REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1042 OF 2020
(@SPECIAL LEAVE PETITION (CIVIL) NO. 20393 OF 2018)

CANARA BANK …APPELLANT(S)

Versus

M/S UNITED INDIA INSURANCE CO. LTD. & ORS. …RESPONDENT(S)

WITH

CIVIL APPEAL NO. 1043-1051 OF 2020
(@SPECIAL LEAVE PETITION (CIVIL) NO. 24774-24782 OF 2018

CIVIL APPEAL NO. 1052-1059 OF 2020
(@SPECIAL LEAVE PETITION (CIVIL) NO. 25957-25964 OF 2018)

CIVIL APPEAL NO. 1060-1071 OF 2020
(@SPECIAL LEAVE PETITION (CIVIL) NO. 25137-25148 OF 2018)

CIVIL APPEAL NO. 1072-1081 OF 2020
(@SPECIAL LEAVE PETITION (CIVIL) NO. 25235-25244 OF 2018)

CIVIL APPEAL NO. 1082-1090 OF 2020
(@SPECIAL LEAVE PETITION (CIVIL) NO. 25535-25543 OF 2018)

CIVIL APPEAL NO. 1091-1097 OF 2020
(@SPECIAL LEAVE PETITION (CIVIL) NO. 25325-25331 OF 2018)

CIVIL APPEAL NO. 1098-1106 OF 2020
(@SPECIAL LEAVE PETITION (CIVIL) NO. 26077-26085 OF 2018)

CIVIL APPEAL NO. 1107-1117 OF 2020
(@SPECIAL LEAVE PETITION (CIVIL) NO. 26494-26504 OF 2018)

CIVIL APPEAL NO. 1118-1126 OF 2020
(@SPECIAL LEAVE PETITION (CIVIL) NO. 25714-25722 OF 2018)

CIVIL APPEAL NO. 1127-1133 OF 2020
(@SPECIAL LEAVE PETITION (CIVIL) NO. 25343-25349 OF 2018)

CIVIL APPEAL NO. 1134-1203 OF 2020
(@SPECIAL LEAVE PETITION (CIVIL) NO. 31449-31518 OF 2018)

J U D G M E N T

Deepak Gupta, J.

Leave granted.

2. All these appeals are being decided by one common judgment since they arise out of a common order dated 08.06.2018 of the National Consumer Disputes Redressal Commission, New Delhi, hereinafter referred to as 'the National Commission'.

3. Briefly stated the facts of the case are that most of the claimants, hereinafter referred to as 'the farmers', had grown

Byadgi Chilli Crop during the year 2012-2013. Some of the farmers had some other crops. These farmers had stored their agricultural produce in a cold store run by a partnership firm under the name and style of Sreedevi Cold Storage, hereinafter referred to as 'the cold store'. These farmers also obtained loans from Canara Bank, hereinafter referred to as 'the Bank'. The loan was advanced by the Bank to each one of the farmers on security of the agricultural produce stored in the cold store. The cold store was insured with the United India Insurance Company Limited, hereinafter referred to as 'the insurance company'. A fire took place in the cold store on the night intervening 13.01.2014 and 14.01.2014. The entire building of the cold store and the entire stock of agricultural produce was destroyed.

4. After the fire, the cold store, which had taken out a comprehensive insurance policy, raised a claim with the insurance company but the claim of the cold store was repudiated by the insurance company mainly on the ground that the fire was not an accidental fire. The farmers had also issued notice to the insurance company in respect of the plant, machinery and building but this claim was repudiated by the insurance company

on the additional ground that the farmers had no *locus standi* to make the claim as the insured was the cold store and not the farmers. It was further pleaded that Condition No.8 of the insurance policy had been violated, and that there was no privity of contract between the farmers and the insurance company. Since the claims of the farmers were either rejected or not answered, they filed claim petitions against the cold store, the Bank and the insurance company in which the primary relief claimed was the value of the agricultural produce as on the date of fire and interest thereupon and each of the farmers also claimed damages of Rs.1,00,000/- per head. There were 91 claim petitions filed and in most of them the agricultural produce was Byadgi Chilli. In a few petitions, the agricultural produce was Dabbi Chilli, Guntur Chilli, Bengal Gram, Coriander (Dhania), Jwar etc. However, this will not have any material impact on the decision of these cases. The details containing the name of the claimants, the nature of the produce, number of bags and quantity thereof, rate, and number of kilograms have been set out in Para 7 of the judgment of the National Commission which we are not reproducing for the sake of brevity.

5. In the claims filed it was pleaded that the cold store while levying the general charges had also charged the insurance premium paid by it. It would be pertinent to mention that a tripartite agreement had been entered into by each one of the farmers while taking a loan from the Bank and hypothecating the agricultural produce which was stored in the cold store. The farmer, the Bank, and the cold store were parties to the tripartite agreement. The cold store issued a warehouse receipt giving the particulars of the crop stored, the value thereof and also the date of the tripartite agreement. For the period in question i.e. from 2012-2013 till the occurrence of fire, the cold store was admittedly insured with the insurance company. The plant and machinery of the cold store was insured for Rs.5 crores and the stocks were insured for Rs.30 crores.

6. The case of the farmers was that in terms of the tripartite agreement, the cold store had got the stocks insured from the insurance company. The fire was an accidental fire and, therefore, in terms of the policy, the insurance company was liable to pay the amount of value of the agricultural produce stored with the cold store as on the date of fire and was also liable to pay interest on

the amount payable. The insurance company resisted the complaint mainly on the ground that the 'farmers' were not 'consumers' within the meaning of Consumer Protection Act, 1986, hereinafter referred to as 'the Act'. It was also claimed that there was no privity of contract between the farmers and the insurance company because the policy was taken by the cold store and not by the farmers. It was alleged that the entire story of loans was a false story. On merits, any conceivable objection which could be taken was taken. The insurance company went to the extent of denying that the claimants were farmers or they had produced the agricultural produce or that they had stored it in the cold store. It was also alleged that the Bank was negligent as it did not take any step to recover the amount due for more than two years. The case of the insurance company is that nobody in his right mind would store agricultural produce for such a long period of time. Therefore, the very genuineness of the tripartite agreement was challenged. The other main ground taken was that the fire was not an accident and there was no spontaneous combustion on account of electrical short circuit. According to the insurance company, there was an element of arson involved and the cold store seems to have been deliberately set on fire.

7. The stand of the cold store was that the fire was accidental and that since the stock was insured, the amount was payable by the insurance company. The Bank supported the claim of the farmers with the caveat that the amount should be paid to it so that it could set it off against the loans advanced to the farmers.

8. The Karnataka State Consumer Disputes Redressal Commission at Bangalore, hereinafter referred to as 'the State Commission' vide judgment dated 28.04.2017 held that the farmers had proved that the fire took place on account of electrical short circuit and no element of human intervention or use of kerosene was found. The State Commission also found that as per the tripartite agreement entered into between the farmers, the Bank and the cold store, it was mandatory for the cold store to insure the goods so hypothecated by the farmers with the Bank. The insurance company was held liable to pay the amount to the farmers. The State Commission assessed the value of the goods by taking the value as reflected in the warehouse receipts issued at the time of taking of loan and did not accept the plea of the farmers that they should get the market value of the goods as on the date of fire. The Bank was also held deficient in service. The

cold store and the insurance company were held jointly and severely liable and were directed to pay the value of the agricultural produce hypothecated with the Bank to the farmers/claimants as on the date of tripartite agreement together with the interest at the rate of 14% per annum payable from six months from the date of the incident till the date of realisation. One complaint being Complaint No.597 of 2015 was dismissed. In some of the complaints, the Bank was also held jointly and severely liable to pay the costs of Rs.10,000/- whereas in a large number of cases the complaint against the Bank was dismissed.

9. Aggrieved by the aforesaid judgment dated 28.04.2017 of the State Commission, an appeal was filed before the National Commission. By the impugned judgment, the National Commission concurred with the findings of the State Commission and held that the farmers are consumers. It held that the insurance company was aware of the fact that the goods were held in trust. It further held that there is no evidence to show that the fire was not an accidental fire or that the fire had been started by the owner of the cold store. However, it partly allowed the appeal of the insurance company and reduced the interest from 14% per

annum to 12% per annum. The farmers had also filed appeal claiming that in terms of the insurance policy they should have been paid the value of the goods as on the date of fire. However, this claim was rejected basically on the ground that the farmers had failed to show that the chilli and/or other produce stored is of the same class and characteristics as reflected in the Variety-wise Periodic Report of the Bengaluru Market for different commodities. As far as the appeals filed by the Bank were concerned, the National Commission held that in the peculiar facts of the case where the farmers had suffered substantial losses, the principal amount of loan advanced by the Bank would be remitted by the insurance company to the Bank but the other amount i.e. interest and damages, would be given to the farmers. It was also held that there was no deficiency of service on behalf of the Bank and the costs imposed on the Bank in some of the cases were set aside.

10. Before this Court, appeals have been filed by the insurance company, the farmers, the cold store and the Bank.

11. We have heard Shri P.P. Malhotra, learned senior counsel appearing for the insurance company, Dr. Rajeev Dhavan and Shri Gopal Shankaranarayanan, learned senior counsel appearing for

the farmers, Shri Sajan Poovayya, learned senior counsel appearing for the cold store and Shri Dhruv Mehta, learned senior counsel appearing for the Bank.

Appeals of the Insurance Company

12. Shri P.P. Malhotra, learned senior counsel appearing for the insurance company raised several issues for consideration of this Court. One of the contentions raised by him is that the fire in question was not an accidental fire. It is also contended that the farmers were not consumers and therefore the consumer fora have no jurisdiction to decide the dispute. He next contends that there is no privity of contract between the farmers and the insurance company. According to him, a contract of insurance is to be strictly construed between the parties to the contract. He submits that there was no insurable interest of the farmers and the tripartite agreement entered between the Bank, the farmers and the cold store was never disclosed to the insurance company. He further submits that there is non-disclosure of important facts by the cold store (insured) and, as such, the insurance company is not liable. He also urged that the liability of the insurance company is excluded by virtue of General Exclusion Clause 5 and

General Condition no.1 and General Condition no.8 of the insurance policy.

Whether the fire was an accident?

13. As far as this issue is concerned, both the State Commission and the National Commission have come to the conclusion that the fire was an accidental fire and occurred due to a short circuit. These are pure findings of fact which, in our view, cannot be challenged in these proceedings. However, since lengthy arguments were addressed by Shri P. P. Malhotra in this behalf, we shall deal with the same. At the outset, we may note that the electrical inspector, the police investigation team and the forensic science laboratory (FSL) have all come to the conclusion that the fire took place due to a short circuit. The concluding portion of the report of the FSL reads as follows:-

> "From the above examination, the following observations have been made
>
> 1. Presence of combustible materials like thermocol (which are used to insulate the walls) pillars, wooden partitions and the grains stored inside the building could have enhanced the spread of fire.
>
> 2. The congested space in the building might have accelerated the smoldering fire.
>
> 3. The fire might have originated at the sixth floor front side of the building. But it was not possible to

> locate the exact place of origin of fire since the complete building was involved in fire.
>
> 4. An electrical short circuit may have initiated the fire."

The insurance company relies upon the findings given by a company namely Truth Labs and those of Rank Surveyors Private Limited, which read as follows:-

> "Based on a thorough and in-depth inspection of the incident site, forensic examinations, field investigations, documentary evidence analysis and personal evidence obtained, it is concluded that the fire occurred in M/s. Sree Devi Cold Storage, Billary on the intervening night of 13/14th January 2014.
>
> a. Was not due to spontaneous combustion on account of bacterial/chemical fires.
>
> b. Was not due to electrical failure caused by short circuit.
>
> c. And was on account of extraneous ignitable fire accelerants such as kerosene used deliberately for ignition, initiation, propagation and burning of stocks in the cold storage through human intervention.
>
> d. Based on the motive, means and opportunity to carry out such malicious acts the possibility of the involvement of management in such a nefarious act cannot be ruled out."

14. We may note that it is not disputed that in the construction of the cold store, the temperature was maintained by insulating the walls of the cold store. Bitumen (coal tar) and Thermocol were

used for providing insulation. The FSL found that in a fire which takes place in a building where such material is used for construction, hydro carbons would obviously be present. On the other hand, M/s. Truth Labs mainly relied upon the presence of hydro carbons to come to the conclusion that the fire had not occurred spontaneously and on account of electrical short circuit but occurred on account of extraneous ignitable fire accelerants such as kerosene. The conclusions of M/s. Truth Labs were based on some inspection and chemical analysis carried out by a team headed by Dr. R. Srinivas. Admittedly, this report of Dr. R. Srinivas was never furnished to the parties nor was placed before the State Commission. Interestingly, when Mr. G. V. H. V. Prasad, Director of M/s. Truth Labs was put a specific query whether the walls of the ground floor and the top floor and the inside portion of the cold store along with 169 pillars were constructed by sandwiching bitumen and thermocol between the concrete in order to raise the level of insulation, he replied that 'he was not aware of how the Cold Storage was built'. This clearly shows the shoddy manner in which M/s. Truth Labs conducted the investigation. There can be no proper investigation of a fire if the investigating agency does not even try to find out what is the nature of

construction of the building which has been destroyed in the fire. M/s. Truth Labs has clearly stated that the observation that fire took place on account of extraneous ignitable fire accelerants, is based on the chemical analysis report which shows presence of hydro carbons in the debris. It is apparent that M/s. Truth Labs, for reasons best known to it, did not analyse the material used for construction because if it had done so, it would have realised that hydro carbons would be present when thermocol or bitumen are burnt. Thermocol is basically a rigid plastic foam material which is derived from petroleum and natural gas by-products. Bitumen is a semi-solid hydrocarbon product produced from crude oil. Both thermocol and bitumen are derivatives of petroleum products and hence are hydrocarbons by their very nature. Therefore, presence of hydrocarbons would be natural when a fire takes place. The presence of hydro carbon could not lead to a conclusion that kerosene oil had been used to ignite the fire.

15. The National Commission has also dealt in detail with this issue and has come to the conclusion that M/s. Truth Labs visited the burnt cold store on two occasions and collected samples on both the occasions. It, however, decided to send 12 samples

collected only in the second visit for analysis. Interestingly, the controlled samples were collected from a plastic bag containing (fresh unaffected) chillies found in the burnt stock of the affected premises. The controlled samples did not show presence of hydro carbons and hence, the assumption that the presence of hydro carbons in the remaining samples was not relatable to thermocol and tar. There is no explanation why the samples taken on the first visit were not sent for analysis. It is also difficult to believe that in a building which has been totally gutted in a fire, there would be one plastic bag containing (fresh unaffected) chillies found in the burnt stock. It is possible that these unburnt chillies may have been introduced later on. Therefore, we cannot place any reliance on the report of M/s. Truth Labs.

16. In any event, neither in the report of M/s. Truth Labs nor in the other reports by the insurance company is there anything to show that the insured had set the cold store on fire. Whether the fire took place by a short circuit or any other reason, as long as insured is not the person who caused the fire, the insurance company cannot escape its liability in terms of the insurance policy. We reject the contention of the insurance company that

the fire was ignited by the use of kerosene and hence it is not liable.

Rule of Strict Interpretation

17. It has been submitted on behalf of the insurance company that the terms of the insurance policy should be construed strictly and since only the insurance company and the cold store (insured) were parties to the contract of insurance, the insurance company will not be liable to pay any claim to the farmers. Various authorities were cited by both sides.

18. In ***United India Insurance Co. Ltd.*** v. ***Harchand Rai Chandan Lal***[1] this Court held as follows:-

> "**9**....It is settled law that terms of the policy shall govern the contract between the parties, they have to abide by the definition given therein and all those expressions appearing in the policy should be interpreted with reference to the terms of policy and not with reference to the definition given in other laws. It is a matter of contract and in terms of the contract the relation of the parties shall abide and it is presumed that when the parties have entered into a contract of insurance with their eyes wide open, they cannot rely on the definition given in other enactment...."

1 (2004) 8 SCC 644

19. Reliance was placed on ***Raghunath Rai Bareja*** v. ***Punjab National Bank***[2] wherein it was held:

> "**58**. We may mention here that the literal rule of interpretation is not only followed by judges and lawyers, but it is also followed by the layman in his ordinary life. To give an illustration, if a person says "this is a pencil", then he means that it is a pencil; and it is not that when he says that the object is a pencil, he means that it is a horse, donkey or an elephant. In other words, the literal rule of interpretation simply means that we mean what we say and we say what we mean. If we do not follow the literal rule of interpretation, social life will become impossible, and we will not understand each other. If we say that a certain object is a book, then we mean it is a book. If we say it is a book, but we mean it is a horse, table or an elephant, then we will not be able to communicate with each other. Life will become impossible. Hence, the meaning of the literal rule of interpretation is simply that we mean what we say and we say what we mean."

20. Reliance was also placed on the following paragraph in ***Suraj Mal Ram Niwas Oil Mills (P) Ltd.*** v. ***United India Insurance Co. Ltd.***[3]***:***

> "**26**. Thus, it needs little emphasis that in construing the terms of a contract of insurance, the words used therein must be given paramount importance, and it is not open for the court to add, delete or substitute any words. It is also well settled that since upon issuance of an insurance policy, the insurer undertakes to indemnify the loss suffered by the insured on account of risks covered by the policy, its terms have to be strictly construed to determine the extent of liability of the insurer. Therefore, the endeavour of the court should always be to interpret

2 (2007) 2 SCC 230
3 (2010) 10 SCC 567

the words in which the contract is expressed by the parties."

21. The principles relating to interpretation of insurance policies are well settled and not in dispute. At the same time, the provisions of the policy must be read and interpreted in such a manner so as to give effect to the reasonable expectations of all the parties including the insured and the beneficiaries. It is also well settled that coverage provisions should be interpreted broadly and if there is any ambiguity, the same should be resolved in favour of the insured. On the other hand, the exclusion clauses must be read narrowly. The policy and its components must be read as a whole and given a meaning which furthers the expectations of the parties and also the business realities. According to us, the entire policy should be understood and examined in such a manner and when that is done, the interpretation becomes a commercially sensible interpretation. As far as the present case is concerned, if we read the tripartite agreement along with the terms of the policy it is obvious that the Bank insisted that the stock be insured. The farmers were told that they would pay the premium. The cold store while fixing the rent obviously factored the premium into the rent. It was obvious that the intention of the parties was that they

would be compensated by the insurance company in case of any untoward loss.

Whether the farmers are consumers and the issue of privity of contract

22. One of the main grounds of attack to the judgments of both the State Commission and the National Commission on behalf of the insurance company is that the farmer is not a consumer insofar as the insurance company is concerned. The contention is based on the ground that the insurance policy is admittedly only between the insurance company and the cold store. It is further urged by Shri Malhotra that the claim of the cold store for damage to the building, plants and machinery was repudiated by the insurance company on 16.09.2015. The cold store has not challenged the repudiation. Thereafter, all the complaints have been filed through one counsel which indicates that they have been orchestrated by the cold store itself. It is also submitted that the tripartite agreement is not relevant as far as the insurance company is concerned since the insurance company is not a signatory to the tripartite agreement. It is further contended that the coverage for the goods was only for the goods owned by the cold store and not by the farmers who are in the nature of third

parties. It is contended that in some cases the tripartite agreement has not even been signed by the Bank.

23. On the other hand, on behalf of the farmers, it is submitted that they paid rent to the cold store which included the element of insurance. It is submitted that the crops were given on contractual bailment to the cold store for a valuable consideration and, therefore, the cold store held the goods as a bailee on behalf of the farmers. It is also submitted that in terms of the tripartite agreement, the cold store was bound to take out an insurance policy and the crops and the premises were separately insured and the insurance was renewed every time for a period of 3 years. It is also submitted that insurance company was aware that the insurance policy had been taken for the benefit of the real owners i.e. farmers.

24. To decide these issues, it would be apposite to refer to the definition of 'consumer' under Section 2(d) of the Act, which reads as follows:-

> "**2 Definitions. -** (1) In this Act, unless the context otherwise requires,-
>
> xxx xxx xxx
>
> (d) "consumer" means any person who, -

> (i) buys any goods for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promised, or under any system of deferred payment, when such used is made with the approval of such person, but does not include a person who obtains such goods for resale or for any commercial purpose; or
>
> (ii) hires or avails of any services for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such services other than the person who hires or avails of the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first mentioned person...;"

25. The definition of consumer under the Act is very wide and it not only includes the person who hires or avails of the services for consideration but also includes the beneficiary of such services who may be a person other than the person who hires or avails of services.

26. Taking the issue of privity of contract, we are of the considered view that as far as the Act is concerned, it is not necessary that there should be privity of contract between the insurance company and the claimants. The definition of consumer under Section 2(d) quoted hereinabove is in 2 parts. Sub-clause (i) of Section 2(1)(d)

deals with a person who buys any goods and includes any user of such goods other than the person who buys such goods as long as the use is made with the approval of such person. Therefore, the definition of consumer even in the 1st part not only includes the person who has purchased but includes any user of the goods so long as such user is made with the approval of the person who has purchased the goods. As far as the definition of the consumer in relation to hiring or availing of services is concerned, the definition, in our view, is much wider. In this part of the section, consumer includes not only the person who has hired or availed of the services but also includes any beneficiary of such services. Therefore, an insured could be a person who hires or avails of the services of the insurance company but there could be many other persons who could be the beneficiaries of the services. It is not necessary that those beneficiaries should be parties to the contract of insurance. They are the consumers not because they are parties to the contract of insurance but because they are the beneficiaries of the policy taken out by the insured.

27. The definition of consumer under the Act is very wide and it includes beneficiaries who can take benefit of the insurance availed by the insured. As far as the present case is concerned, under the

tripartite agreement entered between the Bank, the cold store and the farmers, the stock of the farmers was hypothecated as security with the Bank and the Bank had insisted that the said stock should be insured with a view to safeguard its interest. We may refer to the penultimate clause of the tripartite agreement which reads as follows:-

> "WHEREAS the Third Party has agreed to insure the produce/goods stored in the cold storage to indemnify the produce in case of any casualty or accident by any means to cover the risk and also to cover the loan amount to avoid loss at the cost of the Second Party till the release order or repayment of the loan amount."

28. The aforesaid clause in unambiguous terms binds the cold store to insure the goods, to indemnify the produce, to cover the risk and cover the loan amount. This insurance policy has to be taken at the cost of the second party which is the farmer. Therefore, there can be no manner of doubt that the farmer is a beneficiary under the policy. The farmer is, therefore, definitely a consumer and we uphold the orders of both the Commissions that the complaint under the Act is maintainable.

29. Shri Malhotra in support of his argument relied upon the judgement of this Court in ***M. C. Chacko*** v. ***The State Bank of***

Travancore, Trivandrum[4] wherein the appellant as Manager of High Land Bank, Kottayam, had an overdraft account with the Bank. The father of the appellant had executed letters of guarantee in favour of Bank agreeing to pay the amounts due to the Bank under the overdraft agreement subject to a limit of Rs.20,000/-. The Court held:-

> "**10**. Even if it be granted that there was an intention to create a charge, the Kottayam Bank not being a party to the deed could enforce the charge only if it was a beneficiary under the terms of the contract, and it is not claimed that the Bank was a beneficiary under the deed Ext. D-1. The suit against M.C. Chacko must therefore be dismissed."

30. We are of the view that this judgment has no relevance to the case before us. This Court held that the Kottayam Bank was not only not a party to the deed but was also not a beneficiary under the contract. In our opinion, the Consumer Protection Act clearly provides that a beneficiary of the services, other than the insured is a consumer under the Act.

General Exclusion Clause No.5

31. It has been urged that there is violation of Clause 5 of the policy under the heading of General Exclusion wherein losses of

4 (1969) 2 SCC 343

certain types have not been covered. The said clause reads as follows:-

> "**5**. Loss, destruction or damage to bullion or unset precious stones, any curios or works of art for an amount exceeding Rs.10000/- goods held in trust or on commission, manuscripts, plans, drawings, securities, obligations or documents of any (illegible) stamps, coins or paper money, cheques, books of accounts or other business books, computer systems records, explosives unless otherwise expressly stated in the policy."

32. The argument raised by Shri Malhotra is that since the goods were held in trust by the cold store, the insurance company is not liable. We are not at all impressed with this argument. This is not a case where the goods were deposited only on the basis of trust. The goods were kept in the cold store on payment of rent by the farmer. This is not a case envisaged under Exclusion Clause 5 quoted hereinabove. These goods were also not held on commission. Shri Rajeev Dhavan, learned senior counsel appearing for the farmers submits that the relationship between the farmer and the cold store was of bailor and bailee. He submits that the crops were given on contractual bailment to the cold store for consideration.

33. In the present case, as pointed out above, the farmer had agreed to pay consideration to the cold store and, therefore, the goods were not held in trust *per se* but the goods were held by cold store as bailee of the goods for consideration. The possession of the farm produce was handed over by the bailor, i.e. farmer to the cold store i.e. the bailee, in terms of the contract. There may be *inter se* rights and liabilities between the farmer and the cold store but it cannot be said that the goods were held 'in trust'. The goods were also not held 'on commission'. No commission was payable and only rental was paid. Therefore, we reject this argument on behalf of the insurance company.

General Condition Nos. 1 & 8:

34. Shri Malhotra has placed reliance on Condition Nos. 1 & 8 of Part B of the General Conditions of the Insurance Policy:-

> "(B) GENERAL CONDITIONS:
>
> 1. This policy shall be voidable in the event of misrepresentation, mis-description or non-disclosure of any material particular.
>
> xxx xxx xxx
>
> 8. If the claim be in any respect 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 anyone acting on his behalf to obtain any benefit under the policy or if the loss

> or damage be occasioned by the willful act, or with the connivance of the insured, all benefits under this policy shall be forfeited."

35. The contention of Shri Malhotra is that the insurance company was not informed by the Bank, the cold store or the farmers that the farm produce or the insured goods belong to the farmers and therefore the policy is voidable. At the outset, we may note that misrepresentation or misdescription only makes the policy voidable. The insurance company never chose to declare the policy void for 3 long years when it was in existence and, at this stage, cannot be permitted to wriggle out of its liability by taking this objection. Even otherwise, we are of the view that the submission made on behalf of the insurance company is without any substance. The policies of insurance clearly show that the premises was separately insured for Rs.5 crores and the stock in trade were insured for Rs.30 crores. This insurance was taken not only for the year when the fire took place but was renewed for 3 long years. The insurance policy had an Agreed Bank Clause which reads as follows:-

> "(1) AGREED BANK CLAUSE:
>
> It is hereby declared and agreed:-
>
> (i) That upon any monies becoming payable under this policy the same shall be paid by the company to the bank and such part of any monies so paid as may relate to the interests of other parties insured

hereunder shall be received by the Bank as Agents for such other parties.

(ii) That the receipts of the Bank shall be complete discharge of the company thereon and shall be binding on all the parties insured hereunder."

36. The aforesaid clause itself clearly indicates that it was agreed by the insurance company that upon any amount being payable under the policy in question, the same would be paid to the Bank and the amount so paid "may relate to the interests of other parties". The said amount would be received by the Bank as agent for other parties. Therefore, the insurance policy itself envisaged that there were interest of other parties and not only the Bank and the insured. Therefore, it was for the insurance company to verify and find out who was the owner of the goods. It could not presume that all the goods belong to the cold store. The assumption of the insurance company that it had insured the goods belonging to the cold store itself has no factual basis. It is a well-known fact that cold stores are constructed in such a way that there are many compartments in the cold store. Any person can deposit a small or large amount of goods to be kept in cold store. Normally, it is the goods of third parties which are stored in a cold store and, therefore, we are dealing with a policy of insurance whereby the premises and the stock and goods in a cold store have been

insured. The natural corollary would be that the insurance company should have known that the goods belong to the third parties. From the policy of insurance, we find that in respect of description of risk, the insurance covers "Stock of Guntur Chillies/Byadigi Chillies/Other variety Chillies, Jawar Seeds, Bengal Garam, Red Gram, Tambrind, Coriander Seeds & Other pulses."

37. This stock in trade was covered for a sum of Rs.30 crores and premium was charged accordingly. A prudent insurance company before issuing a policy of such a heavy amount, must or at least should have ascertained the value and the nature of the goods. The insurance company before us is one of the largest nationalised insurance companies and a presumption has to be drawn that it must have verified the details before insurance policy was issued. If verification had been done by a visit to the cold store, it could have been easily found out who are the owners of the stock. In case, the insurance company has chosen not to verify the stock it cannot take advantage of its own negligence. The principle of *uberrima fides* has no application because the cold store had declared all necessary facts. The bank clause clearly indicated that the goods were hypothecated/pledged to the Bank. Therefore,

the insurance company now cannot turn around and claim that the names of the owners were not supplied to it at the time of insurance. We also cannot lose sight of the fact that the insurance policy was renewed at least twice. Therefore, the policy was in existence for 3 years and it is in the 3rd year that the fire took place. If the insurance company chooses not to even write a letter to the insured or take any steps to verify the value of the goods and ownership of the goods, it cannot now turn around and urge that it was not aware about the nature or ownership of the goods.

Fraudulent Claim

38. The insurance company also contends that the whole scheme is fraudulent and that no farmer in his right senses would store agricultural produce for such a long time. This argument is totally baseless.

39. Byadgi Chilli is the major component of the goods that were stored in the cold store. It is a very famous variety of chilli and is produced in two types – dabbi and kaddi. One of the main uses of this chilli is not only as an item of food but as an item to extract red colour pigment which is used in the manufacture of lipsticks, nail polishes, and other cosmetics etc. The material extracted is

called oleoresin, which is a red oil extracted from the pods. Many cold stores have been constructed in the area where this chilli is grown because if these chillies are stored at a low temperature of 4 to 6 degree Celsius, the colour and purity is maintained and it also increases the amount of oleoresin which can be extracted from chilli by about 30% to 40%. As such the farmers took a commercial decision to store the chillies because after storing it, the value would go higher.

40. The insurance company also urged that some of the tripartite agreements are not signed by the officials of the Bank. It is urged that this shows that the agreements cannot be relied upon. We are not at all in agreement with this submission. As long as the parties to the tripartite agreement i.e. the Bank, the farmer and the cold store, are not disputing the correctness of the agreement, there is no reason why we should not accept the same to be a genuine document.

Non-disclosure of material facts:

41. It has been urged on behalf of the insurance company that while submitting the proposal form on 21.03.2013, the cold store had not listed out the names of the parties who had an insurable

interest including the financial institutions. It is, therefore, submitted that the cold store deliberately did not disclose the fact that the produce belonged to the farmers. Shri Malhotra placed reliance on the judgment in ***Satwant Kaur Sandhu*** v. ***New India Assurance Co. Ltd.***[5] wherein it was held that:

> "**25**. The upshot of the entire discussion is that in a contract of insurance, any fact which would influence the mind of a prudent insurer in deciding whether to accept or not to accept the risk is a "material fact". If the proposer has knowledge of such fact, he is obliged to disclose it particularly while answering questions in the proposal form. Needless to emphasise that any inaccurate answer will entitle the insurer to repudiate his liability because there is clear presumption that any information sought for in the proposal form is material for the purpose of entering into a contract of insurance."

42. At the outset, we may mention that the initial insurance policy was taken in the year 2011, if not earlier, and that proposal form was very material. The same has not been produced by the insurance company before us. Thereafter, it was only renewal of the policy. Furthermore, if a column is left blank, again the insurance company should have asked the insured to fill in the column. There is no wrong information given in the proposal form though it may be true that all the requisite information was not

5 (2009) 8 SCC 316

supplied. The column requires listing out the parties who have an insurable interest including financial institutions. Since the policy had a bank clause, the name of Canara Bank should have been mentioned in column 5. That was not there. If the insurance company while accepting the proposal form does not ask the insured to clarify any ambiguities then the insurance company after accepting the premium cannot now urge that there was a wrong declaration made by the insured. In case the insured had written that there were no persons who had an insurable interest, the position may have been different but leaving out the column blank does not mean that there was some misdeclaration of facts. We are, therefore, clearly of the view that the judgment of this Court in ***Satwant Kaur Sandhu's case*** (supra) is not applicable to the facts of the present case.

43. As already held above, the insurance company itself could have also taken some initiative in the matter. To make a contract void the non-disclosure should be of some very material fact. No doubt, it would have been better if the Bank and the insured had given at least 1 tripartite agreement to the insurance company but, in our view, in the peculiar facts of this case, not disclosing the tripartite agreement or the names of the owners cannot be said to

be such a material fact as to make the policy void or voidable. We are clearly of the view that there is no fraudulent claim made. There is no false declaration made and neither is the loss and damage occasioned by any wilful act or connivance of the insured.

44. In view of the above discussion, we are clearly of the view that the insurance company under the insurance policy is liable to indemnify the cold store with regard to the value of goods and since the farmers are the beneficiaries, they are entitled to get the amount payable under the policy. However, this will obviously be subject to the bank clause which we have already referred to above.

Appeal of the Bank

45. The Bank has raised objections to the interest portion of the amount being given to the farmers. Otherwise it supports the case of the farmers. Reliance has been placed on the bank clause already quoted above and it is submitted that the direction of the National Commission to pay the interest to the farmers is against the Agreed Bank Clause in terms of which the money is to be paid to the Bank till the outstandings of the Bank are covered. Shri Dhruv Mehta, learned senior counsel for the Bank submits that since the farmers are claiming benefit of the policy, they cannot urge that the bank clause is not applicable. It is further submitted by him that the National Commission has to decide questions on the basis of legal considerations and equitable considerations or equity has no role to play in such matters. On the other hand, it has been urged by Dr. Rajeev Dhavan that the bank clause is only a processual clause.

46. We cannot accept the submission of Dr. Dhavan that the bank clause lays down only a process. The insurance policy is a contract and the amount has to be paid as per the terms of the contract. In our view, the National Commission could not have

ordered that the interest on the amount payable to the farmers should not be paid to the Bank till the liabilities of the Bank are paid out. Arguments have been addressed before us that this Court may exercise its power under Article 142 of the Constitution of India to ensure that justice is done to the farmers. We feel that there is no need to invoke the jurisdiction under Article 142 because even after paying off the dues of the Bank, some amount of the value of the goods along with interest thereupon will be payable to the farmers.

Whether there was a deficiency in service on the part of the Bank

47. It was urged on behalf of the insurance company that there is deficiency of service by the Bank and, in fact, it was argued that the Bank connived with the farmers because it did not get the valuation of the products done properly and further, it took no steps to sell the agricultural produce after one year which liberty it had in terms of the tripartite agreement. We find no force in this argument. As already pointed out above, the value of Byadgi chillies which was the major agricultural produce stored in the cold store rises the longer it is kept in the cold store. Therefore, the Bank could have taken a commercial decision not to sell the

produce because the product was not deteriorating in any manner and its value was not diminishing.

48. The State Commission had held that there was deficiency on behalf of the Bank in rendering services but the National Commission held otherwise. We are of the view that the Bank was remiss to a limited extent. When the Bank issues loans against the hypothecation of goods, as in the present case, and insists that the goods should be insured to safeguard its outstandings then a duty lies upon the Bank to inform the insurance company of the policy. If both the Bank and the insurance company had done what would be expected of good financial institutions, there would have been no needless litigation. The matter has dragged to this stage only because the names of the farmers were not mentioned in the policy or because the tripartite agreement was not handed over to the insurance company. The Bank, as a prudent financial institution, should have insisted that the tripartite agreement should also be handed over to the insurance company. Therefore, we feel that there is some level of deficiency on behalf of the Bank.

49. In view of the aforesaid, we feel that the Bank cannot claim interest at the contractual rate and is not entitled to claim interest

at the contractual rate because the farmers have been driven through a long drawn litigation which could have been easily avoided if the Bank had itself sent the copy of the tripartite agreement to the insurance company or insisted that the insured should send the same to the insurance company. We accordingly hold that the Bank cannot claim interest at the contractual rate. We are therefore, of the view that the Bank would be entitled to charge simple interest right from the date of grant of loan at the rate of 12% per annum.

The amount of claim payable:

50. The farmers in their appeal have claimed that in terms of the policy of insurance the value of the goods was to be assessed on the date of fire and the value was not to be assessed as mentioned on the date when the goods were stored in the cold store. In this regard, we may make reference to the opening portion of the insurance policy wherein the insurance company has agreed to insure the goods. Relevant portion of the insurance policy reads as follows:-

> "IN CONSIDERATION of the insured named in the schedule hereto having paid to the United India Insurance Company Limited (hereinafter called the Company) the full premium mentioned in the said

> schedule. The Company Agrees (Subject to the conditions and exclusions contained herein or endorsed or otherwise expressed hereon) that if after payment of the premium the property insured described in the said schedule or any part of such property be destroyed or damaged by any of the perils specified hereunder during the period of insurance named in the said schedule or of any subsequent period in respect of which the insured shall have paid and the Company shall **have accepted the premium required for the renewal of the policy, the Company shall pay to the insured the value of the property at the time of the happening of its destruction or the amount of such damage or at its option reinstate or replace such property or any part thereof**."

51. The highlighted portion of the aforesaid clause leaves no manner of doubt that the insurance company in consideration of the premium received had agreed to either reinstate the goods or replace the same or pay to the insured the value of the property at the time of happening of its destruction or damage. The State Commission and the National Commission had rejected the claim of the farmers in this regard on the ground that the variety-wise periodic report of the Bengaluru market, produced by the farmers, showed that the range between minimum and maximum price for Byadgi and Guntur chillies etc. is very vast and to arrive at an average price would mean construing that all the chillies are of standard quality. According to the National Commission, this

would be a speculative exercise based on the assumption that the entire quantity of chillies is of the same class and characteristic.

52. At the time when the farmers deposited the goods with the cold store there were handed over warehouse receipts which not only gave identity of the agricultural produce but also reflected the quantity of the agricultural produce and its market value on the date when this produce was stored in the cold store. However, the quality of the produce is not reflected in the warehouse receipts.

53. Though we hold that in terms of the clause discussed above the insurance company is liable to pay the value of the goods as on the date of the fire, we feel that the National Commission was right when it came to the conclusion that it was not possible to award an amount based on the variety-wise periodic report of the Bengaluru market. This is the only evidence produced by the farmers and brought to our notice to support their contention. The National Commission is right that the difference between minimum price for which this product was sold during the period 14.12.2013 to 14.01.2014 and the maximum price for the same agricultural produce during this period is so high that without exactly knowing what was the quality of agricultural produce, it

would not be possible to ascertain what was the price on the date of fire. To give an example, Byadgi chillies have a price range of Rs. 3,200 per quintal to Rs. 17,300 per quintal i.e. Rs.32 per kilogram to Rs.173 per kilogram. There is no way for any Court to determine what the exact price would have been without having the benefit of the quality of produce. Unfortunately, even in the warehouse receipts there is no gradation or reflection of the quality of the produce.

54. We, therefore, affirm the decision of the National Commission that the value of the goods as reflected in the warehouse receipts should be taken to be the value on the date of fire. We may add that this value is not very different from the median value for most of the products. We rely upon the value given in the warehouse receipts because that was the value which was given by the farmers, not knowing that their product is going to be burnt, and was accepted by the cold store, which must have known the value of the product in the local market and accepted by the Bank, which on the basis of such surety advanced the loan.

55. In view of the aforesaid discussion, we are of the view that the Bank shall be entitled to recover the principal amount

advanced by it to each one of the farmers along with the simple interest at the rate of 12% per annum from the date of advancing of loan till repayment thereof. The insurance company is liable to pay the value of goods as reflected in the warehouse receipts of each farmer along with simple interest at the rate of 12% per annum from the date of fire till payment of the amount. The dues of the Bank till the date of fire will have to be first determined and, thereafter, the excess will be payable to the farmer along with the interest.

56. To clarify the issue we take the example of the first farmer-Thippa Reddy at Sr. No.1, in whose Account No.1425844005736, the loan of Rs.10,00,000/- was sanctioned on 30.08.2011. The insurance company has worked out his outstanding on the date of incident at Rs.13,57,307/- whereas the value of the goods was 2,00,2000 as per the warehouse receipt. If we calculate simple interest at the rate of 12% per annum on Rs.10,00,000/- from 30.08.2011 till 14.01.2014, it works out to Rs.2,84,712/- approximately. Obviously, if the farmer has paid any amount towards the loan that will also have to be adjusted but for the sake

of clarification, we are assuming that no amount has been paid. Therefore, with effect from 14.01.2014, the insurance company shall be liable to pay interest on 10,00,000/- at the rate of 12% per annum to the Bank and shall also be liable to pay a sum of Rs.7,17,288/- along with interest at the rate of 12% per annum from 14.01.2014 till payment to the farmer.

57. In view of the above, we dispose of the appeals with the following directions:

1. That the insurance company shall be liable to pay to each one of the farmers the value of his goods to be assessed as per the rate mentioned on the warehouse receipts when the goods were stored in the Cold Store in terms of our direction given hereinabove along with interest at the rate of 12% per annum from the date of fire till payment or deposit thereof.

2. That the Canara Bank shall file certified statements of accounts before the Karnataka State Consumer Disputes Redressal Commission showing the principal amount of loan advanced to each farmer and the amount due to the Bank by calculating simple interest

@ 12% p.a. up to 13.01.2014 i.e. payable by 14.01.2014 after adjusting the payments which the Bank may have received in the loan account.

3. The Bank in the statement of accounts shall also set out the amount due with the aforesaid rate of interest up to 30.04.2020.

4. The aforesaid statement be filed before the State Commission on or before 02.03.2020.

5. That thereafter, the State Commission in each appeal shall determine the amount payable to the farmer by calculating it in terms of the clarification given above i.e. after adjusting the amount due to the Bank as on 14.01.2014. This exercise be completed on or before 31.03.2020.

6. Out of the aforesaid amount, the Insurance Company shall pay the amount of loan along with simple interest at the rate of 12% per annum from the date of advancement of loan to the date of payment directly to the Bank.

7. Thereafter, the insurance company shall deposit the amount payable to the farmers with the State Commission on or before 30.04.2020.

58. All appeals are disposed of in the aforesaid terms. No order as to costs. Pending application(s), if any, shall also stand(s) disposed of.

.....J.
(S. Abdul Nazeer)

.....J.
(Deepak Gupta)

New Delhi
February 06, 2020