mandamus

- a) By calling for the Investigation Report dated 10.07.2023 submitted by the Respondent No.7 and the Survey Report dated 17.07.2023 submitted by the Respondent No.6 and quash the same for being violative of the statutory provisions of IRDA Act, Rules and Regulations;
- b) Consequently, to set-aside the Repudiation Letter vide bearing No.150098/NMCH/ /2023-24, dated 29.08.2023 issued by the Respondent No.5;
- c) Direct the Respondent No.4 and 5 to release the claim amount as per the summary in terms of assessment of loss, as submitted by the Petitioner No.1 along with interest from the date of claim till realization;
- d) Direct the Respondent No.4 and 5 to pay Rs.50,00,000/- as damages to the Petitioners;
- e) And/or to pass..”

2. The Petitioners' case is that the Petitioner No.1 company was founded by Petitioner Nos.2 and his wife i.e., Petitioner No.3 and they established M/s. Vantage Spinners Private Limited at Hanuman Junction Road, Gollapalli Village, Nuzivid Mandal, Eluru District with the primary goal of generating employment opportunities for the

local/rural community. Their commitment has resulted in over 2000 individuals being directly employed by the company, with an additional 6000 to 1000 people indirectly dependent on its operation. The company's operations also entail the consumption of 60 acres of crops daily, demonstrating their significant support to local cotton farmers.

(a) The Petitioner company purchased the following three insurance policies from the Respondent Company which covered building, transformer, electric installation, plant and machinery, stocks, furniture & fixtures, gross profits etc.,

S.No.	Police details	Police No.	Period	Coverage
1.	Policy No.1	1507001121P110888335 (SFSP)	22.01.2022 to 21.01.2023	Plant & Machinery Rs.49,00,00,000.00 Transformer Rs. 30,00,000.00 Building Rs. 5,00,00,000.00 Electric Instl. Rs. 30,00,000.00 Stocks Rs. 5,00,00,000.00
2.	Policy No.2	1507001121P108800837 (LOP)	29.11.2021 to 28.11.2022	Gross Profit Rs.12,00,00,000.00
3.	Police No.3	1507001121P106752083(LUS)	13.10.2021 to 12.10.2022	Plant & Machinery Rs.24,50,00,000.00 Transformer Rs. 30,00,000.00 Building Rs. 5,00,00,000.00 Fittings * Fixtures Rs. 1,20,0,000.00 Stocks Rs. 19,00,00,000.00

(b) While things stood thus, on 04.04.2022 to the unfortunate of the Petitioner fire occurred accidentally in the factory premises of the Petitioner company resulting a major portion of the factory premises causing huge loss to the Petitioner company. The Petitioner company has two manufacturing units – Spinning and Opened Unit with

galvalume sheet roofing in the premises. The incident occurred in storage godown commonly used by both the units. Both units used to store their stocks within the four walls of the affected common warehouse/godowns. Since the stocks of OE unit (Unit-II) were also affected, the policy No. 1507001121P106752083 (LUS) covering its various assets for a total sum insured of Rs.50 Crores which includes stocks for a sum insured of Rs.19 Crores was also operative for the coverage of the subjected claim.

(c) The Police made detailed enquiries about the cause of fire and examined the reports of the fire department officers RFSL, Vijayawada and CFSL, Hyderabad dated 28.10.2022 and came to conclusion that the fire was caused accidentally and there was no foul play on the part of anyone in causing the fire. Respondent No.7 carried out the investigation regarding the cause of fire at the instance of the Surveyor at the factory premises. They were appointed contrary to the guidelines of Insurance Regulatory and Development Authority of India (for short "IRDA") for Forensic Investigation of the incident. Respondent No.7 made a report dated 10.07.2023 stating that arson was the cause of fire and the said report has not been provided to the Petitioner-company till date by the Respondent Insurance Company. Respondent Insurance Company after receipt of

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intimation of fire in factory premises appointed Respondent No.6 and Respondent No.6 visited the factory premises and enquired about the damages due to fire and submitted report on 17.07.2023 and opined that arson was the possible cause of fire. Respondent No.5 vide its letter dated 29.08.2023 intimated the Petitioner company about the repudiation of the claim.

(d) In spite of repeated reminders to the Respondent Insurance Company, neither provided report dated 10.07.2023 of Respondent No.7 nor considered representation of the Petitioner company. The Petitioner company prepared a summary showing observations/discrepancies in Surveyor's report dated 17.07.2023. Hence, aggrieved by the repudiation letter issued by Respondent No.5, the Petitioners preferred present Writ Petition.

**3.** Respondent Nos.3 and 4 filed counter and contending thus:

(a) As per the Final Survey Report under UBLUS Policy, Open Ended Unit-II was not affected by the incident and production was ongoing. The Respondent Insurance Company appointed Surveyor/Loss Assessor and conducted his investigation and submitted his detailed report dated 17.07.2023, which was furnished to the Petitioner. Basing on the above Surveyor Report, dt: 17.07.2023, the claim was repudiated.

(b) As per the Forensic Analysis Report of CSIR-IICT, Hyderabad, the fire accident occurred due to Hydro Carbons and Extraneous Accelerants are found in the samples. Therefore, it is not an accidental fire, and it is a willful act for wrong gain. As per the Final Survey Report dated 17.07.2023 and the Fire Investigation Report, dt: 10.07.2023 the Petitioners' loan account with different banks were declared as NPA.

(c) As per the Final Survey Report dated 17.07.2023 and the Fire Investigation Report dated 10.07.2023, CBI has filed a case against the Petitioner, Insured and his Directors. The Final Survey Report dated 17.07.2023 and the Fire Investigation Report dated 10.07.2023, reveal that an Insolvency Petition bearing No.(IB)55/9/S/AMR/2020 was filed by M/s The Cotton Corporation of India Limited against the Petitioner, the insured under the provisions of the Section 9 of the Insolvency & Bankruptcy Code, 2016. The said Petition was admitted by the NCLT Bench, Amaravati vide its orders dated 05.04.2022, which is pending under an appeal before the Hon'ble Appellate Authority (NCLAT), Chennai Bench, vide Company Appeal (AT)(CH)(INS) NO.129 of 2022. The order dated 05.04.2022 passed by the NCLT is presently stayed as on date by the Hon'ble Appellate Authority's Order dated 27.04.2022.

(d) As per the Survey and Investigation Report, the enquiries and information gathered, reveal that the Petitioners, the insured has long outstanding balances i.e., Rs.35 Crores to Electricity Department, Rs.1.89 Cores under the head of MAT Credit, Rs.2.98 Crores under Advances against purchases and Rs.3.64 Crores under Interest Subsidy receivable.

(e) As per the survey report, the raw material godown was completely damaged and the office building was partially damaged due to fire. However, details of stock which was damaged was never provided to the Surveyor as mentioned in the Survey Report. As per the survey report, the fire has not travelled to the process block (due to separation wall and firefighting efforts). Furthermore, there was no evidence of fire, smoke, or soot affecting the spinning process unit.

(f) The Survey Report further observes that even if the stocks in process were to be affected by fire and resultant heat, these can be reused by reprocessing and selling them at a discounted rate if there are any variations in required quality after such reprocessing.

(g) The Petitioner has not provided any plausible explanation of how exactly the incident occurred. The burden of proof was on the Petitioner to establish that the incident was a case of accidental fire through an irrefutable and undeniable evidence Mere Occurrence of

the incident itself does not mean it is accidental in nature. Hence there is no direct evidence of the cause of the fire being accidental. Besides the finding of the Investigator and the Surveyor questioning the veracity of the cause of fire, it is on record that a letter signed by many villagers near to Insured's premises was received by Insurers on 29.12.2022 alleging that Insured is trying to make fraudulent claim.

(h) Relying upon the facts, events, circumstances, findings of the survey report together with the fire investigation report, documentary evidence adduced by Petitioner company as described above, the Breach of General Condition No.6(1), General Condition No.7, General Condition No.8 and Stock Warranty Clause shall severally and jointly operate, override and nullify the coverage under the Insurance Policy. Therefore, the subject claim filed by the Petitioner, the insured is inadmissible and untenable. Hence, the Writ Petition is devoid of merits and same may be dismissed.

**4.** Petitioners filed reply affidavit denying the allegations made in the counter affidavit and contending thus:

(a) The counter affidavit does not contain any valid or substantial grounds for kind consideration of this Hon'ble Court much less a deliberate articulation of presumptions and surmises for the sole purpose of denying relief(s) to the Petitioners.

(b) The averments and contents of the Affidavit filed by the Respondent company state that the forensic analysis report of CSIR-IICT, Hyderabad opine that the fire accident has occurred due to Hydro-Carbons and Extraneous Accelerants found in the samples and therefore the event was not accidental in nature; that the Final Survey Report dt: 17.07.2023 and the Fire Investigation Report dated 10.07.2023 declare that the Petitioners' loan accounts were found to be declared as NPA, entailing transfer of loan accounts to Stressed Asset Management Branch for further entrustment of forensic audit for period between 01.01.2016 to 31.03.2020; that the forensic audit has highlighted non-cooperation of borrower, lack of clarification, fabrication of documents and manipulation of books of accounts, higher drawing power, breach of trust, diversion of funds, transactions without receipts and sanctioned terms and differences between sales and purchases; that the final survey report dated 17.07.2023 and the fire investigation report dated 10.07.2023 state that CBI has filed case against the Petitioners, Insured and the Directors thereof under Section 120B r/w 420, 468, 471 IPC and 13(2) r/w 12(1) of PC Act, 1988 and multiple FIRs have been registered against the Petitioners; that Insolvency Petition is pending against the Petitioners and as per Survey and Investigation Report, the Petitioners have outstanding balances of Rs.35 Crores to the Electricity Department, Rs.1.89

Crores to head of MAT Credit, Rs.2.98 Crores to Advances against purchases and Rs.3.64 Crores to Interest Subsidy receivable; that the Final Survey Report dated 17.07.2023 state that fire/smoke was noticed in raw material storage godown near spinning unit entailing complete damage and partial damage to office building, allegedly the fire has not spread to the process block and there was no conclusive evidence thereof, that the stocks affected by the fire can be re-used by reprocessing and selling at a discounted rate, that the report of the police which is not a technical expert or does not possess scientific or technical capabilities is replete with infirmities, neither convincing nor conclusive and does not withstand the test of strict proof with regard to case of fire; that the cause of loss cannot be assessed in isolation of the terms and conditions much less must be assessed within contractual framework of the policy; that the facts, events circumstances, findings of the survey report together with fire investigation report, documentary evidence read with policy schedule terms and conditions conclude that the Petitioners have failed to provide sufficient documentary proof or explanation of occurrence of incident in a time-bound manner for accurate assessment and have breached the terms and conditions of the Insurance Policy and thus, the claim filed by the Petitioners is inadmissible and untenable due to ulterior motive and fraudulent and false declarations to defraud the

Insurer and hence was repudiated; that the Writ Petitioners are guilty of malpractices and unlawful activities with a motive of wrongful gain and the villagers have preferred a complaint in lieu of the same stating that the alleged fire has been created by the Respondent for unlawful gain and the relief(s) sought for by the Writ Petitioners is not maintainable under Article 226 of the Constitution of India; that the Writ Petition consists of disputed questions of facts and the Petitioner has approached this Hon'ble Court with unclean hands.

(c) The Respondent Company deliberately refused to adhere to and comply with the IRDA regulations. The impugned reports were not submitted within stipulated time and are stereotypical and suffer from manipulations and tutoring. Further, the Respondent Company has misused its superior power and privileged position and has arbitrarily deprived the Petitioner Company of its Fair and Justified opportunity of being heard. Thus, the Report arrived at by the Respondent Company is undeniably preconceived, prejudiced, unfair, unreasonable and unprofessional. It is denied that the fire was not accidental as alleged by the Respondent Company. The Police authorities as well as the fire officials along with State Forensic Science Laboratory have visited the site and taken samples and have authoritatively affirmed in their independent reports on 09.05.2022,

i.e., after 35 days, that the cause of fire of incident dated 04.04.2022 was not willful act on part of the Petitioner Company.

(d) The Surveyor has referred to various irrelevant matters in his report which has no nexus to the loss occurred to the Petitioner Company during the operation of Insurance Policy for the sole purpose of denying their indemnification of said loss. Respondent Company clearly prove that the loss occurred at site due to accidental fire entailing the Respondent Company's liability. Moreover, the Surveyor has comfortably assessed the loss caused towards plant and machinery for Rs.11,66,725/- and raw materials purchased along with large quantity of stocks being damaged. Thus, the irrelevant reasoning given by the Respondent Company without any iota of evidence or basis for the purpose of defeating the Insurance Claim of Petitioner.

(e) The bitter truth of the issue is that the report of inexperienced and unqualified investigator cannot challenge and / or replace the findings of the independent Government authorities like police and FSL authorities. It is very much on record that these independent authorities have clearly affirmed that the loss is purely accidental without any iota of foul-play. The fact of the case is the

report of the Police is based upon the FSL reports, which have clearly concluded in favour of the Petitioner Company.

(f) The Respondents opinion is bereft of any approvals or procedure contemplated under IRDA Rules and Regulations and consideration of Police report which conclusively state that the mishap was cause due to accidental fire in the premises of Petitioner Company. Hence, the Writ Petition is liable to be allowed.

5. Learned counsel for the Petitioners further asserts that the Petitioners' company has been purchasing insurance policies from the Respondent Company continuously since 2009. Accordingly, a policy also purchased for the period from 22.01.2022 to 21.01.2023 for a total value of Rs.59,60,000/-. Therefore, the Petitioners' company was covered under the insurance policy for the said period. The subject fire accident and loss of property was happened on 03.04.2022 which is within the valid period of coverage under the insurance policy. The fire accident was taken place in the premises of the Petitioner's company on 03.04.2022 at mid-night. But the complaint was lodged by the Managing Director on 04.04.2022 at 09:00 PM. The said fire accident was confirmed by the Inspector of Police vide his terms as it is a clear case of the accidental fire and hence the Investigating Officer (IO) is advised to refer the case. More so, the District

Superintendent of Police, Eluru District admitted and issued a certificate dated 08.12.2022 by referring based on request of IO and experts opinion from Centre Forensic Science Laboratory (CFSL), Ramanthapur, Hyderabad, A.P Forensic Science Laboratories (FSL), Mangalagiri and from other experts and from legal opinion from the Deputy Director of prosecution there is nothing to suggest that the fire which broke out is not an accidental fire. Accordingly, the IO is permitted to refer the case as action dropped.

6. That the final survey report of the 6<sup>th</sup> Respondent describing about the fire accident that the fire was reportedly brought under control and no personnel were injured in this accident and raw-material godown was completely damaged and office building is partially damaged due to fire. It is further observed that the damaged stock inclusive cotton bales were shifted and dumped at open yard in the premises rapidly in the presence of Government Fire Department Police while simultaneously fire fighting operation was on going and 90% of the fire affected warehouse was cleared by insured's team using tractors and debris were stored in open yard nearby.

7. It is further observed that the OE Spinning Unit i.e., 2<sup>nd</sup> Unit is not affected by the incidence and production was on going and finally the report concluded that basing on preliminary information received

from insured and pending clarification sought about, they estimated a loss of Rs.27.50 Crores. Therefore, the survey report of the 6<sup>th</sup> Respondent clearly and categorically stated that the buildings were damaged @ Rs.1.40 Crores, P&M @ Rs.1.60 Crores, Furniture and fixtures @ Rs.0.50 Crores and Stocks @ Rs.24.00 Crores. Therefore as per the survey report the 6<sup>th</sup> Respondent concludes about the said incidence was a fire accident and to the extent of Rs.27.50 Crores and damage / loss was caused to the Petitioners.

**8.** He further submits that the appointment of 7<sup>th</sup> Respondent by the 5<sup>th</sup> Respondent as an Investigating Agency for investigation of incidence and submitting report dated 10.07.2023 and the report of the 6<sup>th</sup> Respondent dated 17.07.2023 are being violative of statutory provisions of IRDA regulations as well rules made thereunder. He further asserts that issuing impugned letter of repudiation dated 29.08.2023 by the 5<sup>th</sup> Respondent basing upon the investigation report of the 7<sup>th</sup> Respondent and final report of the 6<sup>th</sup> Respondent is contrary to the facts as certified by the Superintendent of Police dated 08.12.2022 and investigation report issued by the IO of Nuzivid Circle dated 12.12.2022.

**9.** He further contends that the surveyor – 6<sup>th</sup> Respondent herein having assessed the loss occurred on various counts as explained

above and its final report rejected the claim of the Petitioner company ignoring its own assessment as well as police report is nothing but contrary to the findings on its own report at preliminary stage. He further submits that once the appointment of the 7<sup>th</sup> Respondent as investigator who submitted his investigation report on 10.07.2023 is contrary to the IRDA regulations. Therefore, the letter of repudiation issued basing upon the said report is liable to be quashed.

To substantiate his claim learned counsel for the Petitioners relied upon the rulings held by Hon'ble Apex Court in following cases:

- (1) Karnavati Veneers Pvt Ltd., v. New India Assurance Company Limited<sup>1</sup>
- (2) Thangam and another v. Navamani Ammal<sup>2</sup>
- (3) Canara Bank v. M/s United Indua Insurance Co Ltd<sup>3</sup>
- (4) Mahakali Sujatha v. Future General India Life Insurance Co., Ltd<sup>4</sup>
- (5) New India Assurance Co., Ltd., v. Mudit Roadways<sup>5</sup>
- (6) The New India Assurance Co. Ltd. v. Shri Naga Durga Silk Reeling Industry [Telangana High Court]<sup>6</sup>
- (7) Mohit Kumar v. Divya Mahajan [High Court of Delhi]<sup>7</sup>

10. Learned counsel for the Petitioners further submits that the alternative remedy as contended by the Respondents i.e., the scheme of Ombudsman which is having only pecuniary jurisdiction of Rs.30 lakhs or so and to approach Civil Court of Law by stating there are

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<sup>1</sup> MANU/SC/0121/2023

<sup>2</sup> 2024 INSC 164= MANU/SC/0161/2024

<sup>3</sup> 2020 INSC 140= MANU/SC/0131/2020

<sup>4</sup> 2024 INSC 296 = MANU/SC/0300/2024

<sup>5</sup> 2023 INSC 1022 = MANU/SC/1262/2023

<sup>6</sup> Appeal Suit No.645 of 2008

<sup>7</sup> W.P(C) No.8916 of 2020

disputed facts regarding cause of accident i.e., fire accident and volume of the loss and regarding value of the loss occurred to the Petitioner company is not tenable in view of principle laid down by the Delhi High Court in **Mohit Kumar v. Divya Mahajan** (Supra 7).

11. He further asserts that the final survey report of the 6<sup>th</sup> respondent which is consisting of contradictory statements, due to inexperienced and unqualified investigator who cannot challenge or dislodge the findings of the independent Government Authorities like Police and FSL Authorities which are clearly confirmed the loss is caused purely an accidental without any *iota* of doubt. In view of clear and categorical report of the police authorities and State Forensic Laboratory after having physical inspection as well as testing of samples vide its report dated 09.05.2022, contra to that the 6<sup>th</sup> Respondent deliberately with malafide intention ignored the claim of the Petitioner and did not act independently and submitted false and misleading reports to favour the 5<sup>th</sup> Respondent.

12. On the other hand, learned counsel for Respondents submits that in view of the forensic analysis report i.e., CSIR-IICT, Hyderabad the fire accident was occurred due to Hydro Carbons and Extraneous Accelerants are found in the samples. Therefore, it is not an accidental fire and it is a willful act for wrongful gain. Therefore, the

claim of the Petitioner that the subject incidence is a fire accident cannot be admitted. Apart from that, claiming the fire accident to the extent of other premises especially the stock warehouse and the value of the claim of the Petitioner on the guise of the fire accident is also not an admitted by the Respondents since the core issues are in dispute and the same cannot be resolved by way of extraordinary jurisdiction under Article 226 of the Constitution of India. As such the Writ Petition is not maintainable.

**13.** He further asserts that in view of final survey report dated 17.07.2023 and pursuant to the report of the 7<sup>th</sup> Respondent dated 10.07.2023, the subject incidence is not due to accidental fire and same is due to Hydro Carbons and Extraneous Accelerants and the Petitioner's account was classified as "NPA" and CBI has filed a case against the Petitioners U/s 120-B r/w 420, 468, 471 of IPC and 13(2) r/w 13(1)(d) of PC Act, 1988 and other offences have been registered and Insolvency Petition was pending against the Petitioners. Apart from that, an outstanding of Rs.35 Crores to Electricity Department and other dues to the statutory authorities and as per the survey report the raw-material storage godown was completely damaged and the accident occurred is due to fire smoke and the Petitioners caused for fabrication of documents and manipulation of books of accounts in

claiming the compensation. Therefore, the Petitioner approached this Court with unclean hands. On that sole ground itself the present Writ Petition is liable to be dismissed.

**14.** He further contended that the Deputy Chief Inspector of Factories as well as Deputy Electrical Engineer has specifically stated that at stock godown there is no power and the alleging fire accident was not occurred due to electrical short circuit. But it may possible by way of short circuit of fork lifter battery or due to pressure between the cotton. It is a fact that Petitioner's company parked Fork-Lifter in the godown.

**15.** He further submits that in view of breach of general condition No.8, the claim of the Petitioner cannot be considered under the policy as the claims arising out of or in any respect of fraudulent or if any false declaration be made or used in support thereof or if any fraudulent means or devices are used by the Insured or any one acting on his behalf to obtain any benefit under the policy and if the loss or damage be occasioned by the willful act or with the connivance of the Insured or dishonesty are specifically excluded from the purview of the Policy.

**16.** He further submits that the claim of the Petitioner company is inadmissible, untenable within the scope and purview of the terms and

conditions of the policy and also in view of the facts and circumstances and due to findings of the final survey report dated 17.07.2023 and also investigating report dated 10.07.2023 and also for clear breach of general condition Nos.6(1), 7 and 8. It is further pleaded that the respondent company received complaints and malpractices from the workers and villagers about the malpractices, unlawful activities of the writ petitioner which indicates the petitioner is trying for unlawful gain from the insurance company. Apart from that in view of malpractices and unlawful activities and with motive of wrongful gain the Petitioner is not entitled to invoke extraordinary jurisdiction before this Hon'ble Court. As such the Writ Petition itself is not maintainable.

17. He finally argued that in view of disputed questions of facts arisen out of the affidavit as well as counter affidavit of the Respondents, the present claim of the Petitioner cannot be decided mere basing upon the affidavits and counter affidavits without examining the persons concerned. Therefore, the Writ Petition is devoid of merits and liable to be dismissed with costs. He relied upon the rule laid down by Hon'ble Apex Court in **Synco Industries v.**

**State Bank of Bikaner & Jaipur<sup>8</sup> and Life Insurance Corporation  
Of India v. Smt.Asha Goel<sup>9</sup>**

18. Heard Sri Navdeep Singh, learned counsel representing Sri A.S.K. S. Bhargav, learned counsel for the Petitioners and Sri Y.V. Anil Kumar, learned Counsel for Respondent No.1 and Sri V. Srinivasa Rao, learned Standing Counsel for Respondent Nos.4 and 5 and in view of submissions made by both the learned counsel and on perusal of the material placed on record, to determine the issue this Court intend to frame the following issues:

- (1) In view of contended facts in dispute as claimed by learned counsel for Respondents in the given facts and circumstances whether the Writ Petition is maintainable under Article 226 of the Constitution of India or not?
- (2) Whether the Petitioners herein approached this Hon'ble Court with unclean hands or not ?
- (3) As contended by learned Counsel for Respondents the Petitioner is entitled to avail alternative remedy either under the scheme of Ombudsman or by approaching Court of Law ?

19. **Point No.1:** On perusal of the entire record filed in support of the Writ Petitioner as well as counter affidavit after gone through the pleadings made by learned counsel for the Petitioners as well as

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<sup>8</sup> (2002) 2 SCC 1

<sup>9</sup> 2001 (2) SCC 160,

learned Counsel for Respondents, the core issue i.e., the subject incidence was occurred due to fire as an accident or it is other than the accidental fire or it is a willful act for wrongful gain. To substantiate the core issue, learned counsel for the Petitioners relied upon the certificates issued by the governmental agencies i.e., District Superintendent of Police and basing upon the IO /SHO(Local) report dated 12.12.2022 and also in view of the report of APSFL, that the said incident is an accidental incident caused due to fire as an accident by which the petitioners suffered loss. Learned counsel for the Petitioners also relied upon the preliminary findings and observations of the survey report as is admitted there is a fire accident and the petitioners and others are tried to rescue the property from causing damage. Then learned counsel for the Petitioners argued that the authenticity of the certificates and conclusions arrived by the Governmental Agencies cannot be disbelieved or replaced in view of the forensic analysis report of CSIR-IICT, Hyderabad which opined that the fire accident was occurred due to the Hydro Carbons and Extraneous Accelerants which were found in the samples and also because of the investigation report of the 7<sup>th</sup> Respondent who was appointed by the 5<sup>th</sup> Respondent and who submitted report after the time prescribed under Regulation No.15 of IRDA Act and also basing

upon the report of the 6<sup>th</sup> Respondent and his final survey report which report speaks so many contradictions and contrary statements.

**20.** Therefore, regarding core issue there may not be any dispute. Therefore, the contention of the Petitioners that there could not be any dispute regarding the core issue is not acceptable and untenable for the reason the forensic analysis report of CSIR-IICT, Hyderabad which concludes that it is other than fire accident since it is a pioneer institution in respect of science and research. The observation in its report that the said fire accident was occurred due to Hydro Carbons and Extraneous Accelerants cannot be ruled out. The investigation report as well as survey report of the 6<sup>th</sup> and 7<sup>th</sup> Respondents also indicates the fire and smoke was noticed in the raw-material storage godown. As such, the issue whether the subject loss or damage to the Petitioners was caused by way of an incident of fire or by way of willful act for wrongful gain to be decided only by conducting a detailed enquiry but cannot be decided on perusal of the affidavit as well as counter affidavit. The Petitioner to substantiate his contention relied upon the judgment of Delhi High Court in **Mohit Kumar v. Divya Mahajan (Supra 7)** which reads thus:

“25. It is clearly seen that in the instant case, there is no disputed question of facts. What is to be considered is the import and extent of the relevant clauses of the insurance policy. The Hon'ble Supreme Court, time and again, has unequivocally held that the Constitution

does not place any fetter on exercise of the extraordinary jurisdiction. Rather, it is left to the discretion of the High Courts. Therefore, it cannot be laid down as a general proposition of law that in no case the High Court can entertain a writ petition under Article 226 of the Constitution to enforce a claim under a life insurance policy. The determination of the question depends on consideration of several factors i.e., whether a writ petitioner is merely attempting to enforce his/her contractual rights or the case raises important questions of law and constitutional issues, the nature of the dispute raised, the nature of inquiry necessary for determination of the dispute etc. The matters are required to be considered in view of the facts involved in each case.

26. If the court finds that the insurer has illegally repudiated the claim de hors the specific terms of the policy, the import of the decision in the case of Asha Goel (supra) would mean that in such cases, the writ petition would still be maintainable as it has been rightly relied upon by this court in the case of Pavan Sachdeva (supra).”

(Emphasis Supplied)

21. On perusal of the judgment relied upon by learned counsel for the Petitioners wherein the dispute therein is regarding relevant clause of insurance policy to enforce the claim of the Petitioner under the policy but the issue in the case in hand is squarely different from the issue involved in the case stated supra. Therefore, the same is not applicable. On the other hand the ratio rendered by Hon’ble Apex Court in **Life Insurance Corporation Of India v. Smt.Asha Goel** (Supra 9) which reads thus:

“10. Article 226 of the Constitution confers extra-ordinary jurisdiction on the High Court to issue high prerogative writs for enforcement of the fundamental rights or for any other purpose. It is wide and expansive. The Constitution does not place any fetter on exercise of the extra-ordinary jurisdiction. It is left to the discretion of the High Court. Therefore it cannot be laid down as a general proposition of law that in no case the High Court can entertain a writ petition under Article 226 of the Constitution to enforce a claim under a life

insurance policy. It is neither possible nor proper to enumerate exhaustively the circumstances in which such a claim can or cannot be enforced by filing a writ petition. The determination of the question depends on consideration of several factors, like, whether a writ petitioner is merely attempting to enforce his/her contractual rights or the case raises important questions of law and constitutional issues; the nature of the dispute raised; the nature of inquiry necessary for determination of the dispute etc. The matter is to be considered in the facts and circumstances of each case. While the jurisdiction of the High Court to entertain a writ petition under Article 226 of the Constitution cannot be denied altogether, Courts must bear in mind the self-imposed restriction consistently followed by High Courts all these years after the constitutional power came into existence in not entertaining writ petitions filed for enforcement of purely contractual rights and obligations which involve disputed questions of facts. The Courts have consistently taken the view that in a case where for determination of the dispute raised it is necessary to inquire into facts for determination of which it may become necessary to record oral evidence a proceeding under Article 226 of the Constitution is not the appropriate forum. The position is also well settled that if the contract entered between the parties provide an alternate forum for resolution of disputes arising from the contract, then the parties should approach the forum agreed by them and the High Court in writ jurisdiction should not permit them to by-pass the agreed forum of dispute resolution. At the cost of repetition it may be stated that in the above discussions we have only indicated some of the circumstances in which the High Courts have declined to entertain petitions filed under Article 226 of the Constitution for enforcement of contractual rights and obligation; the discussions are not intended to be exhaustive. This Court from time to time disapproved of a High Court entertaining a petition under Article 226 of the Constitution in matters of enforcement of contractual rights and obligation particularly where the claim by one party is contested by the other and adjudication of the dispute requires inquiry into facts. We may notice a few such cases; Mohammed Hanif vs. The State of Assam (1969) 2 SCC 782; Banchhanidhi Rath vs. The State of Orissa and ors. (1972) 4 SCC 781; Smt. Rukmanibai Gupta vs. Collector, Jabalpur and others (1980 (4) SCC 556; Food Corporation of India and others vs. Jagannath Dutta and others (1993 (Suppl.) (3) SCC 635; and State of H.P. vs. Raja Mahendra Pal and others (1999) 4 SCC 43.

11. The position that emerges from the discussions in the decided cases is that ordinarily the High Court should not entertain a writ

petition filed under Article 226 of the Constitution for mere enforcement of a claim under a contract of insurance. Where an insurer has repudiated the claim, in case such a writ petition is filed the High Court has to consider the facts and circumstances of the case, the nature of the dispute raised and the nature of the inquiry necessary to be made for determination of the questions raised and other relevant factors before taking a decision whether it should entertain the writ petition or reject it as not maintainable. It has also to be kept in mind that in case an insured or nominee of the deceased insured is refused relief merely on the ground that the claim relates to contractual rights and obligations and he/she is driven to a long drawn litigation in the civil court it will cause serious prejudice to the claimant/other beneficiaries of the policy. The pros and cons of the matter in the context of the fact situation of the case should be carefully weighed and appropriate decision should be taken. In a case where claim by an insured or a nominee is repudiated raising a serious dispute and the Court finds the dispute to be a s bona fide one which requires oral and documentary evidence for its determination then the appropriate remedy is a civil suit and not a writ petition under Article 226 of the Constitution. Similarly, where a plea of fraud is pleaded by the insurer and on examination is found prima facie to have merit and oral and documentary evidence may become necessary for determination of the issue raised then a writ petition is not an appropriate remedy.”

(Emphasis Supplied)

**22.** On perusal of the rulings relied upon by learned counsel for the Petitioners and learned counsel for Respondents, it is observed that the pros and cons as well as fact situation of the case in hand this Court should be carefully weighed and proper decision should be taken. In the present case the claim by insured/Petitioners is repudiated by the Respondents on the ground that it is a willful act for wrongful gain is a serious dispute one which requires oral and documentary evidence for its determination, then appropriate remedy is before court of Law or by way of invoking arbitration proceedings

with the consent of both the parties and certainly not out of extraordinary jurisdiction by way of Writ Petition under Article 226 of the Constitution of India. Similarly, the case in hand the Respondents also made a plea of fraud on the part of the Insured/Petitioners to found the prima facie must requires oral and documentary evidence to determine the issue. Then the Writ Petition is not appropriate remedy. Therefore, in view of the above discussion, it is held the Point No.1 is held against the Petitioners and in favour of the Respondents.

**23. Point No.2:** As far as 2<sup>nd</sup> issue is concerned, whether the Petitioners is approached this Hon'ble Court with unclean hands or not, on perusal of the submissions made by the Petitioners as well as Respondents the Petitioners herein filed this Writ Petition challenging the final survey report of the 6<sup>th</sup> Respondent dated 17.07.2022 and also final report of 7<sup>th</sup> Respondent dated 10.07.2023 and also contending that the reports of the 7<sup>th</sup> Respondent is contrary to the Clause-15 of IRDA Regulations, 2007 which stated as under:

(2) The insurer/surveyor shall within 7 days of the claim intimation, inform the insured / claimant of the essential documents and other requirements that the claimant should submit in support of the claim. Where documents are available in public domain or with a public authority, the surveyor / insurer shall obtain them.

(3) The surveyor shall start the survey immediately unless there is a contingency that delays immediate survey, in any case within 48 hours of his appointment. Interim report of the physical details of the

loss shall be recorded and uploaded / forwarded to the insurer within the shortest time but not later than 15 days from the date of first visit of the surveyor. A copy of the interim report shall be furnished by the insurer to the insured / claimant, if he so desires.

(4) Where the insured is unable to furnish all the particulars required by the surveyor or where the surveyor does not receive the full cooperation of the insured, the insurer or the surveyor, as the case may be, shall inform in writing to the insured under information to the insurer about the consequent delay that may result in the assessment of the claim. It shall be the duty equally of the insurer and the surveyor to follow up with the insured for pending information / documents guiding the insured with regard to submissions to be made. The insurer and / or surveyor shall not call for any information / document that is not relevant for the claim.

(5) (i) The surveyor shall subject to sub-regulation 4 above, submit his final report to the insurer within 30 days of his appointment. A copy of the surveyor's report shall be furnished by the insurer to the insured / claimant, if he so desires. Notwithstanding anything mentioned herein, in case of claims made in respect of commercial and large risks the surveyor shall submit the final report to the insurer within 90 days of his appointment. However, such claims shall be settled by the insurer within 30 days of receipt of final survey report and / or the last relevant and necessary document as the case may be.

(ii) Where special circumstances exist in respect of a claim either due to its special / complicated nature, or due to difficulties associated with replacement/reinstatement, the surveyor shall, seek an extension from insurer for submission of his report. In such an event, the insurer shall give the status to the insured / claimant fortnightly wherever warranted. The insurer may make provisional / on account payment based on the admitted claim liability.”

(Emphasis Supplied)

**24.** On perusal of the Clause-15, the survey should be completed as per the time line fixed under the Regulation No.15 and should be settled within 30 days but contrary to that the 7<sup>th</sup> respondent was appointed as Investigator after 35 days of the incidence. Therefore, the final report of the 7<sup>th</sup> Respondent dated 10.07.2023 is not valid. As such the consequential letter of repudiation of the 5<sup>th</sup> Respondent

is also contrary to the Clause-15. Apart from that the Petitioners substantiating their claim basing upon the certificates and conclusions rendered by the Government Agencies i.e., certificate issued by the Superintendent of Police dated 08.12.2022 and local Investigating Officer dated 12.12.2022 and also basing upon the APSFL report which are confirmed the said incident is an accidental fire. More so, there is no submission on the part of the Respondents that the certificate issued by the Governmental Agencies either forged or fabricated. The other contention of the Respondents that the Petitioner is having alternative remedy under the scheme of Ombudsman is also not applicable since the jurisdiction of the Ombudsman is only against the claims which are in lakhs i.e., upto 30 lakhs but the present claim of the Petitioners is more than a Crore. Therefore, invocation of jurisdiction of this Court under Article 226 of the Constitution of India cannot be canvassed with unclean hands. The other contention of the Respondents that alleged fire accident is a willful act for wrongful gain and Union Bank of India filed a case against the Petitioners with CBI and CBI also filed a FIR was registered on 27.12.2022 and other multiple FIRs also registered against the Petitioners and the final survey report also indicating about the malpractices, fabrication of documents, manipulation of books of accounts and false declarations. On the guise of these

allegations, learned counsel for Respondents contended that the Petitioner approached this Court with unclean hands is not reasonable and untenable and liable to be rejected. The said allegations should be proved at Court of law only. Mere reports by 6<sup>th</sup> and 7<sup>th</sup> Respondents cannot be concluded that the Petitioner caused these offences till final verdict by Court of law and as such it cannot be said, it approached this Court with unclean hands. The fact remains the Petitioner is substantiated his claim pursuant to the certificate submitted by the Governmental Agencies as stated supra, there is no allegation that the said certificate was either manipulated or fabricated. In the absence of the same it cannot be said that the Petitioners approached with unclean hands. Therefore, the issue decided in favour of the Petitioners.

**25. Point No.3:** As far as issue No.3 is concerned, there are disputes regarding the issue whether the Petitioners are entitled for the claim or not. As contended by learned counsel for Respondents, in view of Forensic Analysis Report of CSIR-IICT, Hyderabad, which is a pioneer institution in research, the said incidence is not an accidental fire it is occurred due to Hydro Carbons and Extraneous Accelerants which were found in the samples. Therefore, the determination of the claim by the Petitioners is in dispute. Further,

there are numerous allegations by the Respondents against the Petitioners and the said allegations are substantiated by way of substantive evidence i.e., registration of FIR by CBI at the behest of Union Bank of India and other multiple FIRs and filing of Insolvency Petition against the Petitioners before NCLT regarding outstanding claims nearly more than 30 Crores and due to findings of the final survey report of the 6<sup>th</sup> Respondent and investigation report of the 7<sup>th</sup> Respondent, where they found about the malpractices, fabrication of documents, manipulation of books of accounts and false declarations.

**26.** All these facts and allegations can be determined with the assistance of oral and documentary evidence only. Certainly it cannot be by way of simple affidavit and counter affidavits under extraordinary jurisdiction of this Court, for which learned counsel for Respondents relied upon the rule laid down by Hon'ble Apex Court in **Synco Industries v. State Bank of Bikaner & Jaipur** (Supra 8) which reads thus:

“Given the nature of the claim in the complaint and the prayer for damages in the sum of rupees fifteen crores and for an additional sum of rupees sixty lakhs for covering the cost of travelling and other expenses incurred by the appellant, it is obvious that very detailed evidence would have to be led, both to prove the claim and thereafter to prove the damages and expenses. It is, therefore, in any event, not an appropriate case to be heard and disposed of in a summary fashion. The National Commission was right in giving to the appellant liberty to move the civil court. This is an

appropriate claim for a civil court to decide and, obviously, was not filed before a civil court to start with because, before the consumer forum, any figure in the damages can be claimed without having to pay the court fees. This, in that sense, is an abuse of the process of the consumer forum.”

(Emphasis Supplied)

Learned counsel for Respondents relied upon the ratio rendered by Hon'ble Apex Court in **Life Insurance Corporation Of India v. Smt.Asha Goel** (Supra 9) which reads thus:

“10. Article 226 of the Constitution confers extra-ordinary jurisdiction on the High Court to issue high prerogative writs for enforcement of the fundamental rights or for any other purpose. It is wide and expansive. The Constitution does not place any fetter on exercise of the extra-ordinary jurisdiction. It is left to the discretion of the High Court. Therefore it cannot be laid down as a general proposition of law that in no case the High Court can entertain a writ petition under Article 226 of the Constitution to enforce a claim under a life insurance policy. It is neither possible nor proper to enumerate exhaustively the circumstances in which such a claim can or cannot be enforced by filing a writ petition. The determination of the question depends on consideration of several factors, like, whether a writ petitioner is merely attempting to enforce his/her contractual rights or the case raises important questions of law and constitutional issues; the nature of the dispute raised; the nature of inquiry necessary for determination of the dispute etc. The matter is to be considered in the facts and circumstances of each case. While the jurisdiction of the High Court to entertain a writ petition under Article 226 of the Constitution cannot be denied altogether, Courts must bear in mind the self-imposed restriction consistently followed by High Courts all these years after the constitutional power came into existence in not entertaining writ petitions filed for enforcement of purely contractual rights and obligations which involve disputed questions of facts. The Courts have consistently taken the view that in a case where for determination of the dispute raised it is necessary to inquire into facts for determination of which it may become necessary to record oral evidence a proceeding under Article 226 of the Constitution is not the appropriate forum. The position is also well settled that if the contract entered between the parties provide an alternate forum for resolution of disputes arising from the contract, then the parties should

approach the forum agreed by them and the High Court in writ jurisdiction should not permit them to by-pass the agreed forum of dispute resolution. At the cost of repetition it may be stated that in the above discussions we have only indicated some of the circumstances in which the High Courts have declined to entertain petitions filed under Article 226 of the Constitution for enforcement of contractual rights and obligation; the discussions are not intended to be exhaustive. This Court from time to time disapproved of a High Court entertaining a petition under Article 226 of the Constitution in matters of enforcement of contractual rights and obligation particularly where the claim by one party is contested by the other and adjudication of the dispute requires inquiry into facts. We may notice a few such cases; Mohammed Hanif vs. The State of Assam (1969) 2 SCC 782; Banchhanidhi Rath vs. The State of Orissa and ors. (1972) 4 SCC 781; Smt. Rukmanibai Gupta vs. Collector, Jabalpur and others (1980 (4) SCC 556; Food Corporation of India and others vs. Jagannath Dutta and others (1993 (Suppl.) (3) SCC 635; and State of H.P. vs. Raja Mahendra Pal and others (1999) 4 SCC 43.

11. The position that emerges from the discussions in the decided cases is that ordinarily the High Court should not entertain a writ petition filed under Article 226 of the Constitution for mere enforcement of a claim under a contract of insurance. Where an insurer has repudiated the claim, in case such a writ petition is filed the High Court has to consider the facts and circumstances of the case, the nature of the dispute raised and the nature of the inquiry necessary to be made for determination of the questions raised and other relevant factors before taking a decision whether it should entertain the writ petition or reject it as not maintainable. It has also to be kept in mind that in case an insured or nominee of the deceased insured is refused relief merely on the ground that the claim relates to contractual rights and obligations and he/she is driven to a long drawn litigation in the civil court it will cause serious prejudice to the claimant/other beneficiaries of the policy. The pros and cons of the matter in the context of the fact situation of the case should be carefully weighed and appropriate decision should be taken. In a case where claim by an insured or a nominee is repudiated raising a serious dispute and the Court finds the dispute to be a bona fide one which requires oral and documentary evidence for its determination then the appropriate remedy is a civil suit and not a writ petition under Article 226 of the Constitution. Similarly, where a plea of fraud is pleaded by the insurer and on examination is found prima facie to have merit and oral and documentary evidence may become necessary for determination of the issue raised then a writ petition is not an appropriate remedy.”

(Emphasis Supplied)

The ratio relied upon by the learned counsel for the Petitioners in **Karnavati Veneers Pvt Ltd., v. New India Assurance Company Limited** (Supra 1) and **Thangam and another v. Navamani Ammal** (Supra 2) are not applicable to the facts of the present case. Therefore, the issue is held in favour of the Respondents and against the Petitioners.

**27.** In view of the above analysis, the claim of the Petitioners cannot be determined by way of extraordinary jurisdiction under Article 226 of the Constitution of India. In view of foregoing discussion the Writ Petition is disposed of directing the Petitioners to initiate appropriate proceedings before Court of Law. However with the consent of Respondents the Petitioners can also invoke the jurisdiction of alternative remedy under the provisions of Arbitration and Conciliation Act. No costs.

As a sequel, interlocutory applications if any pending, shall stand closed.

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**JUSTICE VENKATESWARLU NIMMAGADDA**

Dt:13.02.2025  
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**THE HON'BLE SRI JUSTICE VENAKTESWARLU NIMMAGADDA**

**WRIT PETITION NO.24779 of 2023**

13.02.2025

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