IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE MOHAMMED NIAS C.P.

TUESDAY, THE 28TH DAY OF OCTOBER 2025 / 6TH KARTHIKA, 1947

WP(C) NO. 42110 OF 2024

PETITIONER/S:

**HDFC LIFE INSURANCE COMPANY LTD,
2ND FLOOR, LODHA EXCELUS, APPOLLO MILLS COMPOUND,
N.M JOSHI MARG, MAHALAKSHMI, MUMBAI REPRESENTED BY ITS
AUTHORISED SIGNATORY VINAY PRAKASH, PIN - 400001**

**BY ADVS.
SHRI.K.J.SAJI ISAAC
DR.ELIZABETH VARKEY
SRI.JITHIN SAJI ISAAC
SHRI.ABHISHEK S. KUMAR
SHRI.JOSHUA SEBASTIAN**

RESPONDENT/S:

**JYOTHI MADHAVAN U.
AGED 45 YEARS,W/O.LATE MADHU MENON, JYOTHIS, SUDHINAM
COMPOUND, FORT ROAD, KANNUR, PIN - 670001**

**BY ADVS.
SRI.K.P.SREEKUMAR
SRI.P.M.SATHEESH**

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 22.09.2025, THE COURT ON 28.10.2025 DELIVERED THE FOLLOWING:

"C.R."

MOHAMMED NIAS C.P., J.

.....

W.P(C) No.42110 of 2024

.....

Dated this the 28th day of October, 2025

JUDGMENT

The writ petition is filed by HDFC Life Insurance Company Limited, challenging the award dated 07.11.2024 passed by the Insurance Ombudsman, Ernakulam, on a complaint preferred by the respondent herein. The petitioner is hereinafter referred to as 'the insurer' and the late husband of the respondent is hereinafter referred to as 'the insured' for brevity.

2. The brief facts necessary for disposal of the writ petition are as follows:-

The Insured (husband of the respondent) died on 11.04.2021 due to COVID-19. He availed a housing loan to the tune of Rs. 1,73,00,000/- in November 2018 from HDFC Bank. To secure the aforementioned loan, he had taken two life insurance policies from HDFC Life Insurance Company

Ltd, in addition to the immovable properties owned by him being offered as security. The policies were taken by the insured as insisted by HDFC Bank, which offered the loan, as a mandatory condition for granting the loan. For the sole purpose of insurance premium funding, the insured opened an account bearing No.637607046 with Rs. 2,07,931/- and two insurance policies were subscribed on 30.11.2018.

2.1. The Policy bearing No.20910176 has a maturity value of Rs.30 Lakhs, while Policy No.20924808 has a maturity value of Rs. 1.40 Crores. The premium amount with regard to Policy No.20910176 was also paid on 30.11.2018 by the HDFC Bank Limited directly to the HDFC Life Insurance Company from the loan account No.637607046. It is seen from the transaction history of the aforesaid account with the HDFC Limited that the EMI has been collected by the bank from the account of the insured till May 2021.

2.2. Though the policy, as per proposal No.20924808, was taken in November 2018, the Insurance Company, for reasons best known to them, delayed the issue of a policy against this proposal despite collecting the premium. The wife of the insured/respondent herein, on 26.05.2021, went to the office of the HDFC Standard Life Insurance Company Limited and

submitted the claim forms with all proofs for policy No.20910176 and also furnished the details about the second policy in respect of proposal No.20924808. It was only then that the respondent insured was informed that the Insurance Company had not issued the second policy, even though the factum of acceptance of the premium amount in 2018 was acknowledged. It is an admitted fact that proposal No.20924808 was for the purpose of covering all the housing loans in case of the occurrence of any unforeseen events. On 05.06.2021, as requested by the Insurance Company, all the relevant documents concerning the above-stated two policies were submitted. On 17.06.2021, the Insurance Company issued an online communication to the petitioner stating that, as per the confirmation received by their team, the application relating to the above proposal No.20924808 was withdrawn, since the requirements were not submitted within the time limit and the Insurance Company offered to initiate steps for refunding the premium, based on updated NEFT details and the same would be credited within 9 to 14 working days.

2.3. The wife of the insured, feeling aggrieved by the conduct of the Insurance Company, sought the intervention of the grievance officer of the insurer, informing about the unwillingness to accept the proposal

of the refund of the premium, demanding that the assured sum be credited to the loan account, so that the uncleared liabilities towards the loan availed of by the deceased could be cleared. On 25.06.2021, the HDFC Standard Life Insurance Company Limited rejected the claim made by the respondent herein and informed her to approach the Insurance Ombudsman.

2.4. Thereupon, the respondent herein approached the Insurance Ombudsman, Kochi, on 23.07.2021. On receiving her complaint, the Insurance Company filed a written reply, but no copy was provided to her. She therefore requested the Registrar of the Insurance Ombudsman for a copy of the insurer's statement and documents. Since these were not furnished, she sent follow-up emails to the Insurance Company.

2.5. The Ombudsman heard the matter online on 13.09.2021. The Ombudsman, by award dated 16.09.2021, found that there was no communication from the Insurance Company regarding any requirement in connection with the policy. It was also found that there was no intimation by the insurer regarding the non-issuance of the second policy, and the corporate agent of HDFC Life themselves have procured the policy while granting the housing loan and that the policy has been

assigned to them against the loan as security. Though findings were entered in favour of the respondent herein, the Ombudsman concluded that the complaint cannot be entertained by the Ombudsman, as the claim under consideration is above Rs 30 lakhs and hence, beyond the pecuniary jurisdiction of the Ombudsman, and the Ombudsman has no authority to decide on such a complaint. Aggrieved by the rejection, the respondent herein has approached this Court by filing W.P(C) No. 29499/2021.

3. The main contentions rendered by the insurance company were that the insured has deposited the first premium along with the proposal form and in the said proposal form, it is specifically mandated that the company will be at risk in pursuance of this proposal for insurance only after the risk under the proposal form is accepted by the company and such acceptance is communicated to the petitioner in writing by the company and further that the company has the right either to accept or reject the proposal without giving reasons thereto. It is also mandated that if the proposal of insurance is not accepted by the company, the aforesaid deposit shall be refunded without interest. Also, the company has requested the insured to appear for a medical examination, which is mandatory for the issuance of the policy under

proposal No.20924808, but he did not turn up for the same. Since the insured has not satisfactorily furnished the necessary declarations as required by the insurer, including the underwriting requirements, the proposal was not accepted. It is also admitted that an amount of Rs.57,931/-, which was deposited, has not been appropriated towards the premium. The said amount could be appropriated towards the premium only after a medical examination and after determining the premium based on the medical report of the petitioner's husband. The proposal was not considered for want of a Medical Examination Report, which was a prerequisite for considering the proposal. It is also stated that the amount of Rs.57,931/-, was refunded, which was lying in the suspense account, to the wife of the insured through NEFT.

4. After considering the contentions advanced on either side, this Court, in W.P.(C) No. 29499 of 2021, quashed the award of the Insurance Ombudsman, which had rejected the complaint on the ground of pecuniary limits, and directed reconsideration of the complaint preferred by the respondent.

5. The insurer filed Writ Appeal No.2121/2023 against the judgment of the learned Single Judge, wherein the judgment was modified

to the limited extent permitting parties to raise all contentions on merits before the Ombudsman.

6. After reconsideration, the Insurance Ombudsman passed the impugned award directing the insurer to admit the claim of the complainant under proposal number 20924808, and pay the Death Benefit claim amount of Rs.1,40,00,000.00 to her along with interest @ 8.75% p.a. calculated for the exact number of days from 29.05.2021 till the date of actual payment to her in satisfaction of this Award, which is under challenge in this writ petition.

7. Learned counsel for the petitioner, Sri. K.J. Saji Isaac and Jithin Saji Isaac, for the insurer, argued that the Ombudsman went wrong in relying on the observations made by the Single Judge in W.P(C) No.29499 of 2021. It is also argued that the insured had not submitted himself for medical examination, which was mandatory for issuance of the policy, and because of the non-submission of the medical examination report, the policy could not be issued. It is also stated that since the same was not received, the insurer could not accept or decline the proposal. They cited the following judgments to support their contentions: ***Life Insurance Corporation of India v. Raja Vasireddy Komalvalli Kamba and***

Others [1984 KHC 660], ***LIC of India v. Prasanna Devaraj*** [1994 KHC 383].

8. The learned counsel for the respondent, Sri. K.P. Sreekumar argues that the allegation of insurer that the insured had not undergone the required medical tests is wrong and that the proposal form itself contains several enquiries on the personal details of the life of the assured, all of which had been filled up. The premium for the policy was debited by the bank from the loan account of the insured. It is also stated that to secure the loan, apart from the immovable properties, the deceased husband of the respondent herein had assigned the two policies referred to above in favor of HDFC Bank Limited, which the bank had accepted. On 11.04.2021, the husband of the respondent died due to COVID-19 pandemic, and the policy for the maturity amount of Rs. 30,00,000/- was honoured. The payment was adjusted by the HDFC Bank towards the loan availed by the deceased husband of the petitioner, and with respect to the second policy for Rs. 1.43 crores, the insurer took a stand that no value policy was issued.

8.1. It is also argued that the stand of the insurer is against the **Insurance Regulatory and Development Authority of India (Protection of Policyholders' Interests) Regulations, 2017** *(hereinafter*

referred to as IRDAI Regulations, 2017), which are framed in exercise of the powers conferred by clause (zc) of sub-section (2) of section 114A of the Insurance Act, 1938 read with clause (b) of sub-section (2) of section 14 and section 26 of the Insurance Regulatory and Development Authority Act, 1999, where a proposal is to be processed and to be communicated to the proposer within a reasonable period, but not exceeding 15 days from the date of receipt of the proposal and where the proposal refund is to be made, the same is to be done within 15 days of the decision of the proposal. The alleged request for medical examination was allegedly made on 09.02.2018, after 2 and a half months of the acceptance of the initial premium. The objection by the insurer comes only after the death of the husband of the respondent, and, after taking all the relevant facts on the record into account, including the legal issues raised by the insurer, the Insurance Ombudsman had rightly rejected the claim of the insurer. The learned counsel for the respondent relied on the following judgments: ***Kerala Solvent Extractions Ltd. v. Unnikrishnan*** [1993 (2) KLT 208], ***SBI Life Insurance Co. Ltd. v. Asha Latha Parida and Anr*** (2010 3 CPJ (NC) 228), ***Srinivas D., v. SBI Life Insurance Co. Ltd. and Others*** [2018 KHC 6117] and ***Mrs.Bhumikaben N.Modi and Ors. v. Life Insurance Corporation of India***

[Civil Appeal No.270 of 2012], ***Gokal Chand (D) Thr. Lrs. v. Axix Bank Ltd. & Anr.*** (2022 SCC Online 1720).

9. Heard the learned counsel appearing on both sides and perused the records.

10. At the outset, a few undisputed facts are to be noticed. It is not disputed that the complainant's husband had availed a housing loan for Rs. 1.73 crore from the HDFC Bank Limited and that to secu re the loan from any unfortunate/unforeseen circumstances, he had opted for two life insurance policies of HDFC Life Insurance. One for a sum assured of Rs. 30,00,000/- and the second one for Rs.1.40 crore/-. It is also undisputed that the premiums for these two policies were funded with another loan for Rs. 2,07,931/-. The loan repayment through the EMIs continued to be paid to the HDFC Bank Ltd since November 2018. It is also not disputed that HDFC Bank Ltd transferred the entire premium, amounting to Rs.2,07,931/-, to HDFC Life Insurance Company Ltd., out of which Rs.1,50,000/- was converted as premium for policy No. 20910176 for sum assured of Rs. 30,00,000/-. The balance amount of Rs. 57,931/- meant for the second policy for a sum assured of Rs. 1.40 crores was kept with the petitioner insurer, and the policy was not issued allegedly for want of

medical requirements, and as the life assured did not respond to the alleged demands for these tests. Upon the death of the life assured, the insurer settled the death benefit of Rs.30,00,000/- for Policy No. 20910176 on 28.05.2021 and informed that they would refund the premium collected for the second policy since the policy process had not been completed.

11. It is relevant to note that the contention of the insurer that multiple reminders were sent to the life assured for a mandatory health check-up was stoutly denied by the insurer. There was no intimation whatsoever of the rejection of the policy till the death of the life assured. The premium collected was also not returned till the death of the life assured. It is curious to note that even in the present writ petition, in Ground No.9, the case of the insurer is that they could not decide as to whether to accept or decline the proposal, only after obtaining the mandatory medical examination report, which was not submitted by the life assured. Thus, it is clear that the insurer does not have a case whether they have accepted or rejected, even while filing this writ petition. The Insurance company contends that mere acceptance of the part of the premium is not execution of the policy. Since there is no concluded

contract, no valid policy has come into existence.

12. In the context of the rival contentions, it is relevant to note the Rules and regulations in the IRDAI Regulations, 2017.

> "**8. PROPOSAL FOR INSURANCE**
>
> *1. Except in case of a marine insurance cover, or such other covers approved by the Authority exempting usage of proposal form, a proposal for grant of insurance cover, either for life insurance business or for general insurance business or for health insurance business, must be evidenced by a document in written or electronic or any other format as approved by the Authority. It is the duty of the insurer to furnish to the insured, free of charge, within 30 days of the acceptance of a proposal, a copy of the proposal submitted by the Insured.*
>
> *2. In case of marine insurance cover or other insurance covers where a proposal form is not used, the insurer shall record the information obtained orally or in writing or electronically, and confirm it within a period of 15 days thereof with the prospect and incorporate the information in its cover note or policy. Where the insurer claims that the prospect suppressed any material information or provided misleading or false information on any matter material to the grant of a cover, then the onus of proof rests with the insurer only in respect of any information not so recorded.*
>
> *3. Any proposal form seeking information for grant of life cover shall prominently state therein the requirements of Section 45 of the Act.*
>
> *4. While answering the questions in the proposal form for obtaining life insurance cover, the prospect is to be guided by the provisions of Section 45 of the Act.*
>
> *5. Wherever the benefit of nomination is available to the proposer, in terms of the Act or the conditions of policy, the insurer or the*

distribution channel shall draw the attention of the proposer to it and encourage the proposer to avail the facility and inform him of the provisions of section 39 of the Act.

6. Insurer shall process the proposals with speed and efficiency and the decision on the proposal thereof, shall be communicated in writing to the proposer within a reasonable period but not exceeding 15 days from the date of receipt of proposals or any requirements called for by the insurer.

7. Where a proposal deposit is refundable in a prospect under any circumstances, the same shall be refunded within 15 days from the date of the underwriting decision on the proposal.

14. CLAIMS PROCEDURE IN RESPECT OF A LIFE INSURANCE POLICY

1. A life insurer, upon receiving a death claim, shall process the claim without delay. Any queries or requirement of additional documents, shall be raised all together and not in a piece-meal manner. within a period of 15 days of the receipt of the claim.

2(i) A death claim under a life insurance policy shall be paid or be rejected or repudiated giving all the relevant reasons, within 30 days from the date of receipt of all relevant papers and required clarifications. However, where the circumstances of a claim warrant an investigation in the opinion of the insurer, it shall initiate the same at the earliest and complete such investigation expeditiously, in any case not later than 90 days from the date of receipt of claim intimation and the claim shall be settled within 30 days thereafter.

(ii) If there is delay on the part of Insurer beyond the timelines mentioned in sub regulation (i) above, the insurer shall pay interest at a rate, which is 2% above bank rate from the date of receipt of last necessary document.

(iii) Except in the case of claims where an application is made under section 47 of the Act to the court, if a claim is ready for payment but the payment cannot be made due to any reasons of proper identification of the payee, the life insurer shall pay interest on the claim amount at the bank rate from the date on which claim is ready for payment.

(iv) In respect of Maturity, Survival Benefit claims and Annuities, the Life Insurer shall initiate the claim process by sending intimation sufficiently in advance or send post-dated cheque or give direct credit to the bank account of claimant through any electronic mode approved by RBI, so as to pay the claim on or before the due date. In case of any delay on the part of the Insurer in settling the claim on due date, the life insurer shall pay interest at a rate, which is 2% above bank rate from the due date of payment or date of receipt of last necessary document from the insured/claimant, whichever is later.

(v) In respect of free look cancellation, surrender, withdrawal, request for refund of proposal deposit, refund of outstanding proposal deposit if any, shall be processed and paid within 15 days of receipt of request or last necessary document, failing which the insurer shall pay penal interest at a rate, which is 2% above bank rate from the date of request or receipt of last necessary document if any whichever is later, from the insured/claimant.

Explanation: Administration of Health Insurance Policies issued by Life Insurers shall also be governed by Chapter IV of IRDAI (Health Insurance) Regulations, 2016.

(vi) The interest payments referred above in sub regulations (ii), (iii), (iv), (v) shall be paid by the Life Insurer suo moto without waiting for specific demand from the insured/claimant."

13. The short question that arises is whether the insurer can, after the death of the proposer, set up a plea of non-acceptance of the proposal when such non-acceptance was never communicated during the

proposer's lifetime. A reading of Regulation 8 clearly indicates a timeline for the issuance of a policy, and also provides that the proposal shall be processed by the insurer with speed and efficiency, and all decisions thereon shall be communicated in writing within a reasonable period not exceeding 15 days from the receipt of the proposal. The timelines prescribed under the IRDAI Regulations, 2017, are mandatory and are designed to ensure that the proposer, while alive, is made aware of the insurer's decision and thereby afforded the opportunity to exercise his options. The very object of regulations would be frustrated if an insurer were permitted to remain silent during the proposer's lifetime and later defeat the claim by raising a contention of non-acceptance. Such a course cannot be countenanced. Accordingly, the failure to communicate non-acceptance within the stipulated period fastens liability on the insurer, and the plea of non-acceptance raised only after the death of the proposer is unsustainable in law. If the insurer does not do that and retains the premium till the death of the sum assured, they must be estopped from contending that the policy had not come into existence or that the proposal was rejected.

14. The purpose of prescribing such a time frame is to guarantee

transparency and bona fide conduct on the part of the insurers, and to protect the proposal from the prejudice that would inevitably follow from a belated disclosure. This duty assumes greater significance in the context of housing loan insurance, where the very object of the policy is to secure the loan and protect the family of the borrower from being saddled with liability in the event of his untimely death. To permit an insurer to withhold communication during the proposer's lifetime and thereafter defeat the claim by raising a plea of non-acceptance after his death would be wholly destructive of the object of the insurance and the regulatory mandate. The insurer, having failed to act within the mandatory timeline and to discharge its duty of bona fide communication, must be held liable. The IRDAI Regulations, 2017 stipulate that where the proposal deposit is refundable in any circumstance, the refund shall be made within 15 days from the date of the underwriting decision on the proposal. These stipulations are not directory but mandatory, for they are intended to protect the proposer against uncertainty and to compel the insurer to act with diligence, fairness, and bona fides. The entire regulatory framework rests on the principle that the proposer is entitled to know, within the fixed timeline, whether his proposal has been accepted or rejected, so

that he may exercise his rights and options accordingly. Non-communication within the period prescribed is not a mere irregularity, but a violation of statutory duty, and an insurer cannot be permitted to take advantage of its own omission by raising a plea of non-acceptance at a later stage.

15. The decision on the proposal must, therefore, be taken and communicated within the prescribed period, and any deviation therefrom would render the insurer liable for the consequences. The retention of the premium for more than two years without communication or refund is therefore a patent violation of these mandatory time limits, apart from being contrary to the principle of utmost good faith that governs contracts of insurance.

16. On the undisputed facts obtaining in the present case, as distinct from the cases relied on by the insurer, there was no intimation regarding the proposal submitted by the complainant as well, and such intimation regarding the non-acceptance of the proposal was given only after the death of the insured. In short, an intimation as well as the refund of the premium amount was made almost 2 and a half years after the date of the proposal, that too after the death of the insured and after a

claim was raised by the wife of the deceased. There is nothing on record to show that the husband of the respondent did not comply with any request made by the insurer. Regulation 14 further provides that a death claim must be settled or repudiated within thirty days from the date of receipt of all relevant documents, failing which interest at two per cent above the bank rate shall be payable.

17. The Supreme Court of India in the Judgment reported in ***Srinivas D.*** (supra) held as follows:-

> "*10. It is clear from the above that the proposer was willing to join the life insurance coverage from the respondent insurance company subject to his undertaking medical examination and for his willingness he authorized the bank to debit his account for payment of the premium. This clearly implies that medical examination was to take place prior to the premium being debited from the bank account of the proposer. The specific condition in the policy is that in case the loan amount exceeds Rs.7.5 lacs the medical examination was compulsory. If the medical examination was compulsory for such cases it should have been done along with filing of the proposal form before the payment of the premium. If the proposal was not accepted for any reason the premium would have been credited to the account of the proposer. The premium has been refunded after 23.2.2011. From this, it is clear that the insurance company had not rejected the proposal before 23.2.2011.*
>
> *11. Our attention has been drawn to the case of LIC v. Raja Vasireddy Komalavalli Kamba and Ors., (1984) 2 SCC 719, wherein this Court has clearly stated that the acceptance of an insurance contract may not be completed by mere retention of the premium or preparation of the policy document rather the acceptance must be signified by some act or acts agreed on by the parties or from which the law raises a presumption of acceptance.*

12. Although we do not have any quarrel with the proposition laid therein, it should be noted that aforesaid judgments only laid down a flexible formula for the court to see as to whether there was clear indication of acceptance of the insurance. It is to be noted that the impugned majority order merely cites the aforesaid judgment, without appreciating the circumstances which give rise to a very clear presumption of acceptance of the policy by the insurer in this case at hand. The insurance contract being a contract of utmost good faith, is a two-way door. The standards of conduct as expected under the utmost good faith obligation should be met by either party to such contract.

13. From the aforesaid clause it may be seen that the condition precedent for acceptance of the premium was the medical examination. It would be logical for an underwriter to accept the premium based on the medical examination and not otherwise. Therefore, by the very fact that they accepted the premium waived the condition precedent of medical examination.

14. It is an admitted fact that the premium was paid on 29.09.2008. That it was only in 18.01.2011 that the respondent insurance company informed the appellant that the policy was not accepted by them. We are unable to fathom the reason for such excessive delay in informing the appellant, which cannot be excused. We are of the opinion that the rejection of the policy must be made in a reasonable time so as to be fair and in consonance with the good faith standards. In this case, we cannot hold that such enormous delay was reasonable. Moreover, it is borne from the records that the premium was only re-paid on 24.02.2011, after a delay of more than one year five months. If we consider above aspects, it can be reasonably concluded that the insurer is only trying to get out of the bargain, which they had willfully accepted. From the aforesaid circumstances we can easily conclude that the policy was accepted by the insurer.

15. In the circumstances, there is no reason to believe that there was no complete contract. There is clear presumption of the acceptance of the proposal in favour of the proposer. Therefore, the majority view of the

Commission would not sustain."

18. In the said decision, the Hon'ble Supreme Court distinguished the earlier ruling in ***Raja Vasireddy Komalavalli Kamba*** (supra), observing that the said judgment laid down only a flexible formula to determine whether there was a clear indication of acceptance, and that the insurer's conduct and surrounding circumstances are decisive. It was held that where the premium was accepted and retained without communication of rejection, there arises a presumption of acceptance of the proposal. The Court further held that rejection of the proposal after an unreasonable delay violates the standard of good faith expected under the contract.

19. The principle laid down in ***Srinivas D.*** (supra) was subsequently reiterated by the Hon'ble Supreme Court in ***Gokal Chand (D) through LRs v. Axis Bank Ltd.*** (AIR 2023 SC 177) and ***Mrs. Bhumikaben N. Modi v. LIC of India*** (Civil Appeal No.270 of 2012, judgment dated 08.05.2024), holding that the earlier decision in ***Raja Vasireddy*** (supra) cannot be mechanically applied. The Court held that acceptance of the premium itself amounts to a waiver of preconditions such as medical examination and creates a presumption of a concluded contract, and that refund of the premium only after the death of the insured reveals mala

fides and amounts to a deficiency of service.

20. The view taken in ***Srinivas D.*** (supra) has also been followed by various High Courts. In ***Rajeswari v. Shriram Life Insurance Co. Ltd.*** **(MANU/TN/7343/2023),** the Madras High Court, relying on ***Srinivas D.*** (supra) held that the finance company's act of recovering the loan while denying the insurance benefit amounted to harassment and violation of good faith. In ***Tata AIG General Insurance Co. Ltd. v. Vinay Sah*** **(MANU/MH/5475/2025),** the Bombay High Court observed that where the insurance policy is bundled with a home loan, the insurer is bound to honour the claim and not take technical pleas to defeat it. Similarly, in ***Jeyalakshmi v. RBI*** **(MANU/TN/7077/2023),** it was held that if the insurer fails to reject a proposal within a reasonable time after receiving the premium, a presumption of acceptance arises, and retaining the premium constitutes waiver of any conditions, such as medical examination. All these decisions have applied the ratio of ***Srinivas D.*** (supra) and ***Gokal Chand*** *(supra)* to similar factual situations, particularly in cases of insurance policies taken along with housing loans.

21. In view of the above, the contention of the insurance company based on the decision in ***Raja Vasireddy Komalavalli Kamba***

(supra) and ***Prasanna Devaraj*** (supra) that on a mere receipt of the insurance premium, without actual communication of acceptance by giving an insurance policy certificate, the contract is not concluded, cannot be accepted in the facts and circumstances of this case.

22. It may also be noted that the factual situation in the present case is identical to those considered in the aforesaid line of decisions, since the life insurance policy was a precondition for the housing loan, and the premium was collected and retained by the insurer through the bank. Thus, on the facts of the case and going by the IRDAI Regulations, 2017, there is a clear indication of acceptance of the insurance proposal, and the subsequent refund of premium only after the death of the insured reinforces this inference.

23. Moreover, it is submitted by the counsel for the petitioner that the Insurance Company did not require the fulfilment of any medical examination with respect to policy No.20910176, and both the policies were proposed on the same date, and the premium was also accepted by the Insurance Company on the same date. The policies to which the deceased subscribed were not Health Insurance policies, and the death of

the assured was due to COVID and not due to any other ailments.

24. No illegality can be found with the direction of the Insurance Ombudsman. Even otherwise, the IRDAI Regulations, 2017, changed the entire landscape of insurance-related activities, and none of the judgments considered the impact of the mandatory IRDAI guidelines and thus, those precedents cannot be made applicable to the facts of this case, which is squarely covered by the principles in ***Srinivas D.*** (supra)**.**

25. The very policy was taken to secure the loan in the event of unforeseen circumstances. The insured, having taken the risk of violating the regulations and not intimating about the acceptability of rejection of the proposal within the time granted to him, cannot be heard to say that the insured did not honour the conditions of the policy.

26. It is trite that interference in cases that would result in any illegality or injustice has to be avoided. It is profitable to refer to the decision in ***A.M. Allison v. B.L. Sen,*** (AIR 1957 SC 227), the Hon'ble Supreme Court which held as follows:

> *"Proceedings by way of certiorari under Art.226 are 'not of course'. The High Court has the power to refuse the writ if it is satisfied that there was no failure of justice, and in appeals which are directed against the orders of the High Court in applications under Art 226 the Supreme*

> *Court can refuse to interfere unless it is satisfied that the justice of the case requires it. But where it is not so satisfied, it will not interfere.*
>
> *In Sanaram Singh v. Election Tribunal, Kotah, AIR 1955 SC 425, it was observed by the Supreme Court:*
> *"That, however, is not to say that the jurisdiction will be exercised whenever there is an error of law..... Their powers are purely discretionary and though no limits can be placed upon that discretion it must be exercised along recognised lines and not arbitrarily, and one of the limitations imposed by the Courts on themselves is that they will not exercise jurisdiction in this class of case unless substantial injustice has ensued, or is likely to ensue. They will not allow themselves to be turned into Courts of appeal or revision to set right mere errors of law which do not occasion injustice in a broad and general sense, for though no legislature can impose limitation on these Constitutional powers it is a sound exercise of discretion to bear in mind the policy of the legislature to have disputes about these special rights decided as speedily as may be. Therefore, writ petitions should not be lightly entertained in this class of case."*

For the foregoing reasons, the order of the Insurance Ombudsman is perfectly legal and calls for no interference from this Court in a judicial review. There is no merit in the writ petition, and the same will stand dismissed, with a direction to the petitioner to comply with Ext. P1 order of the Ombudsman dated 07.11.2024, forthwith, in view of proceeding under the SARFAESI Act initiated by the HDFC Bank Limited against the respondent herein.

MOHAMMED NIAS C.P.
JUDGE

okb/

APPENDIX OF WP(C) 42110/2024

PETITIONER EXHIBITS

Exhibit P1	**TRUE COPY OF THE AWARD DATED 07.11.2024 IN KOC-L-019-2425-0233 BEFORE THE INSURANCE OMBUDSMAN, ERNAKULAM**
Exhibit P2	**TRUE COPY OF THE PROPOSAL FORM ALONG WITH CUSTOMER CONSENT DATED 01.12.2018 SUBMITTED BY MADHU MENON**
Exhibit P3	**TRUE COPY OF LETTER DATED 09.02.2019 SENT BY THE PETITIONER TO MADHU MENON**

RESPONDENT EXHIBITS

EXHIBIT R1(A)	**A TRUE COPY OF THE COUNTER AFFIDAVIT DATED 05.03.2022 FILED BY THE RESPONDENTS 2 AND 3 IN W.P.(C)NO.29499 OF 2021**
EXHIBIT R1(B)	**A TRUE COPY OF THE AWARD OF THE INSURANCE OMBUDSMAN DATED 16.09.2021 IN COMPLAINT NO.KOC-L-019-2122-0128**
EXHIBIT R1(E)	**A TRUE COPY OF THE JUDGMENT DATED 05.09.2024 IN W.A.NO.2121 OF 2023**
EXHIBIT R1(H)	**A TRUE COPY OF THE ORDER ON 17.11.2023 IN W.P.(C)NO.38135 OF 2023 OF THIS COURT**
EXHIBIT R1(C)	**A TRUE COPY OF THE JUDGMENT DATED 25.07.2023 IN WP(C) 29499/2021OF THE HIGH COURT OF KERALA**
EXHIBIT R1(G)	**A TRUE COPY OF THE NOTICE DATED 30.10.2023 ISSUED UNDER SECTION 13(2) OF THE SARFAESI ACT**
EXHIBIT R1(D)	**A TRUE COPY OF THE ORDER OF THIS COURT DATED 14.03.2024 IN W.A.NO.2121 OF 2023**
EXHIBIT R1(F)	**A TRUE COPY OF THE NOTICE DATED 10.10.2023**