

A M/S. KRISHNA FOOD & BAKING INDUSTRY P. LTD.
v.
M/S. NEW INDIA ASSURANCE CO. LTD. & ANR.
(Civil Appeal No. 7515 of 2001)

NOVEMBER 7, 2008

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[C.K. THAKKER AND D.K. JAIN, JJ.]

Consumer Protection Act, 1986 – s. 23 – Insurance policy against terrorism and fire – Units engaged in manufacturing bakery products in Srinagar – Suspension of operation of units, following casualty by terrorist attack – Chairman migrated to Delhi – Thereafter, units set on fire in terrorist attack – Damage to plant, machinery, stocks and raw materials in the units – Insurance claim – Partly allowed by National Commission – On appeal, held: Complainants established their claims – Units could not do business and produce goods because of terrorism – Thus, National Commission not justified in reducing any amount on the ground that certain stocks and raw materials were unfit for human consumption – However, it was right in rejecting the plea as regard pilferage by intruders and staff members as no material was produced in support thereof – Complainants entitled to compensation towards building, plant, machinery and electricity fittings, raw materials and stocks – As insurance policies assigned in favour of Bank, Insurance company to pay the entire amount to Bank directly.

Insurance Act, 1938 – s. 38 – Transfer of Property Act, 1882 – ss. 130 and 135 – Insurance policies assigned in favour of Bank by complainant – Insurance claim – Entitlement of Bank – Held: When decree is passed in favour of complainants, bank is entitled to said amount – Bank not required to file suit in a competent court of law and obtain a decree in its favour – Bank is entitled to the amount directly from the Insurance Company.

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Two units-KB Company and KF Mill were manufacturing bakery items in Srinagar. RK was the Chairman of the Company and the main partner of the Mill. The son of the complainant-chairman was killed in terrorist attack. Subsequently, operations of both the units were suspended. The Chairman of the Company left Srinagar and went to Delhi. The 'watch and ward staff' were looking after the premises, stocks and raw materials lying in the units. It is the complainant's case that certain terrorists attacked the Company as well as the Mill and set them on fire. The building, plant, machinery and electricity fittings were substantially damaged; and the raw materials and the stocks lying in the units were either destroyed or substantially damaged. The complainants had obtained three separate insurance policies covering several acts including terrorism and fire. In view thereof, the complainants requested the Insurance Company to get the survey done but no action was taken. The complainants got the survey done through the surveyors and demanded certain amount. However, the Insurance Company did not make payment. The complainants filed complaints before the National Commission. It raised the claim; however, the Insurance Company repudiated it. After a long time, the Insurance Company got the survey done. The surveyors observed that substantial damage was not caused to building, plant, machinery and electricity fittings and as regard raw-materials and stocks, the stocks had become unfit for human consumption; and there was pilferage of stocks and raw materials by intruders as well as by staff members of the Company and Mill, thus, the complainants were not entitled to the amount claimed.

With regard to the stocks kept in the godown of the Mill, covered by policy no. 1131190000249, the complainants raised a claim for Rs.37,78,618/-. The National Commission held that the complainants were

A entitled to Rs.5,18,619/- as recommended by the
Surveyors of the Insurance Company. With regard to the
raw material, covered by policy no. 1131190000312, the
complainants claimed Rs.25,58,798/-. The National
Commission held that the complainants were entitled to
B Rs.4,53,122/- as per the Surveyors Report at instance of
the Insurance Company. The claim of building, plant,
machinery and electricity fittings, was covered by policy
No.1131190000313. It was for Rs. 53 lakhs. The National
Commission held that the complainant's were entitled to
C Rs.31,373/- as assessed by Insurance Company, with
12% interest. However, it rejected the prayer of the Banks
that the amount claimed by the complainants be given to
them directly as the insurance policies had been assigned
in their favour. Hence the appeals.

D Disposing of the appeals, the Court

HELD: 1.1. It is clear that the complainants were able
to establish the claims put forward by them. The
Insurance Policy covered several acts including
terrorism and fire. It has come in evidence and has been
E believed by National Commission that the son of the
Managing Director was killed in March, 1990 by terrorist
attack. It is in the light of the said incident that the
Managing Director had to leave Srinagar and to return to
Delhi. It was because of the said incident that the
F operation of both the units was suspended. Thus, it was
not a case wherein the complainants *did not* undertake
the activities which were required to be undertaken by
them, but they *could not* operate the units and carry on
business. Therefore, no fault could be found against the
G complainants for suspending the operation of both the
units. The complainants obviously cannot suffer because
of non-production in the Mill as well as in the Company.
The National Commission was, therefore, not right in
reducing any amount on the ground that certain stocks
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and raw materials were unfit for human consumption. It was not intentional or deliberate act on the part of the complainants in stopping production and allowing the stocks and raw materials to get spoiled or damaged and by making them unfit for human consumption. It was because of the militant activities and terrorism that the Company and the Mill could not do business and produce goods. Therefore, reduction of amount by the National Commission on that count was unjustified. [Para 31] [686-F, G, H; 687-A, B, C]

1.2. As regards pilferage by intruders and staff members, except *ipse dixit* on the part of the Insurance Company, no material whatsoever has been placed on record in support of such allegation. The National Commission was justified in not accepting such bare assertion without any evidence or concrete material in support of such plea. In fact, a finding has been recorded by the National Commission that the godowns were 'full' when they were set on fire. 'Watch and ward staff' were protecting the Mill and the Company. There was also a 'Police post' nearby both the units. Further, the report submitted by the surveyor of the Insurance Company as to pilferage was not reliable. In *Shyam Sunder Narang's* case an adverse comment had been made by the National Commission against the report submitted by the surveyor. Hence, the National Commission was right in not believing 'pilferage theory' advanced by the Insurance Company. Furthermore, nothing has been shown from which such an inference could be drawn by a reasonable and prudent man as to pilferage by intruders or staff members. The National Commission was wholly right in negating the contention of the Insurance Company that substantial part of stocks and raw materials had been taken away by intruders or staff members. Therefore, no reduction could be allowed on that count. [Paras 32 and 33] [687-D-H; 688-A, B]

A *Shyam Sunder Narang v. United India Insurance Co.*
1997 (111) CPJ 599, referred to.

B 1.3. The claim put forward by the Canara Bank that
the entire amount to which the complainants were entitled
ought to have been ordered to be paid to the Bank in
view of the fact that the Insurance Policies had been
assigned in favour of the Bank and in law, such an
assignment amounts to transfer of actionable claim in
favour of the Bank, is well founded. [Paras 22 and 37]
[682-C, D; 689-A]

C 1.4. As soon as a decree is passed or order is made
in favour of the complainants, the Bank is entitled to the
said amount. For such a relief, it is not necessary for the
Bank to become a plaintiff by filing a suit in a competent
D Court of law and obtain a decree in its favour. It is true
that had it been the position, the provisions of Jammu &
Kashmir Migrants (Stay of Proceedings) Act, 1997 would
get attracted and such suit would be stayed and no
decree could have been passed by a competent Court in
E favour of the creditor. But in the light of the statutory
provisions in the Insurance Act, 1938 and in the Transfer
of Property Act, 1882, the Bank is entitled to the amount
directly from the Insurance Company. The National
Commission was not right in rejecting the claim of the
Bank. [Paras 39 and 41] [692-C, D, E; 693-A, C]

F *Chief Executive Officer and Vice Chairman, Gujarat
Maritime Board v. Haji Daud Haji Harun Abu and Ors.* 1996
(11) SCC 23, relied on.

G 1.5. The National Commission was right in observing
that no payment was made by the Insurance Company
even as per the survey conducted by the Surveyor
appointed by the Insurance Company. Taking into
consideration the entire facts and circumstances, the
complainants are entitled to claim compensation towards
H building, plant, machinery and electricity fittings, raw

materials and stocks. [Para 34] [688-C]

1.6. The appeals filed by the Insurance Company are dismissed. The appeals filed by the complainants are allowed to the extent indicated above with interest at the rate of 9 % p.a. from the date of filing of complaints before the National Commission, till the date of payment. So far as appeal concerning Policy No. 11319000249 relating to stocks is concerned, the complainants are entitled to get the entire amount of Rs.37,78,619/- since there is no appeal in respect of the said policy. Canara Bank is not concerned with the said policy. Grindlays Bank has not approached this Court and had supported the complainants before the National Commission. The two appeals of Canara Bank in regard to two policies, 113190000312 and 113190000313, are allowed and the Insurance Company is directed to make payment to Canara Bank and not to the complainants in respect of the amount to be paid to the complainants. [Para 42] [693-D-G]

Case Law Reference:

1997 (111) CPJ 599	Referred to.	Para 32
1996 (11) SCC 23	Relied on.	Para 41

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 7515 of 2001.

From the Judgment/Order dated 1.6.2001 of the National Consumer Disputes Redressal Commission, New Delhi in Original Petition No. 210 of 1994.

WITH

C.A. Nos. 8495, 8496 of 2001, 3393, 4024, 8000 and 8002 of 2002.

R.K. Kapoor, Shweta Kapoor, Mansi Dhiman, Anis Ahmed Khan, Pradeep Dewan, Pramod B Agarwala, Praveena

A Gautam, Rajiv Samaiyar, Anupam Dhingra, Pramod Dayal and Nikunj Dayal for the appearing parties.

The Judgment of the Court was delivered by

C.K. THAKKER, J. 1. All these appeals have been filed
B against a common judgment and order dated June 01, 2001
passed by the National Consumer Disputes Redressal
Commission ('National Commission' for short) in Original
Petition No. 194 of 1994 and companion matters. These
appeals are filed under Section 23 of the Consumer Protection
C Act, 1986 (hereinafter referred to as 'the Act').

2. To appreciate the controversy raised in the present
appeals, few relevant facts may be stated.

3. M/s Krishna Flour and Oil Mills ('Mill' for short) is a
D partnership firm while M/s Krishna Food and Baking Industry
Pvt. Ltd. ('Company' for short) is a company registered under
the Companies Act, 1956 as applicable to the State of Jammu
& Kashmir. Both the units were located in Nawab Bazar,
Srinagar, in the State of Jammu & Kashmir. Both were sister
E concerns. Rajendra Kumar Sawhney was Chairman of the
Company as also main partner of the Mill. The Company was
dealing in manufacturing bread, biscuits, cakes and other
bakery items. It is the case of the complainants that during the
period of disturbances caused by militancy in early nineties of
F the last century, Mr. Praneet Sawhney, only son of Rajendra
Kumar Sawhney was shot dead by the terrorists on March 27,
1990 in his office. Immediately thereafter, operations of both
the units were suspended and the complainants had to migrate
to Delhi. It was stated that there was 'watch and ward staff' as
G also some other personnel who looked after the premises and
stocks and raw materials lying in the units. It was also stated
in the complaints that the complainants were able to transfer
records from Srinagar to Delhi.

4. According to the complainants, they had obtained three
H separate insurance policies from M/s New India Assurance Co.

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Ltd. ('Insurance Company' for short), the details of which are as under;

S. No.	Policy No.	Sum Assured	Case No.	Items covered
1.	112119000249	Rs.40 Lakh	194/94	Stock of Wheat, Wheat Products and Packing material and Goods of like nature of Krishna Flour & Oil Mills
2.	113119000312	Rs.25 Lakh	210/94	Stocks of Raw Material like Flour, Maida, Ghee, chemicals etc. in godowns belonging to Krishna Food & Baking Industries
3.	113119000313	Rs.53 Lakhs	209/94	Plant & Machinery installed in Krishna Food & Baking Industries. (a) Factory Building Rs.21 lakhs (b) Electric fittings Rs.4 lakhs (c) Plant & Machinery Rs.28 lakhs

5. It was the say of the complainants that in the morning of November 12, 1991, certain terrorists attacked the Company as well as the Mill and set them on fire. Substantial damage had been caused to building, plant, machinery and electricity fittings; the raw materials lying in the units were destroyed stocks which were in both the units were also either destroyed or substantially damaged. In view of the insurance coverage, a demand was made by the complainants to the Insurance Company to get the survey done and to pay the amount of loss

- A sustained by the complainants. The Insurance Company, however, did not do anything in the matter for quite long time. The complainants got the survey done through their surveyors and demanded the amount to which they were entitled to. The Insurance Company, however, did not make payment which
- B constrained the complainants to approach National Commission by filing three complaints being Complaint Nos. 194, 209 and 210 of 1994.

6. The prayer made in the complaints and the demand in respect of policies and sums may be summarized thus;

S. No.	Policy No.	Sum Assured	Complaint No	Items covered
1.	112119000249	Rs.40 Lakhs	194/94	Stock of Wheat, Wheat Products and Packing material and Goods of like nature of the Mills. ('Wheat Policy')
2.	113119000312	Rs.25 Lakhs	210/94	Stocks of Raw Material like Flour, Maida, Ghee, chemicals etc. in godown belonging to Baking Industry. ('Raw Material Policy')
3.	113119000313	Rs.53 Lakhs	209/94	Plant & Machinery installed in Baking Industry. ('Plant Policy') (a) Factory Building Rs.21 lakhs (b) Electric fittings Rs.4 lakhs (c) Plant & Machinery Rs.28 lakhs

7. The Insurance Company repudiated the claim of the

complainants. At a belated stage, survey had been carried out by the Insurance Company through its Surveyors wherein it was observed that substantial damage had not been caused to building, plant, machinery and electricity fittings and the complainants were not entitled to the amount demanded by them under the said head. The Insurance Company also assessed the damage to the building, plant, machinery and electricity fittings to the extent of Rs.31,373/- and nothing more.

8. With regard to raw-materials and stocks, the amount was substantially curtailed by the Insurance Company inter alia on the grounds that the stocks were perishable in nature and had become unfit for human consumption and the same had been badly affected by bacterial growth. It had become worthless at the time of mishap in 1991. It was also contended that in absence of proper 'watch and ward staff', there was pilferage of stocks and raw materials by intruders as well as by staff members of the complainants' Company and Mill. It was, therefore, submitted that the complainants were not entitled to the amount claimed in the complaints.

9. The National Commission went into the merits of the matter and held that the complainants were entitled to certain reliefs. With regard to stocks kept in the godown of the Mill, it observed that it was covered by policy No. 1131190000249. The policy was for an amount of Rs. forty lakhs and premium of Rs.5,814/- was paid. The claim put forward by the complainants was for Rs.37,78,618/-. According to the complainants, the stocks which were lying in the units were as under;

A	Commodity	Quantity	Rate	Amount (Rs.)
	Wheat	2138.48 Qtls.	Rs.400/QtI.	8,55,392
	Maida	4676 Bags (90 Kg.)	Rs.450/bag	21,04,200
B	Krishna Bhog Atta	271 Bags (80 Kg.)	Rs.400/bag	1,08,400
	Super Fine Atta	5952 Bags (10 Kg)	Rs.55/bag	3,27,360
	Bran	2090 Bag (10 Kg)	Rs.100/bag	2,09,000
C	Bardana (Packing Material)	(Total value as per Books)		<u>1,74,267</u>
	Total			37,78,619

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10. The National Commission held that surveyors of the complainants had prepared a report and submitted to the Insurance Company, but the claim was repudiated on the ground that there were no stock worth its while as there was pilferage since the units remained closed for about twenty months. It was also contended by the Insurance Company that the stock was not fit for human consumption. The final survey report at the instance of the Insurance Company recommended to settle the claim of the complainants at Rs.5,18,619/-. The figure was communicated by the Insurance Company to the complainants.

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11. The National Commission noted that respondent No. 2 Grindlays Bank supported the case of the complainants and prayed that the amount claimed by the complainants be given to them as the complainants executed mortgage documents in the favour of the Bank.

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12. The National Commission considered the evidence of Mr. Ghulam Rasool Wani, the only witness examined on behalf of the complainants who was an illiterate staff member. On

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behalf of the Insurance Company, two surveyors, Mr. Andrasabi and Mr. A.K. Gupta were examined. The Insurance Company also examined Mr. V.K. Malik and Mr. M.R. Grover. The National Commission considered the relevant documentary and oral evidence and observed that the risk was covered by the terms and conditions of the insurance policy. It also held that the units could not work in view of militancy in the area and the units were required to be closed down. It believed the case of the complainants that there was terrorist attack on both the units on November 12, 1991 and the militants set on fire the units. It further recorded a finding that there was no evidence whatsoever to conclude that there was pilferage either by the intruders or by the staff members of any of the units. It, however, held that stocks were worthless, and as such, the complainants were not entitled to the amount claimed. According to the National Commission, an amount of Rs.5,18,619/- as recommended by the surveyors of the Insurance Company was a reasonable figure and ought to have been accepted by the Insurance Company. Accordingly, it held that the complainants were entitled to the said amount.

13. With regard to the raw material, it was covered by policy No.1131190000312 and the coverage was for Rs. 25 lakhs. Premium of Rs.4,821/- was paid and the policy was subsisting.

14. The break up given for such claim was as under;

Raw Materials	Rs. 11,52,248-00
Packing Materials	Rs. 05,40,079-00
Interest @ 18%	Rs. 08,66,471-00

TOTAL	Rs. 25,58,798-00

15. Thus, according to the complainants, total loss in

A respect of raw materials and allied perils was to the extent of
 Rs. 25,58,798/-. On the said claim, the Insurance Company
 appointed three investigators, i.e. Mr. Hamdani, Andrasabi and
 Adarsh Associates. The surveyors, in their report, narrated the
 facts and circumstances of the case and left the amount of
 B valuation of raw materials to the opposite party. In a subsequent
 report, however, they gave a figure of Rs.4,33,122/- for
 settlement of the claim and asked the complainants whether
 they were ready to accept the amount. Upon the query by the
 complainants, however, the Insurance Company, instead of
 C giving response to the query, repudiated the claim vide letter
 dated April 19, 1995 on the ground that there was pilferage and
 hence, the Insurance Company was not liable. Moreover, though
 there was destruction of raw material due to fire in the units,
 since the raw materials were unfit for human consumption, the
 complainants' claim was not well-founded. It was, therefore, held
 D that the complainants were not entitled to the claim.

16. The National Commission considered the question
 and observed that there was no pilferage and taking into
 account the weather condition in Srinagar, it could not be held
 E that the raw materials had become worthless or unfit for human
 consumption. Considering the reports, it was held by the
 National Commission that as per the Surveyors Report at the
 instance of the Insurance Company, the claimants were entitled
 to Rs.4,53,122/-.

F 17. In respect of building, plant, machinery and electricity
 fittings, the claim was covered by policy No.1131190000313.
 It was for Rs. 53 lakhs. The break-up was as follows;

G i)	Factory Building	Rs. 21,00,000
ii)	Electric fittings including Transformer etc.	Rs. 4,00,000
iii)	Machinery of all kinds used for Manufacture of Biscuits, Bread etc.	Rs. 28,00,000

H Rs. 53,00,000

18. The Insurance company, on the other hand, stated that the complainants were entitled only to Rs.31,373/- and nothing more.

19. The National Commission considered the question and observed that the complaint relating to the said policy was required to be allowed in part. The Insurance Company was directed to make payment of Rs.31,373/- towards damage to building with interest at the rate of 12 per cent and the complaints were accordingly disposed of.

20. Being aggrieved by the order passed by the National Commission, three appeals have been filed by the complainants. The grievance of the complainants is that though the complainants were entitled to the amount which had been claimed by them, based on evidence and Surveyors' Reports, the National Commission committed an error of fact and of law in not granting the prayer and in not allowing the complaints in their entirety. It was, therefore, submitted that the appeals deserve to be allowed by directing the Insurance Company to pay full amount with interest at the rate of 18 per cent from November 12, 1991 and costs. The prayer was also made to pay appropriate amount towards harassment caused to the complainants.

21. Two appeals are filed by the Insurance Company. In the appeals, it was contended by the Insurance Company that the National Commission was in error in granting relief in favour of the complainants. The complainants were not entitled to any relief since in absence of the Managing Director and other responsible persons, there was pilferage by intruders and staff members themselves for which the Insurance Company cannot be held liable nor it can be directed to make payment. Similarly, raw materials and stocks had become unfit for human consumption and the complainants were not entitled to the amount claimed by the complainants from the Insurance Company. The amount which was offered by the Insurance Company was adequate and sufficient. The amount on account

A of poor quality of goods and materials had been rightly deducted. The order passed by the National Commission, therefore, deserves interference by allowing the appeals of the Insurance Company.

B 22. Grindlays Bank has not challenged the order passed by the National Commission. Canara Bank, however, has filed two appeals by obtaining special leave from this Court against orders passed in Original Petition Nos. 209 of 1994 and 210 of 1994. It has supported the case of the complainants. According to the Canara Bank, the claim put forward by the complainants was well-founded and ought to have been allowed in toto by directing the Insurance Company to pay full amount towards loss and damage claimed by the complainants. It, however, submitted that the entire amount to which the complainants were entitled ought to have been ordered to be paid to the Bank in view of the fact that the Insurance Policies had been assigned in favour of the Bank. In law, such an assignment amounts to transfer of actionable claim in favour of the Bank. The Insurance Company is, therefore, bound to pay the amount to Canara Bank. Reliance in this connection was placed on behalf of the Bank on Section 38 of the Insurance Act, 1938; Sections 130 and 135 of the Transfer of Property Act, 1882 and a decision of this Court in *Chief Executive Officer & Vice Chairman, Gujarat Maritime Board v. Haji Daud Haji Harun Abu & Ors.*, (1996) 11 SCC 23. It was, therefore, submitted that appeals filed by the complainants should be allowed but the entire amount in relation to two policies be ordered to be paid to Canara Bank.

23. We have heard the learned counsel for the parties. Learned counsel for the complainants contended that the National Commission committed an error of fact and of law in not allowing the complaints and the claims put forward by the complainants in their entirety. It was submitted that the National Commission recorded a finding that the claims were covered by policies which were operative. Claims were lodged by the

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complainants on the basis of damage sustained by them. In support of such claims, survey was made and Surveyors' Reports were duly forwarded to the Insurance Company. The defence of the Insurance Company that there was pilferage by the intruders as well as by staff members of the complainants was not believed. Regarding adverse affect on raw materials and stocks, the National Commission observed that keeping in view the climatic conditions of Srinagar, it could not be said that the entire stock and raw material was unfit for human consumption. It, therefore, allowed part of the claim of the complainants. According to them, however, the National Commission was not right in deducting the claim of the complainants. Apart from favourable climatic conditions in Jammu & Kashmir, the National Commission ought to have appreciated the fact that the complainants could not carry on their business activities of preparing biscuits, breads, cakes and other items not because of inaction on their part, but because of terrorist activities and militancy in the area. It was, therefore, not a case of voluntary omission to carry on trade, but it was compulsion that they could not produce goods. It was contended that terrorism was one of the terms covered by the Insurance Policy and since the business could not be carried on because of terrorism, the complainants had to suspend operations of both the units. The complainants cannot be held even partly responsible for such suspension of operation of units and stoppage of business. The National Commission ought to have appreciated these facts and ought to have allowed the claim of the complainants.

24. It was also submitted that in spite of continuous requests by the complainants to the Insurance Company to get the survey done, no action was taken by the Insurance Company for a pretty long time. Moreover, even after the survey was got done by the Insurance Company through its own Surveyors and as per their reports, certain amounts were required to be paid, the said amount was also not paid by the Insurance Company. Regarding certain items, there was no response whatsoever

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A by the Insurance Company. The National Commission also took into account those facts, but allowed the claim of the complainants only in part. The order of the National Commission to that extent, therefore, requires to be modified by granting full claim of the complainants.

B 25. It was submitted that in the facts and circumstances and entitlement of the complainants for full claim, appeals filed by the Insurance Company are liable to be dismissed.

C 26. Regarding to appeals filed by Canara Bank, it was submitted that the appeals are not maintainable. The National Commission was, therefore, wholly right in not directing the Insurance Company to pay the claim amount to the Bank. It was also submitted that such claim lodged by the Canara bank was even otherwise not tenable. It was urged that under Section 3
D of the Jammu & Kashmir Migrants (Stay of Proceedings) Act, 1997, no such claim could have been lodged by the Bank against the complainants by approaching a Civil Court by filing a suit and no order could have been made or a decree could have been passed by a competent Court in view of the
E provisions of the said Act. Since no such claim is maintainable in the light of statutory provisions, the Bank cannot by this indirect method, obtain a decree and get it executed which it could not have otherwise got in view of the suspension of such claims. It was, therefore, submitted that both the appeals filed
F by the Canara Bank are also liable to be dismissed.

G 27. The learned counsel for the respondent Insurance Company contended that the National Commission was not right in partly allowing the claims of the complainants. It was stated that the Insurance Company got the survey done through its surveyors and the amount to which the complainants were found entitled was offered to them. But the complainants wanted more amount and approached the National Commission. It was also submitted that from the Survey Reports, it was clearly proved that stocks and raw materials had become unfit for
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human consumption. The National Commission was, therefore, right in reducing the claim to that extent. According to the counsel, however, the National Commission was not right in observing and recording a finding that there was no pilferage. It was stated that it was not in dispute that after Praneet Sawhney was shot dead by the terrorists, the operation in both the units stood suspended and Managing Director of the Company (Rajendra Kumar Sawhney) left Srinagar and went to Delhi and only employees were there. It was, therefore, obvious that in absence of any responsible officer belonging to Sawhney family, there was pilferage as stated by the Insurance Company and the National Commission could not have recorded a finding to the contrary. To that extent, therefore, their appeals deserve to be allowed.

28. The learned counsel for the Canara Bank, on the one hand, supported the claim of the complainants and submitted that once the operation of the units became impossible due to terrorist activities which was covered by a clause in Insurance Policy and the complainants could not carry on business, the National Commission was not justified in rejecting any part of the claim of the complainants. On the basis of survey reports substantial loss to the building, plant, machinery and electricity fittings had been proved and the complainants were entitled to the entire amount. Similarly, with regard to raw materials and stocks, nothing could have been deducted by the National Commission as it was impossible for the complainants to carry on production. The only reason why the units could not operate was militancy activities in the area. If it were so, the National Commission was not justified in taking into account the fact as to suspension of business for reduction of claim and consideration of the aspect that certain items were unfit for human consumption and the amount was liable to be reduced.

29. It was, however, submitted that indisputably substantial advance was made to the complainants by the Bank and it was having charge over the property of the Company and of the Mill. It had also a right of lien. It was, therefore incumbent on the

A National Commission to uphold the claim of the Bank by directing the Insurance Company to pay the amount to the Bank directly and not to the complainants. The counsel submitted that the provisions of Section 38 of the Insurance Act, 1938 and Sections 130 and 135 of the Transfer of Property Act are clear
B on the point. The point is also covered by a decision of this Court. The National Commission was, therefore, wrong in rejecting the prayer of the Bank and both the appeals of the Bank should be allowed.

C 30. Regarding the provisions of 1997 Act, it was submitted that the contention of the complainants is ill-founded. This is not a case wherein the Bank becomes a plaintiff and in that capacity, it files a suit against the complainants-defendants for recovery of amount. Once there is an 'actionable claim' and the Bank is having charge over the property of the complainants,
D it ipso facto entitles the Bank to recover such amount directly from the debtor, i.e. Insurance Company. The 1997 Act has no application to such cases. It was asserted that as on date, the amount to which the Bank is entitled and the complainants are liable to pay, exceeds Rs. five crores. The Bank, therefore, has
E right to get the entire amount to which the complainants are held entitled to. It was, hence, submitted that the appeals filed by the Bank deserve to be allowed.

F 31. Having heard the learned counsel for the parties and having gone through the records and proceedings as also the judgment of the National Commission, it is clear that the complainants were able to establish the claims put forward by them. It is not in dispute by and between the parties that the Insurance Policy covered several acts including terrorism and fire. It has come in evidence and has been believed by National
G Commission that the son of the Managing Director was killed in March, 1990 by terrorist attack. It is in the light of the said incident that the Managing Director had to leave Srinagar and to return to Delhi. It was because of the said incident that the operation of both the units was suspended. Thus, it was not a
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case wherein the complainants *did not* undertake the activities which were required to be undertaken by them, but they *could not* operate the units and carry on business. No fault, therefore, can be found against the complainants for suspending the operation of both the units. The complainants obviously cannot suffer because of non-production in the Mill as well as in the Company. The National Commission was, therefore, not right in reducing any amount on the ground that certain stocks and raw materials were unfit for human consumption. It was not intentional or deliberate act on the part of the complainants in stopping production and allowing the stocks and raw materials to get spoiled or damaged and by making them unfit for human consumption. It was because of the militant activities and terrorism that the Company and the Mill could not do business and produce goods. Reduction of amount by the National Commission on that count was, therefore, unjustified and in our opinion, that part of the order requires interference by this Court.

32. As regards pilferage by intruders and staff members, except ipse dixit on the part of the Insurance Company, no material whatsoever has been placed on record in support of such allegation. The National Commission, in our opinion, was justified in not accepting such bare assertion without any evidence or concrete material in support of such plea. In fact, a finding has been recorded by the National Commission that the godowns were 'full' when they were set on fire. 'Watch and ward staff' were protecting the Mill and the Company. There was also a 'Police post' nearby both the units. Further, the report submitted by Mr. Andrasabi as to pilferage was not reliable. In *Shyam Sunder Narang v. United India Insurance Co.*, (1997) 111 CPJ 599, an adverse comment had been made by the National Commission against the report submitted by Mr. Andrasabi. Hence, in our opinion, the National Commission was right in not believing 'pilferage theory' advanced by the Insurance Company.

33. The matter, however, did not end there. Even before

A us, nothing has been shown from which such an inference could be drawn by a reasonable and prudent man as to pilferage by intruders or staff members. The National Commission, in our judgment, was wholly right in negating the contention of the Insurance Company that substantial part of stocks and raw materials had been taken away by intruders or staff members. B No reduction, therefore, could be allowed on that count.

C 34. The National Commission was also right in observing that no payment was made by the Insurance Company even as per the survey conducted by the Surveyor appointed by the Insurance Company. Taking into consideration the entire facts and circumstances, in our opinion, the complainants are entitled to claim compensation towards building, plant, machinery and electricity fittings, raw materials and stocks.

D 35. Accordingly, the complainants are held to be entitled to the following;

<i>Policy No.</i>	<i>Amount entitled to be awarded in favour of the appellant-insured</i>
E 113119000249	Rs. 37,78,619/-
113119000312	Rs. 23,79,195/-
F 113119000313	Rs. 25,81,600/-

G 35. In view of the fact that the appeals filed by the complainants are allowed, the appeals filed by the Insurance Company must necessarily fail. Accordingly, the appeals filed by the Insurance Company are dismissed.

H 36. In respect of Policy No. 113119000249, no appeal has been filed by the Grindlays Bank. It was observed by the National Commission in the impugned judgment that the matter appears to have been settled between the parties. In any case, there is no appeal by a financial institution so far as the said

policy is concerned.

37. But as far as the appeals by Canara Bank are concerned, in our opinion, the claim put forward by the Bank is well founded.

Section 38 of the Insurance Act reads thus;

Section 38 - Assignment and transfer of insurance policies

(1) A transfer or assignment of a policy of life insurance, whether with or without consideration may be made only by an endorsement upon the policy itself or by a separate instrument, signed in either case by the transferor or by the assignor his duly authorised agent and attested by at least one witness, specifically setting forth the fact of transfer or assignment.

(2) The transfer or assignment shall be complete and effectual upon the execution of such endorsement or instrument duly attested but except where the transfer or assignment is in favour of the insurer shall not be operative as against an insurer and shall not confer upon the transferee or assignee, or his legal representative, and right to sue for the amount of such policy or the moneys secured thereby until a notice in writing of the transfer or assignment and either the said endorsement or instrument itself or a copy thereof certified to be correct by both transferor and transferee or their duly authorised agents have been delivered to the insurer:

Provided that where the insurer maintains one or more places of business in India, such notice shall be delivered only at the place in [India] mentioned in the policy for the purpose or at his principal place of business in India.

(3) The date on which the notice referred to in sub-section (2) is delivered to the insurer shall regulate the priority of

A all claims under a transfer or assignment as between
persons interested in the policy; and where there is more
than one instrument of transfer or assignment the priority
of the claims under such instruments shall be governed by
the order in which the notices referred to in sub-section (2)
B are delivered.

(4) Upon the receipt of the notice referred to in sub-section
(2), the insurer shall record the fact of such transfer or
assignment together with the date thereof and the name
C of the transferee or the assignee and shall, on the request
of the person by whom the notice was given, or of the
transferee or assignee, on payment of a fee not exceeding
one rupee, grant a written acknowledgement of the receipt
of such notice; and any such acknowledgement shall be
D conclusive evidence against the insurer that he has duly
received the notice to which such acknowledgement
relates.

(5) Subject to the terms and conditions of the transfer or
assignment, the insurer shall, from the date of receipt of
E the notice referred to in sub-section (2)], recognise the
transferee or assignee named in the notice as the only
person entitled to benefit under the policy, and such person
shall be subject to all liabilities and equities to which the
transferor or assignor was subject at the date of the
F transfer or assignment and may institute any proceedings
in relation to the policy without obtaining the consent of the
transferor or assignor or making him a party to such
proceedings.

(6) Any rights and remedies of an assignee or transferee
G of a policy of life insurance under an assignment or transfer
effected prior to the commencement of this Act shall not
be affected by the provisions of this section.

(7) Notwithstanding any law or custom having the force of
H law to the contrary, an assignment in favour of a person

made with the condition that it shall be inoperative or that the interest shall pass to some other person on the happening of a specified event during the lifetime of the person whose life is insured, and an assignment in favour of the survivor or survivors of a number of persons, shall be valid. A
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38. Likewise, both the sections, i.e. Sections 130 and 135 of the Transfer of Property Act, 1882 are explicitly clear and they read as under;

Section 130 - Transfer of actionable claim C

(1) The transfer of an actionable claim whether with or without consideration shall be effected only by the execution of an instrument in writing signed by the transferor or his duly authorized agent, shall be complete and effectual upon the execution of such instrument, and thereupon all the rights and remedies of the transferor, whether by way of damages or otherwise, shall vest in the transferee, whether such notice of the transfer as is hereinafter provided be given or not: D
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Provided that every dealing with the debt or other actionable claim by the debtor or other person from or against whom the transfer would, but for such instrument of transfer as aforesaid, have been entitled to recover or enforce such debt or other actionable claim, shall (save where the debtor or other person is a party to the transfer or has received express notice thereof as hereinafter provided) be valid as against such transfer. F

(2) The transferee of an actionable claim may, upon the execution of such instrument of transfer as aforesaid, sue or institute proceedings for the same in his own name without obtaining the transferor's consent to such suit or proceedings and without making him a part thereto. G

Exception.-Nothing in this section applies to the transfer H

A of a marine or fire policy of insurance or affects the provisions of section 38 of the Insurance Act, 1938.

Section 135 - Assignment of rights under policy of insurance against fire

B Every assignee by endorsement or other writing, of a policy of insurance against fire, in whom the property in the subject insured shall be absolutely vested at the date of the assignment, shall have transferred and vested in him all rights of suit as if the contract contained in the policy had been made with himself.

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39. In our opinion, therefore, the submission of the learned counsel for the Bank that as soon as a decree is passed or order is made in favour of the complainants, the Bank is entitled to the said amount is well founded. For such a relief, it is not necessary for the Bank to become a plaintiff by filing a suit in a competent Court of law and obtain a decree in its favour. It is true that had it been the position, the provisions of 1997 Act would get attracted and such suit would be stayed and no decree could have been passed by a competent Court in favour of the creditor. But in the light of the statutory provisions in the Insurance Act and in the Transfer of Property Act, the Bank is entitled to the amount directly from the Insurance Company.

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F 40. In our opinion, the learned counsel for the Bank is also right in relying upon the decision in Gujarat Maritime Board. In that case, a similar question came up for consideration before this Court. There one B was financed by A for purchase of vessel. The vessel so purchased was mortgaged in favour of A. As per the Finance Agreement between the parties, B was required to take out a comprehensive risk insurance policy and assign it in favour of Director of Ports representing Government of Gujarat. The insurance also contained an endorsement in terms of the agreement. The vessel on its voyage sunk in the sea. B filed a complaint before the National Commission

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claiming the insurance amount from the Insurance Company. A brought to the notice of the Commission that it had an interest in the vessel as a mortgagee. The Commission, however, directed the Insurance Company to pay entire amount to B. A approached this Court. This Court held that the directions of the National Commission that the entire insurance amount be paid to B was unsustainable in law. Accordingly, the appeal filed by the Maritime Board was allowed and the order passed by the National Commission was set aside.

41. In our opinion, the point is directly concluded by the above decision of this Court in Gujarat Maritime Board and the National Commission was not right in rejecting the claim of the Bank. The appeals of the Bank are, therefore, required to be allowed.

42. For the foregoing reasons, the appeals filed by the Insurance Company are ordered to be dismissed. The appeals filed by the complainants are required to be allowed to the extent indicated above with interest at the rate of 9 per cent per annum from the date of filing of complaints before the National Commission, till the date of payment. So far as Appeal concerning Policy No. 11319000249 relating to stocks is concerned, the complainants are entitled to get the entire amount of Rs.37,78,619/- since there is no appeal in respect of the said policy. Canara Bank is not concerned with the said policy. Grindlays Bank has not approached this Court and had supported the complainants before the National Commission. The two appeals of Canara Bank are in regard to two policies, 113190000312 and 113190000313, raw materials policy and plant policy. Both the appeals of Canara Bank are allowed and the Insurance Company is directed to make payment to Canara Bank and not to the complainants in respect of the amount to be paid to the complainants.

43. All appeals are disposed of accordingly with no order as to costs.