

(2016) 02 OHC CK 0072
In the Orissa High Court
Case No : First Appeal No. 230 of 1985

Divisional Manager, Oriental Fire and General Insurance Co. & Anr. APPELLANT

Vs

M/s. The Cold Storage Co-operative Societies Ltd. and others RESPONDENT

Date of Decision : 23-02-2016

Acts Referred:

Contract Act, 1872 — Section 126

Citation : (2016) AIRCC 1892

Hon'ble Judges : B.P. Ray, J.

Bench : Single Bench

Advocate : M/s. S.S. Rao, Advocate, for the Appellant; M/s. B.K. Behura and Ms. Sujata Das, Advocates, for the Respondent

Final Decision : Dismissed

Judgement

B.P. Ray, J.—The respondent Nos. 1 and 2 as the plaintiffs filed Money Suit No. 73 of 1983 before the learned Subordinate Judge, Baragarh. By the judgment and decree dated 17.08.1985 and 26.08.1985 respectively, the learned court below decreed the suit which are under challenge in the present appeal.

2. Parties have been described as per their status in the suit before the learned court below for the sake of convenience.

3. The case of the plaintiffs-Society in brief is that plaintiff No. 1 is a registered Co-operative Society and plaintiff No. 2 is its Secretary. The main function of plaintiffs-Society is to store potatoes of the cultivators in the Cold Storage on payment of storage charges. During 1980-81, 5300 quintals of potatoes were kept in the Cold Storage chamber for safe storage by different cultivators. The above stock was insured on 24.04.1981 with the defendant No. 1-Company covering all sorts of risks against damages of potatoes on payment of premium amount of Rs. 4,100/- to the said defendant through its authorised agent i.e. defendant No. 5. After receipt of the above premium, the defendant No. 5 issued

one cover note on behalf of the defendant No. 1-Company. The period of insurance coverage commenced from 26th April, 1981 till 25th December, 1981. The cover note was issued pending issuance of stand policy of insurance. Subsequently, the defendant No. 1-Company did not issue the policy despite repeated reminders and notices by the suit Co-operative Society. During the coverage period, despite precaution taken by the Society, the stock started getting damaged due to fluctuation of voltage in supply of electricity as well as failure of electricity supply at some times. Ultimately by 22.10.1981, the situation went beyond the control of Society and about 1200 quintals of potatoes worth of Rs. 2,64,000/- got wasted. The cost of the potatoes was assessed @ Rs. 220/- per quintal as per Government Cold Storage rate. The matter was brought to the notice of defendant No. 4-Branch Manager of the defendant No. 1-Company of Sambalpur District by telegram on the very day of 22.10.1981. On receipt of telegram, the defendant No. 4 intimated the plaintiffs-Society by return telegram to the effect that defendant No. 5 was advised to contact the plaintiffs-Society to assess the damage. Accordingly, defendant No. 5 verified the Cold Storage and was satisfied about the loss. But the damage was not released by the defendant No. 1-Company, for which the suit Society served notice on the defendant No. 1-Company through its advocate. As the defendant No. 1-Company disowned its liability under the cover note by taking a false plea of non-payment of premium and the cover note did not include the risk in question, the plaintiffs-Society was compelled to bring the money suit to recover the damages. The defendants contested the suit by filing the written statement denying the plaint allegations pleading, inter alia, that there was absolutely no payment of any premium. The then Secretary of the Society intended to insure the stock with Insurance Company pending approval of the Board of Directors of plaintiffs-Society. Therefore, on the request of the Secretary of the Society, the defendant No. 5 issued the provisional cover note covering the risk of the stock in the Cold Storage against fire on condition that the premium of Rs. 4,100/- would be paid to the defendant No. 1-Company after due approval of the Board of Directors. Subsequently, the Secretary was transferred and the premium was never paid to defendant No. 1-Company through the defendant No. 5. The alleged loss or damage of the stock because of the fluctuation of the power supply was not covered by the standard fire policy issued by the defendant No. 1-Company. With this, it has been pleaded that the defendants have no liability whatsoever to pay the damage claimed. Besides that, the suit having not been filed within one year is barred by limitation. Therefore, the suit be dismissed with cost.

4. Upon the pleadings of the parties, the learned court below framed as many as six issues which are as follows :-

1. Have the plaintiffs any cause of action for the suit?
2. Was there any completed contract between the parties as alleged and, if so, whether it was valid and binding on the defendant No. 1?
3. Was there any damage sustained by the plaintiffs and, if so, to what extent

and whether the defendant No. 1 is liable for the same?

4. Is the suit maintainable in the form it is laid?

5. Is the suit barred by limitation?

6. To what relief?

5. On assessment of the evidence, oral as well as documentary, the learned court below came to the conclusion that the cover note was sufficient to tying the suit Insurance Company under the contract of the Insurance Policy, the insurance was valid for the alleged period and the loss was squarely covered under the insurance policy, and the suit was not barred by limitation. Therefore, the suit Insurance Company was liable to pay the damage with interest and the suit Society was entitled to get the same from the defendant No. 1-Company, and accordingly decreed the suit. Learned counsel for the appellants submitted that the judgment and decree of the learned court below are not based on evidence on record and being contrary to law, are liable to be set aside in the appeal. Learned counsel for the respondents, on the other hand, supported the judgment and decree of the learned court below as lawful and submitted that the appeal having no merit is liable to be dismissed with cost. The issuance of cover note by the suit Insurance Company through its agent defendant No. 5 is not disputed. The then Secretary, who has been examined as P.W.1 has given evidence that on 26.04.1981, the defendant No. 5 approached him to insure the potatoes stock of the suit Society. Accordingly, the entire stock was insured for the period from 26.04.1981 to 25.12.1981 on payment of Rs. 4,100/- towards the premium. After receipt of the premium the defendant No. 5 granted him the cover note vide Ext.2. He proved the relevant entry of the Cash Register of the suit Society regarding payment made vide Ext.1. P.W.1 has further given the categorical evidence that when he demanded the money receipt for the premium paid, the defendant No. 5 assured that money receipt would be granted after deposit of the premium amount with the Company. The above evidence of P.W.1 was well corroborated by the evidence of the Store Keeper of the Society, P.W.3. On examination of the cover note Ext.2, it is found that the premium amount of Rs. 4,100/- has been reflected in the said document. The defendant No. 5, who has been examined as D.W.1 admitted in his evidence that without receipt of premium amount, the cover note could not be issued. Besides that, the non-payment of premium has not at all been reflected in the cover note. The plaintiffs-Society has proved the letters issued by defendant No. 5 to the Secretary of the Society vide Exts.3 and 5. The recitals of these letters lend assurance that the premium was really paid to the defendant No. 1-Company. Specifically in Ext.3, the defendant No. 5 had requested the Society to return the cover note and assured him to issue money receipt and the policy document from their Sambalpur Branch Office, In Ext.5, the defendant No. 5 has admitted that the loss was not covered under the policy. This clearly shows that the premium was paid by the suit Society for the stock and the same was received by the defendant No. 5 on behalf, of the suit Insurance Company. No doubt, the

defendants have proved the letter (Ext.B) through which Assistant Registrar of Co-operative Society was intimated about non-payment of premium by the suit Society. However, the overwhelming evidence adduced by the plaintiffs-Society as noted earlier nullified the allegation of non-payment of premium.

The necessary conclusion, therefore, is that there was a concluded contract between the suit Society and the defendant No. 1-Company for the potato stock and the said insurance policy was valid for the relevant period as narrated earlier.

6. On the basis of the cover note, the party is entitled to make the claim and the delay in issuance of policy makes no difference as per the principle decided in the case of General Assurance Society Ltd. v. Chandumull Jain & others, in AIR 1966 SC 1644.

7. No doubt, there is no recital in the cover note that the stock was insured against fluctuation of electricity. However, on careful examination of the cover note, it is found that the stock was insured covering all the risks and not against any particular risk. The necessary inference, therefore, is that the Insurance Policy was also covering the alleged factor of damages narrated in the plaint.

8. On perusal of the plaint, it is found that the suit was filed within 3 years. Learned court below after careful analysis came to the conclusion correctly that the suit was not barred by limitation.

9. From the above analysis, it is apparent that the defendant No. 5, the authorised agent of the defendant No. 1-Company, received the premium from the suit Society against the potato stock for the relevant period and issued the cover note for the same. Therefore, the defendant No. 1-Company is bound by the act done by its authorised agent, defendant No. 5. Thus, there was a concluded contract between the parties to be enforceable in law. The valid insurance policy was based on above valid contract, the insurance policy was valid for the relevant period and insurance policy covered the risk factors of the present suit for which there was damage of the potato stock of the suit Society. Therefore, the suit was not barred by limitation and the defendant-Company is liable to pay the damages with pendente lite and future interest claimed by the suit Society. The suit Society is entitled to get the same from the defendant-Insurance Company. In that view of the matter, the judgment and decree dated 17.08.1985 and 26.08.1985 respectively suffer from no infirmity and therefore, cannot be interfered with in the present appeal.

10. In the result, I find no merit in the appeal which is accordingly dismissed, but with cost in the circumstances.