

CHANDIGARH HOUSING BOARD AND ANR.

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v.

GURMIT SINGH

JANUARY 9, 2002

[V.N. KHARE AND B.N. AGRAWAL, JJ.]

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Chandigarh Housing Board (Allotment, Management and Sale of Tenements) Regulations, 1976—Regulation 6—Expression 'Domicile'—Connotation—Allotment of flat—Eligibility criteria—Applicant to be domicile of Union Territory or bonafide resident for at least 3 years—Applicant applied on the premise of being a domicile of Union Territory but did not furnish such certificate—Allotment cancelled—High court set aside the cancellation—On appeal held, applying popular meaning of 'domicile' criteria, flat can be allotted if applicant furnishes domicile certificate—On failure he cannot fall back on the criteria of being a bonafide resident.

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Words and Phrases:

'Domicile'—Meaning of.

Appellant-Board floated a housing scheme for general public, for allotment of flats. The eligibility condition under the Regulations was that the applicant should be either a domicile of Union Territory of Chandigarh or should have been a *bona fide* resident of the Territory for a period of at least 3 years on the date of submitting the application.

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Respondent submitted an application form to the Board for allotment of flat. He did not furnish any information regarding his being a *bonafide* resident of Chandigarh and also his period of stay. However, he stated that he is a domicile of Union Territory of Chandigarh and on that premise the Board allotted him a flat. Subsequently, the respondent was asked to submit the domicile certificate or any other proof in that regard. Respondent submitted a residential certificate but not a domicile certificate. Appellant-Board repeatedly asked for the same. Respondent did not furnish any such document to prove his eligibility. Thereafter the Board issued a show cause notice to the respondent. Respondent filed writ petition and the High Court directed the Board to take a decision about handing over the possession of the flat. Appellant-Board after giving opportunity to the respondent cancelled the

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A allotment of the flat. Respondent challenged the same. High court held that since the respondent has already furnished a residential certificate to the effect that he is a *bonafide* resident of Chandigarh for the last more than three years, and further the respondent being an Indian citizen, is a domicile of Union Territory of Chandigarh. Thus, it set aside the order passed by the Appellant-Board. Hence the present appeal.

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Allowing the appeal, the Court

HELD : 1. Respondent had applied for allotment of flat on the premise that he being a domicile of Union Territory of Chandigarh, is eligible to apply for allotment of the flat, but he failed to furnish such a certificate to the Board.

C The respondent did not apply for allotment under the eligibility criteria of being a *bonafide* resident of Union Territory of Chandigarh for the last three years. The respondent having unequivocally claimed to be a domicile of Union Territory of Chandigarh for satisfying the eligibility criteria, it was not open to him to fall back on the second eligibility criteria of being a *bonafide* resident of Chandigarh for last more than three years and the Board, therefore, was justified in cancelling the allotment of flat in his favour.

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[115-B-C; 116-G-H]

2. High Court fell in error in setting aside the order passed by the Board cancelling the allotment of the flat in favour of the respondent and also holding that the respondent being citizen of India is a domicile of Union Territory of Chandigarh. [115-C; 116-H; 117-A]

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Dr. Pradeep Jain and Ors., v. Union of India and Ors., [1984] 3 SCC 654, explained.

3. Under Regulation 6, one of the eligibility criteria for submitting an application for allotment of flat is that the applicant should be domicile of Union Territory of Chandigarh. The expression 'domicile' employed in Regulation 6 has not been used in technical sense, as referred to in Article 5 of the Constitution but in popular or loose sense in contradiction to the words "*bonafide* resident of Chandigarh for a period of at least three years" which means that 'domicile' is permanent home or intended to live permanently or indefinitely within the Union Territory of Chandigarh. Therefore, the expression 'domicile' in Regulation 6 is assigned the meaning not in technical sense in which it is used in private international law but what is understood in popular or loose sense. [116-D-E-F]

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Dr. Pradeep Jain and Ors. etc. v. Union of India and Ors., [1984] 3 SCC 654, explained.

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D.P. Joshi v. The State of Madhya Bharat and Anr., [1955] 1 SCR 1215, A
referred to.

Whicker v. Hume, (1859) 28 I.J. Ch. 396,400 and *Udny v. Udny*, (1869)
I.R. 1. Sc & Div. 441, 457, referred to.

Dicey on Conflict of Laws, referred to. B

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5834 of 1998.

From the Judgment and Order dated 24.2.98 of the Punjab and Haryana
High Court in C.W.P. No. 10789 of 1997. C

L.K. Pandey for the Appellant.

M.N. Rao, C.N. Sree Kumar, Ms. Deepa S. Monappan, Ms. Deepthi and
Jyothish A.P. for the Respondent.

The Judgment of the Court was delivered by D

V.N. KHARE, J. The appellant herein, the Chandigarh Housing Board
(hereinafter referred to as 'the Board') is constituted and established under
the provisions of the Haryana Housing Board Act (hereinafter referred to as
'the Act') as extended to the Union territory of Chandigarh. One of the E
functions, amongst others, assigned to the Board is to develop land and
construct houses and flats and sell out them under a scheme to the general
public. The Board in exercise of the power conferred by Section 74 of the Act
has made Regulations known as Chandigarh Housing Board (Allotment,
Management and Sale of Tenaments) Regulations, 1976 (hereinafter referred
to as the Regulations). In the year 1986, the Board floated a housing scheme F
for general public, for allotment of category I, II and III flats. The eligibility
conditions as per terms and conditions laid down in the brochure were that
the applicant should be either a domicile of Union Territory of Chandigarh or
should have been a *bona fide* resident of Union Territory of Chandigarh for
a period of at least 3 years on the date of submitting the application. On G
3.3.87, the respondent herein, submitted an application to the Board for
allotment of category I flat. It is alleged that in the said application form, the
respondent did not furnish any information against the relevant column No.
13 regarding his being a *bona fide* resident of Chandigarh and his period of
stay in Chandigarh. It is also alleged that in the sworn application form, the
respondent did not state since when he was a *bona fide* resident of Chandigarh. H

A However, in column No. 12 of the application form, the respondent stated that he is a domicile of Union Territory of Chandigarh. It is further alleged that on 20.10.1989 the Board on the premise that the respondent was a domicile of Union Territory of Chandigarh allotted a second floor in the category I flats. Subsequently, on 1.7.91, the Board asked the respondent to submit the domicile certificate or any other proof in that regard. In response to the said letter, the respondent on 24.7.91 submitted a residential certificate dated 18.7.91. It is not disputed that the respondent did not furnish the certificate to the effect that he is a domicile of Union Territory of Chandigarh and, therefore, the Board on 30.9.91 again asked the respondent to furnish the particulars to determine his eligibility for the allotment of a flat. The respondent, in response to the said letter furnished documents i.e. copy of certificate showing his having passed 10 + 2 examination from St. Columbus' School, New Delhi in 1982, copy of possession certificate dated 20.10.74 of an Industrial Plot No. 182/14, Industrial Area, Phase I, Chandigarh allotted to M/s. Freezing Industries Pvt. Ltd. wherein the respondent claimed to have shares and also various income tax assessment orders beginning for the financial years 1986-87 to 1990-91. It further appears that the Board was still not satisfied with the eligibility of the respondent for allotment of the flat and, therefore, the Board on 17.11.92 again wrote to the respondent to furnish further information and documents to satisfy his eligibility with regard to his residence. The respondent, in response to the said letter did not furnish any document to prove that he is a domicile of Union Territory of Chandigarh. Under such circumstances, the Board on 17.11.93 issued a show cause notice to the respondent calling upon him as to why the allotment of flat in his favour be not cancelled as he failed to satisfy the eligibility condition of being a domicile of Union Territory of Chandigarh. In between time, on 25.9.96, the respondent filed a writ petition under Article 226 of the Constitution before the Punjab & Haryana High Court for direction to the appellant Board to take a decision within three months about the handing over the possession of the flat in question to him. The High Court issued a direction as prayed for, and in compliance thereof, the Board after giving opportunity to the respondent, on 16.5.97, cancelled the allotment of the flat. The respondent, thereafter, filed another writ petition before the High Court challenging the order of cancellation of allotment of the flat. The appellants herein filed a counter affidavit/writ statement and contested the writ petition. The High Court was of the view that since the respondent has already furnished a residential certificate to the effect that he is a *bonafide* resident of Chandigarh for last more than three years, and further the respondent being an Indian citizen, is a domicile of Union Territory Chandigarh and, as such, the order passed by the Board cancelling the allotment of the

flat was erroneous. In that view of the matter, the writ petition was allowed and the order cancelling the allotment of the flat was set aside. It is against the said judgment and order of the High Court the Board has preferred this appeal. A

Shri L.K. Pandey, learned counsel appearing for the appellant Board, urged that once the respondent opted for an allotment of the flat on the eligibility criteria of being domicile of Union Territory Chandigarh in the application form submitted by him, it was not open to him to justify under the eligibility criteria that he is *bonafide* resident of Chandigarh for last three years and, therefore, the view taken by the High Court was erroneous. It was also urged that the decision of this Court in *Dr. Pradeep Jain and Ors. etc. v. Union of India and Ors.*, [1984] 3 SCC 654 has no application inasmuch as the said decision runs counter to the case of the respondent and, therefore, the view taken by the High Court was erroneous. However, Shri M.N. Rao, learned senior counsel appearing on behalf of the respondent made an effort to support the judgment of the High Court on the strength of the decision in *Dr. Pradeep Jain's* case (*supra*). B C D

Coming to the first argument of learned counsel for the appellant, it is necessary to refer to certain Regulations which are relevant to the present controversy. Regulation 2 (15) defines eligible persons, which runs thus:

“2(15)—“Eligible Person” means a person who is entitled to the purchase of property in accordance with the provisions of the scheme and these regulations.” E

Regulation 6 provide for eligibility of allotment, which runs thus:

“(1) A dwelling unit or flat in the Housing Estates of the Board shall be allotted only to such person who or his wife/her husband or any of his/her dependent relations including unmarried children does not own on free-hold or lease-hold or on hire-purchase basis, a residential plot or house in the Union Territory of Chandigarh or in any of the Urban Estates of Mohali or Panchkula. Similarly persons who have acquired a house/residential site anywhere in India through Government/Semi-Government/Municipal Committee/Corporation/Improvement Trust at concessional rate in their name or in the name of any dependent member of their family will not be eligible to apply to the Board for allotment of a dwelling unit or flat. Subject to the above provisions, *the applicant should be a domicile of U.T. of* F G H

A *Chandigarh or should have been a bona fide resident of U.T. of Chandigarh for a period of at least three years on the date of submitting the application.*

B (2) The applicant shall furnish an affidavit in the prescribed form with regard to his eligibility along with the application. In the event of the affidavit being found false at any stage, the Board shall be entitled to cancel the registration or the allotment of dwelling unit or flat as the case may be, and to forfeit the deposit received with the application and all the payments made to the Board thereafter.

C (3) The Board shall have the right to impose any additional condition of eligibility as may be determined and notified from time to time.”

The aforesaid Regulations show that any person who is either a domicile of Union Territory of Chandigarh or is a *bona fide* resident of Union Territory of Chandigarh for a period of at least three years on the date of submitting an application, is qualified to apply for allotment of flat under the scheme floated by the Board. Under sub-Regulation (2) of Regulation 6, an applicant for allotment of a flat is required to furnish an affidavit in the prescribed form with regard to his eligibility along with the application. The said Regulation further provides that in the event of the affidavit being found false at any stage, the Board is entitled to cancel the registration or cancellation of the dwelling unit of the flat, as the case may be, and to forfeit the money received with the application and all the payments made to the Board thereafter. Columns 12 and 13 of the application form of registration of intending purchasers of flats run as under:

F “12. Whether a domicile of Union Territory of Chandigarh. Yes.

13. Whether a *bona fide* resident of Chandigarh. If so, give period of stay in U.T. of Chandigarh i.e. from.....to.....”

G The respondent in Col. 12 stated ‘yes’, meaning thereby that he is a domicile of U.T. of Chandigarh. Whereas Col. 13 was left blank. In the affidavit/ declaration, at the foot of the application form at column no.(iii), the respondent did not state as to since when he was a *bona fide* resident of U.T. of Chandigarh. On the other hand, he ticked col. (iv) indicating that he was a domicile of U.T. of Chandigarh. The aforesaid application form, as filled in by the respondent shows that he was claiming to be eligible for allotment of flat on the basis that he was a domicile of U.T. of Chandigarh. The Board H repeatedly asked the respondent to furnish the certificate to the effect that

he was a domicile of U.T. of Chandigarh which he failed to furnish. The only allegation made by him was that he has applied to the competent authority/ Sub-Divisional Magistrate for issue of domicile certificate, but the same was not issued to him and, therefore, he relied upon the residential certificate issued by the Sub-Divisional Magistrate. The respondent having unequivocally claimed to be a domicile of U.T. of Chandigarh for satisfying the eligibility criteria, it was not open to him to fall back on the second eligibility criteria of being a *bonafide* resident of Chandigarh for last more than three years. The High Court fell in error in overlooking this aspect of the matter while setting aside the order passed by the Board cancelling the allotment of the flat in favour of the respondent. We, therefore, find that the view taken by the High Court was erroneous.

So far as the second argument is concerned, the question that arises is what meaning is required to be assigned to the expression 'domicile' of U.T. of Chandigarh. In *Whicker v. Hume*, (1859) 28 I.J. Ch. 396, 400 it was held thus:

"Domicile meant permanent home, and if that was not understood by itself no illustration could help to make it intelligible."

Dicey on Conflict of Laws, stated thus:

"The domicile of origin, though received at birth, need not be either the country in which the infant is born, or the country in which his parents are residing, or the country to which his father belongs by race or allegiance, or the country of the infant's nationality."

Udny v. Udny, (1869) L.R. 1 Sc.& Div. 441, 457, it was held thus:

"The law of England, and of almost all civilised countries, ascribes to each individual at his birth two distinct legal statuses or conditions: one by virtue of which he becomes the subject of some particular country binding him by the tie of national allegiance, and which may be called his political status, another by virtue of which he has ascribed to him the character of a citizen of some particular country and as such is possessed of certain municipal rights, and subject to certain obligations, which latter character is the civil status or condition of the individual, and may be quite different from his political status. The political status may depend on different laws in different countries; one single principle, namely, that of domicile, which is the criterion established by law for the purpose of determining civil status. For it

A is on this basis that the personal rights of the party, that is to say, the law which determines his majority or minority, his marriage, succession, testacy or intestacy, must depend.”

In *D.P. Joshi v. The State of Madhya Bharat and Anr.*, [1955] 1 SCR 1215, it was held that the expression ‘domicile of a person’ meant his permanent home. In *Dr. Pradeep Jain’s* case (supra), it was held that in view of Article 5 of the Constitution, every person who is a domicile in the union territory of India is a citizen of India and a citizen of India could be a domicile of any State forming part of India. However, this Court in *Dr. Pradeep Jain’s* case (supra) brought a distinction between the technical meaning of the expression ‘domicile’ and the loose or popular meaning of the expression ‘domicile’ and in that context, this Court held that if a person is residing permanently or indefinitely in a particular state he would be domicile of that State in popular or loose sense.

A perusal of Regulation 6 shows that one of the eligibility criteria for submitting an application for allotment of flat is that the applicant should be domicile of Union Territory of Chandigarh. The expression ‘domicile’ employed in Regulation 6 has not been used in technical sense, as referred to in Article 5 of the Constitution or as stated by this Court in the context of Article 5 of the Constitution in *Dr. Pradeep Jain’s* case (supra). The word ‘domicile’ in Regulation 6 has been employed in popular or loose sense in contradiction to the words “bonafide resident of Chandigarh for a period of at least three years”. The popular and loose meaning of the expression ‘domicile’ in Regulation 6 is permanent home or intended to live permanently or indefinitely within the Union Territory of Chandigarh. We are, therefore, required to assign the meaning of the expression ‘domicile’ in Regulation 6 not in technical sense in which it is used in private international law but what is understood in popular or loose sense. Applying the popular meaning of the expression ‘Domicile’ it means a person must be having permanent home in Chandigarh or he being there for years with the intention to live permanently or indefinitely.

We have already noticed that the respondent had applied for allotment of flat on the premise that he being a domicile of U.T. of Chandigarh, is eligible to apply for allotment of the flat and he failed to furnish such a certificate to the Board. The respondent did not apply for allotment under the eligibility criteria of being a *bonafide* resident of U.T. of Chandigarh for the last three years and, therefore, the respondent was not eligible for allotment of the flat and the Board, therefore, was justified in cancelling the allotment of flat in his favour. The High Court fell in error in holding that in view of *Dr. Pradeep*

Jain's case, the respondent being citizen of India is a domicile of Union Territory of Chandigarh. A

For the aforesaid reasons, we are of the view that this appeal deserves to succeed.

Before we part with the case, we would like to observe that the respondent has alleged that he applied to the competent authority or the Sub-Divisional Magistrate for issue of domicile certificate, but the same was not issued to him and, therefore, he could not furnish the same before the Board. Under such circumstances we direct that if the respondent approaches the competent authority or the Sub-Divisional Magistrate for issue of a domicile certificate within one month from issue of certified copy of this judgment, the competent authority after due enquiry and also after hearing the Board shall consider the application of the respondent. If it is found that the respondent is a domicile of U.T. of Chandigarh, the concerned authority shall issue a domicile certificate to him. In the event the competent authority issues a domicile certificate to the respondent, the appellant Board shall re-consider the matter again. B C D

For the aforesaid reasons, the judgment and order of the High Court under challenge is set aside. The appeal is allowed. No costs.

N.J.

Appeal allowed. E

A NATIONAL INSURANCE CO. LTD.

v.
SKY GEMS

JANUARY 9, 2002

B [D.P. MOHAPATRA AND K.G. BALAKRISHNAN, JJ.]

Insurance Claim

C *Mode of payment—CIF contract—Consignor exported precious stones—
Insurance cover procured—Insured value of consignments in terms of Pounds
Sterling—But the premium paid in Indian currency—Consignment however,
lost in transit—Claim filed against Insurance Company to pay in Pounds
Sterling—National Commission allowed the claim—On appeal, held the title
to the goods had not passed to the consignee as he could not produce any
D document of title—Therefore, consignor is not entitled to receive payment in
Pounds sterling.*

E Respondent-consignor exported parcels of precious stones to the
consignee in London. He obtained insurance policies from the appellant-
insurance company and the insured value of the consignments were in terms
of Pounds Sterling. Consignment did not reach the consignee and the
investigators appointed confirmed that the consignment had either been lost
or stolen. Respondent-consignor filed a claim against the appellant and insisted
the payment in Pounds sterling. Appellants contended that as the title in the
F goods had not passed to the consignees, the respondent-consignor continued
to be the owner of the goods and, therefore, the payment could be effected
only in Indian currency. National Commission held that as the insurance
policies stated that the claim was payable in London and the insured value of
the consignments were in terms of Pounds Sterling, the appellant was liable
to pay to the respondent in Pounds Sterling. Hence the present cross appeals.

G Respondent-consignor contended that as the claim was payable at
London, the payment should be made by the appellant only in Pounds Sterling.
It also contended that the goods were sent on CIF contract and the moment
the goods were consigned, the title would pass to the consignee.

H Disposing of the appeal, the Court

HELD : 1. The right of the buyer to claim policy amount would arise when he obtained title to the property and he must produce the documents of transfer. In the instant case, the buyer-consignee was not in possession of any documents concerning the title of the goods as such could not produce them before the investigators. The letter written by the consignee clearly shows that they had not paid the value of the missing merchandise to the consignor and had suggested to the investigator that the claim may be settled with the respondent-consignor in India. More so there is no evidence to show that the necessary documents were endorsed in favour of the consignee and that they were transferred to them. These facts show that the title to the goods in question had not passed to the consignee at London. The insurable interest over the goods continued to be with the respondent-consignor. Thus under such circumstances, the respondent-consignor is not entitled to receive the payment in Pounds Sterling. [122-H; 123-A-B]

2. The respondent-consignor has paid the insurance premium in Indian currency and continued to have title over the goods as it never passed to the consignee. Had the title passed to the consignee, and if they had preferred the claim, the insurance amount would have been payable in London in Pounds Sterling. [123-C]

Comptoir d' Achat v. Luis de Ridder; The Julia, (1949) A.C. 293 at 309, referred to.

Schmittoff's Export Trade—The Law and Practice of International Trade by Leo D'Arcy. Carole Murray Barbara Cleave (10th Edn.), referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 559 of 1994.

From the Judgment and Order dated 21.12.93 of the National Consumer Disputes Redressal Commission, New Delhi in O.P. No. 248 of 1992.

M.S. Nargolkar and D.M. Nargolkar for the Appellant.

V.A. Mohanty and Praveen Swarup for the Respondent.

The Judgment of the Court was delivered by

K.G. BALAKRISHNAN, J. Civil Appeal No. 559 of 1994 by National Insurance Co. Ltd. and Civil Appeal No. 633 of 1994 by M/s Sky Gems are filed against the judgment dated 21st December, 1993, passed by the National Consumer Disputes Redressal Commission (hereinafter referred to as 'National

- A Commission'). The respondent-Sky Gems exported two parcels of precious stones (Emerald) to London through the Foreign Post Office, New Delhi on 10.9.1990. However, the consignment did not reach the consignee and was believed to have been either stolen or lost in transit. The respondent had taken two insurance policies from the appellant-insurance company. The total sum assured was Pound Sterling 85,740.55 (CIF value + 10%). M/s. W.K. Webster & Company, London, were appointed as investigators and their report dated 25.3.1991 confirmed that the consignment had either been lost or stolen. Non-delivery certificate was issued by the Department of Posts (Foreign Post), New Delhi, in respect of the consignment. The postal authorities admitted their liability and made payment at the rate of Rs. 10,254.50 for each parcel representing the full insured value and service charges. In respect of the two policies obtained from the appellant-insurance company, respondent preferred a claim and the appellant agreed to settle the same for Rs. 28,30,000. The respondent claimed from the appellant an amount of Pounds Sterling 1,07,175.60 and insisted that the payments be made in Pounds. For some reason or the other, there was a delay in settlement of the claim and the respondent filed a petition before the National Commission. The appellant resisted the claim and contended that it was not liable to pay the respondent in Pounds Sterling. It was also contended that as the title in the goods had not passed to the consignee, the respondent continued to be the owner of the goods and, therefore, the payment could be effected only in Indian currency.

The National Commission held that as the insurance policies clearly stated that the claim was "payable at London" and the declared invoice value and the insured value of the consignments were in terms of Pounds Sterling, the appellant was liable to pay to the respondent in Pounds Sterling and ultimately ordered the appellant to pay Pounds Sterling 85,740 + 10% or Pounds Sterling 94,314. The respondent was also held entitled to recover interest at the rate prevalent on commercial borrowings in U.K. from time to time, commencing from January, 1991 to the end of December, 1993. The appellant was entitled to adjust the amount of Rs. 20,000 received as compensation from the postal authorities. A sum of Rs. 50,000 was also ordered as compensation for delayed payment. This Order of the National Commission has been challenged before us.

We heard Mr. M.S. Nargolkar, learned senior Counsel on behalf of the appellant and Mr. V.A. Mohanty, learned senior Counsel on behalf of the respondent. The dispute in this case is only with regard to the mode of

payment to be effected by the appellant in favour of the respondent. The counsel for the respondent contended that as per the terms of the policy, the insured amount was payable at London and, therefore, the payment to be effected has to be in Pounds Sterling. The consignment of the precious stones was dispatched in favour of M/s. Emdico (London) Limited. As per the insurance policy, the claim for settlement was given to M/s. W.K. Webster & Company, 6 Lloyd's Avenue, London. The contention of the respondent is that as the insurance policy specifically stated that the claim was payable at London, the payment should be made by the appellant only in Pounds Sterling.

But, some important facts are to be noted in this case. The two consignments were sent from India on 10.9.1990. After survey, it was found that these consignments were either lost or stolen. The consignee of these goods had approached M/s. W.K. Webster & Company for the settlement of the claim and there was correspondence between the consignee and M/s. W.K. Webster & Company. Some of this correspondence has been placed before us. It is noticed that in the letter dated 2nd April, 1991, M/s. W.K. Webster & Co. had asked the consignee, M/s Emdico (London) Limited, for the original Policies of Insurance together with all correspondence exchanged with the postal authorities concerning their liability, and also a clarification as to whether they had remitted full payment of the value of the missing merchandise to the Indian suppliers. In another letter dated 20th June, 1991, M/s. W.K. Webster & Co. offered to settle the claim as soon as they received the necessary documentation from India and also mentioned that they shall present the same to the Bank in order to obtain the required funds against the Letter of Credit, which was available to them for payment of claims. The consignee, Emdico (London) Limited, sent a reply to M/s. W.K. Webster & Co. on 8th April, 1991 and the last paragraph of their letter reads as follows:-

“As regards the question whether we have remitted full payment of the value of the missing merchandise to our Indian suppliers, the answer is that we haven't done so and we suggest that the settlement may be concluded direct with Sky Gems in India, however, if you will feel it is more convenient for you to deal with us as the consignees of the goods, we shall be happy to do so. One way or the other it doesn't seem to make much difference.”

From the above correspondence, it is evident that the consignee, Emdico (London) Limited, did not pay the value of the missing merchandise to the respondent. There is no evidence to show that the necessary documents were

A endorsed in favour of the consignee and that they were transferred to them. These facts will show that the title to the goods in question had not passed to the consignee, M/s. Emdico (India) Limited and the respondent continued to be the owner having insurable interest over the goods.

B The learned senior Counsel for the respondent contended that the goods were sent on CIF contract and the moment the goods were consigned, the title would pass to the consignee. We do not find much force in this contention. It is true that the goods are ascertained, but even then the title would pass based on the contract between the parties. The rights and liabilities of the parties in a CIF contract have been described by *Lord Porter in*
 C *Comptoir d' Achat v. Luis de Ridder; The Julia*, [1949] A.C. 293 at 309, which is quoted in the Book Schmitthoff's Export Trade - The Law and Practice of International Trade by Leo D' Arcy, Carole Murray and Barbara Cleave [10th edition], at page 29, and read as follows:

D "The obligations imposed on a seller under a c.i.f. contract are well known, and in the ordinary case, include the tender of a bill of lading covering the goods contracted to be sold and no others, coupled with an insurance policy in the normal form and accompanied by an invoice which shows the price and, as in this case, usually contains a deduction of the freight which the buyer pays before
 E delivery at the port of discharge. Against tender of these documents the purchaser must pay the price. In such a case the property may pass either on shipment or on tender, the risk generally passes on shipment or as from shipment, but possession does not pass until the documents which represent the goods are handed over in exchange
 F for the price. In the result, *the buyer, after receipt of the documents, can claim against the ship for breach of the contract of carriage and against the underwriters for any loss covered by the policy.* The strict form of c.i.f. contract may, however, be modified. A provision that a delivery order may be substituted for a bill of lading or a certificate of insurance for a policy would not, I think, make the contract be concluded on something other than c.i.f. terms."

G (Emphasis supplied)

H From the above passage, it is clear that the right of the buyer to claim policy amount would arise when he obtained title to the property and he must produce the documents of transfer. Here, the buyer was not in possession of any such documents of title. The letter written by the consignee, M/s. Emdico

(London) Limited on 8th April, 1991 clearly shows that they had not paid the value of the missing merchandise and had suggested to M/s. W.B. Webster & Co. that the claim may be settled with the respondent-Sky Gems in India. The consignee could not produce any documents concerning their title to the goods before M/s. W.K. Webster & Company and this evidently shows that the title had not passed to the consignee at London. The insurable interest over the goods continued to be with the respondent. Under such circumstances, the respondent is not entitled to receive the payment in Pounds Sterling.

The respondent has paid the insurance premium in Indian currency and continued to have title over the goods as it never passed to the consignee. Had the title passed to the consignee, and if they had preferred the claim, the insurance amount would have been payable in London in Pound Sterling. The National Commission did not notice these points and directed the appellant to pay the amount in Pound Sterling mainly on the ground that the policies issued by them stated that the insurance amount was payable at London.

Having regard to the facts and circumstances of the case, we do not think that the appellant is liable to pay the insurance amount in Pounds Sterling. We set aside the direction of the National Commission to pay the amount in Pounds Sterling and hold that the respondent is entitled to get Rs. 28,30,000 with interest @ 18% from the date on which it preferred the claim petition before the appellant, till payment. The respondent is also entitled to receive Rs. 20,000 towards costs ordered by the National Commission.

The Order passed by National Commission shall stand modified to the extent indicated above.

With the above directions, Civil Appeal No. 559 of 1994 is disposed of. Civil Appeal No. 633 of 1994 is without any merits and is dismissed. The cost of these proceedings shall be borne by the respective parties.

N.J.

C.A. No. 559/94 disposed of.
C.A. No. 633/94 dismissed.