Before Anil Kshetarpal, J.

UNITED INDIA INSURANCE COMPANY LTD.—*Appellant*

versus

PEPSU ROAD TRANSPORT CORPORATION AND OTHERS—*Respondents*

RSA No.1138 of 1998

February 02, 2019

A) ***Specific Relief Act, 1963—S.14 and 34—Termination of insurance contract—Suit for declaration against Insurance Company—Maintainability—On revocation of insurance contract, plaintiff entitled to file suit for damages for wrongful termination of contract.***

Held that the suit for declaration was not maintainable against the insurance company. On revocation of the insurance contract, the plaintiff was only entitled to file a suit for damages for wrongful termination of the contract as provided in Section 14 of the Specific Relief Act, 1963. Accordingly, question No.1 is answered in favour of the appellant and against the plaintiff-respondent.

(Para 17)

B) ***Contract Act, 1982—S.124—Insurance of contract of Indemnity—Whether contract of general insurance can be terminated before expiry of the term for which it was issued?— These contracts can be terminated and insurance company or owner has option to walk out of contract by giving sufficient notice enabling other party to take appropriate steps—Insurance contracts cannot be held to be not terminable before expiry of term.***

Held that it is declared that the insurance contract of indemnity as defined in Section 124 of the Contract Act and as such, these contracts can be terminated and the insurance company or the owner has option to walk out of the contract by giving sufficient notice enabling the other party to take appropriate steps. The insurance contracts cannot be held to be not terminable before the expiry of the term.

(Para 18)

Neeraj Khanna, Advocate,
for L.M. Suri, Advocate
for the appellant.

Anupam Singla, Advocate for respondent No.1.

Vishwajit Bedi, Advocate for respondents No.2 and 3.

ANIL KSHETARPAL, J.

(1) Defendant-appellant is in the regular second appeal against the judgment passed by the First Appellate Court reversing the judgment of the trial Court while granting declaration that action of the insurance company revoking the insurance policy is illegal and arbitrary.

(2) In the considered view of this Court, the following questions of law needs determination:-

1. Whether a suit for declaration shall be maintainable on revocation of a contract of insurance by the insurer or only suit for damages for wrongful termination of the contract of insurance would be maintainable?

2. Whether contract of general insurance can be terminated before expiry of the term for which it was issued?

(3) Some facts are required to be noticed. Plaintiff-respondent/Pepsu Road Transport Corporation, a company which runs a fleet of buses for transportation, invited expression of interest for setting insurance of large number of buses from various insurance companies. After negotiations, offer made by two insurance companies was accepted. It was decided that the appellant-company will be the leading company and 60% of the business would be handled by the appellant-company whereas 40% would be handled by M/s New India Assurance Company, Patiala. The premium of Rs.64,93,222/- on account of insurance of 1050 buses from 28.08.1991 to 27.08.1992 was sent through a cheque which was accepted by the appellant-insurance company and a cover note dated 27.08.1991 was issued indicating that the insurance is of 1050 buses owned by PRTC have been insured for a period of one year w.e.f. 28.08.1991 to 27.08.1992. The insurance was for damage to the third party as well as property as also for insuring passengers travelling the buses. However, vide communication dated 18.09.1991, insurance company intimated to the plaintiff-respondent that cover note/insurance policy shall stand cancelled on seven days notice i.e. midnight of 25.09.1991. It was also intimated that the premium on pro- rata basis for unexpired period of cover note shall be refunded for which a refund voucher was forwarded which was required to be signed enabling the company to issue cheque.

(4) This communication dated 18.09.1991 was challenged by the plaintiff-respondent by filing a suit for declaration that the aforesaid communication is illegal, null and void, inoperative and arbitrary. On notice issued, the suit was contested by the defendant-insurance company by pleading that as per the clause in the policy, the insurance company is well within its right to terminate the contract of the insurance. It was further pleaded that the suit in the present form is not maintainable.

(5) Learned trial Court on appreciation of evidence dismissed the suit whereas learned First Appellate Court has reversed the judgment of the trial Court resulting in decree. Learned First Appellate Court has broadly recorded the following reasons to reverse the judgment of the trial Court:-

1. The third party insurance is compulsory under Section 147 of the Motor Vehicle Act, 1988 and therefore, a statutory insurance which cannot be permitted to be terminated in between the period for which insurance contract was entered into.

2. Public interest must prevail over the interest of the insurance company.

3. Cancellation of the contract was not justified.

4. The suit for declaration is maintainable.

(6) This Court has heard learned counsel for the parties and with their able assistance gone through the judgments passed by the Courts below and the record.

(7) At the outset, it must be noticed that attention of this Court has not been drawn to any special provision which differentiates between a normal contract with respect to the consequences of its breach and an insurance contract. The contract of insurance is basically a contract of indemnity as defined in Section 124 of the Contract Act which is extracted as under:-

> "**124. 'Contract of indemnity' defined.** - A contract by which one party promises to save the other from loss caused to him by the conduct of the promisor himself, or by the conduct or any other person, is called a 'contract of indemnity'."

(8) Motor Vehicle Act, 1988 provides for compulsory insurance of the motor vehicles with respect to third parties so as to ensure that by use of a motor vehicle if third party suffers, the compensation payable to third party

is at least secured. Reference in this regard can be made to Section 147 of the Motor Vehicles Act, 1988 which is extracted as under:-

"**147 Requirements of policies and limits of liability.** —

(1) In order to comply with the requirements of this Chapter, a policy of insurance must be a policy which—

(a) is issued by a person who is an authorised insurer; and

(b) insures the person or classes of persons specified in the policy to the extent specified in sub-section (2)—

(i) against any liability which may be incurred by him in respect of the death of or bodily injury to any person, [including owner of the goods or his authorised representative carried in the vehicle] or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place;

(ii) against the death of or bodily injury to any passenger of a public service vehicle caused by or arising out of the use of the vehicle in a public place:

Provided that a policy shall not be required—

(i) to cover liability in respect of the death, arising out of and in the course of his employment, of the employee of a person insured by the policy or in respect of bodily injury sustained by such an employee arising out of and in the course of his employment other than a liability arising under the Workmen's Compensation Act, 1923 (8 of 1923) in respect of the death of, or bodily injury to, any such employee—

(a) engaged in driving the vehicle, or

(b) if it is a public service vehicle engaged as conductor of the vehicle or in examining tickets on the vehicle, or

(c) if it is a goods carriage, being carried in the vehicle, or

(ii) to cover any contractual liability.

Explanation.—For the removal of doubts, it is hereby declared that the death of or bodily injury to any person or damage to any property of a third party shall be deemed to have been caused by or to have arisen out of, the use of a vehicle in a public place notwithstanding that the person who is dead or injured or the property which is damaged was not in a public place at the time of the accident, if the act or omission which led to the accident

occurred in a public place.

(2) Subject to the proviso to sub-section (1), a policy of insurance referred to in sub-section (1), shall cover any liability incurred in respect of any accident, up to the following limits, namely:—

(a) save as provided in clause (b), the amount of liability incurred;

(b) in respect of damage to any property of a third party, a limit of rupees six thousand:

Provided that any policy of insurance issued with any limited liability and in force, immediately before the commencement of this Act, shall continue to be effective for a period of four months after such commencement or till the date of expiry of such policy whichever is earlier.

(3) A policy shall be of no effect for the purposes of this Chapter unless and until there is issued by the insurer in favour of the person by whom the policy is effected a certificate of insurance in the prescribed form and containing the prescribed particulars of any condition subject to which the policy is issued and of any other prescribed matters; and different forms, particulars and matters may be prescribed in different cases.

(4) Where a cover note issued by the insurer under the provisions of this Chapter or the rules made thereunder is not followed by a policy of insurance within the prescribed time, the insurer shall, within seven days of the expiry of the period of the validity of the cover note, notify the fact to the registering authority in whose records the vehicle to which the cover note relates has been registered or to such other authority as the State Government may prescribe.

(5) Notwithstanding anything contained in any law for the time being in force, an insurer issuing a policy of insurance under this section shall be liable to indemnify the person or classes of persons specified in the policy in respect of any liability which the policy purports to cover in the case of that person or those classes of persons."

(9) However, the provisions of the Act of 1988 does not deal with contracts between the insurance company and the insured. At the relevant time under the umbrella of General Insurance Company, there

were four nationalized insurance companies which were dealing in general insurance providing for choice of the motor vehicle owner to get the motor vehicle insured from any of them. The specific performance or specific enforceability of a contract in which compensation in money is an adequate relief for non-performance thereof is barred under Section 14 of the Specific Relief Act, 1963. By filing a suit for declaration, the respondent- plaintiff has indirectly prayed for specific performance of an insurance contract.

(10) Let us first deal with the reasons given by the First Appellate Court to reverse the judgment of the trial Court.

(11) As regards first reason, it will be noticed that no doubt third party insurance is compulsory under Section 147 of the Motor Vehicle Act,1988, however, it is not mandatory that the insurance policy should be purchased from the defendant-appellant-company only. In the considered view of this Court, learned First Appellate Court addressed the issue from a wrong perspective/direction. The defendant-appellant is not the only company which is in the business of general insurance including insurance of the motor vehicles. The plaintiff was at liberty to get the vehicles insured from any of the four companies who are in business at that relevant point of time. It was also open to the plaintiff-respondent to get their vehicles insured from another insurance company once communication was sent to it specifying that the insurance contract would come to an end with effect from midnight of 25.09.1991. In the aforesaid circumstances, First Appellate Court erred while returning a finding that since third party insurance is compulsory under the statute, therefore, the suit for declaration was maintainable.

(12) As regards second reason, the First Appellate Court again addressed the question from a wrong direction. In the present case, question of public interest is not involved. No doubt, large number of persons travelling in the buses and on road were involved but the insurance contract is a commercial contract between the insurance company and the insured. Once options are available to the insured to go to another company and get the vehicles insured, the public interest would not come into play. The Court had no jurisdiction to direct the insurance company to continue with the insurance contract against its wishes. The attention of this Court has not been drawn to any statutory provision which binds a particular insurance company to stay with the insurance contract against its wishes.

(13) As regards next reason given by the First Appellate Court, the approach of the learned First Appellate Court was equally

erroneous. The First Appellate Court has held that cancellation of contract was not justified. In the present case, both the Courts have noticed that as per insurance policy, the insurance company had option to terminate the contract of insurance as provided in condition No.4 of conditions of the insurance policy Ex.D-1 which is extracted as under:-

> "The Company may cancel the policy by sending seven days notice by registered letter to the insured at his last known address and in such event will return to the insured the premium paid less the pro rata portion thereof for the period the policy has been in force or the policy may be cancelled at any time by the insured on seven days notice and (provided no claim has arisen during the currency of the policy) the insured shall be entitled to a return of premium less premium at the Company's short period rates for the period the Policy has been in force."

(14) At the most, the insured i.e. plaintiff-respondent would be alleged to have violated the terms of the contract or the appellant-company could be alleged to be a party which has breached the contract and as such, the insurance company could be held guilty for non-performance of the contract resulting in award of damages as well as compensation. An insurance contract is a contract of indemnity and at the most, the plaintiff- respondent was entitled to allege violation of the terms of the contract or non-performance thereof resulting in award of damages and/or compensation. However, by filing a suit for declaration what is sought to be achieved is specific performance of the contract which is not permissible. In the considered view of this Court, such suit was not maintainable.

(15) The First Appellate Court also held that the insurance company has no right to cancel the contract of insurance which is essentially a contract of indemnity during its currency. In the considered view of this Court, the First Appellate Court was not correct. An insurance contract is like any other contract and such contract can be revoked, cancelled as per the terms provided therein. A word of caution, there can be situation when the Courts may declare a particular clause to be arbitrary or against public interest. However, in the present case, such declaration was neither prayed nor any argument on this aspect was raised. This Court is conscious of the fact that in the case of health insurance/medical insurance, the Courts have intervened and declared certain clauses to be bad and even mandated the insurance company to renew the policy. However, those cases are in entirely separate category. The rights of the insurance company to

recall/revoke/cancel the insurance contract has been considered in detail by a Constitutional Bench of the Hon'ble Supreme Court in the case of ***General Assurance Society Ltd.*** versus ***Chand Mul Jain and others***[1]. This judgment has been noticed by the First Appellate Court, however, First Appellate Court has distinguished the judgment on the ground that the insurance of property against fire, flood and erosion which was optional. No doubt, insurance of the property against fire, flood and erosion is optional for the owner, however, third party insurance of a vehicle, no doubt, is compulsory but there are lots of options available to the owner to get it insured from any company. In the present case, the plaintiff- respondent could get its vehicle insured from remaining three companies who were carrying on their business. Hence, the distinction drawn by the First Appellate Court was erroneous.

(16) Now the stage is set for answering the questions of law.

(17) In the considered view of this Court, the suit for declaration was not maintainable against the insurance company. On revocation of the insurance contract, the plaintiff was only entitled to file a suit for damages for wrongful termination of the contract as provided in Section 14 of the Specific Relief Act, 1963. Accordingly, question No.1 is answered in favour of the appellant and against the plaintiff-respondent.

(18) Similarly, it is declared that the insurance contract of indemnity as defined in Section 124 of the Contract Act and as such, these contracts can be terminated and the insurance company or the owner has option to walk out of the contract by giving sufficient notice enabling the other party to take appropriate steps. The insurance contracts cannot be held to be not terminable before the expiry of the term.

(19) Accordingly, second question of law is also answered in favour of the defendant-appellant.

(20) Hence, judgment of the First Appellate Court is set aside and that of the trial Court is restored.

(21) The pending miscellaneous application, if any, shall stand disposed of in view of the above said judgment.

(22) Regular Second Appeal is allowed.

Ritambara Rishi

[1] AIR 1966 SC 1644