

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL NO. 4772 OF 2008

[Arising out of SLP(C) No.8151/2007]

M/S. UNITED INDIA INSURANCE CO. LTD. ... APPELLANT(S)

:VERSUS:

M/S. WANI CARPETS AND ANR. ... RESPONDENT(S)

ORDER

Leave granted.

Nobody appears on behalf of the respondents despite service of notice. Heard the learned senior counsel appearing on behalf of the appellant.

The parties hereto have entered into a contract of insurance in terms whereof, inter alia, in the event of loss of goods caused by fire and/or riots, the appellant was to reimburse the claim of the respondents.

The respondents filed a claim petition claiming a sum of Rs.34,90,000/- before the State Consumer Protection Commission. The J & K State Consumers Protection Commission by its judgment and order dated 8.10.2004 directed the appellant to pay to the respondent a sum of Rs.34,90,000/- with interest at the rate of 9% per annum.

An appeal was preferred thereagainst by the appellant before the High Court. The said appeal was dismissed for non-prosecution on 7.9.2006. The appellant filed an application for restoration of the said appeal. The High Court by reason of the impugned order, without passing any order on the said restoration application, directed:

“Our attention is invited to the award amount not being deposited by the appellant-Company. Four weeks' time is granted for depositing this amount.

List after four weeks, as and when the Bench becomes available.”

Mr. K.B. Sinha, learned senior counsel appearing on behalf of the appellant would submit that keeping in view the fact that the appeal was dismissed for default, in absence of any order restoring the same to its original file, the impugned judgment directing the appellant to deposit the entire amount awarded should not have been passed.

It is not in dispute that the impugned order dated 13.02.2007 has been passed in Restoration Application No.8/2006.

It is one thing to say that the Court imposes conditions for restoring the appeal but it is another thing to say that before exercising its discretionary jurisdiction, some conditions could be imposed. The stage of exercising discretionary jurisdiction of the High Court in restoring the said appeal preferred by the appellant

had not yet reached. It was for the High Court to pass appropriate orders on the said application for restoration of appeal, at the first instance. Only in the event the High Court thought it fit to allow the said application, it could have put the appellant to reasonable terms.

For the reasons aforementioned, the impugned judgment cannot be sustained and it is set aside accordingly. The High Court is requested to pass appropriate orders on the merit of the restoration application at the first instance.

The appeal is disposed of accordingly.

.....J
(S.B. SINHA)

.....J
(CYRIAC JOSEPH)

NEW DELHI,
AUGUST 1, 2008.