(2016) 11 CAL CK 0038

In the Calcutta High Court

Case No : C.S. No. 7-A of 1996

Durgamata Cold Storage APPELLANT

Vs

The New India Assurance Co. Ltd. RESPONDENT

Date of Decision : 15-11-2016

Acts Referred:

Citation : (2017) 169 AIC 751 : (2017) AIRCC 1171

Hon'ble Judges : Ranjit Kumar Bag, J.

Bench : Single Bench

Advocate : Mr. Amit Chatterjee, Advocate, for the Defendant; Mr. P.K. Dutta, Sr. Advocate, Mr. Rajarshi Dutta and Mr. Amit Kumar Ghosh, Advocates, for the Plaintiff

Final Decision : Disposed Off

Judgement

R.K. Bag, J. - The plaintiff is a registered partnership firm carrying on business of keeping agricultural products in the cold storage for fixed period of time. The cold storage was constructed in the year 1976 with capacity of storage of 18,500 quintals of potatoes. In the year 1985 the cold storage was extended for augmenting capacity of storage of 42,000 quintals of potatoes by taking loan of Rs.14.94 lakh from the United Bank of India, Nutanganj Branch, Burdwan. The extended portion of the cold storage became functional from the year 1986. The cold storage was insured with The New India Assurance Company Ltd. for a sum of Rs.13,05,000/- for any loss or damage of the building, plant, machinery, insulation, racks and electrical fittings of the said cold storage by fire, malicious damage, explosion etc. for the period from March 23, 1985 to March 22, 1986. A new insurance policy for the extended portion of the cold storage being Policy No.1327800411 was obtained from The New India Assurance Company Ltd. (hereinafter referred to as the defendant insurance company) on payment of premium of Rs.6,743/- for coverage of risk to the extent of Rs.12,50,000/- for the building of extended portion of the cold storage, Rs.3,50,000/- for its insulation materials, Rs.1,50,000/- for its racks and Rs.70,000/- for electrical fittings.

2. On March 19, 1986 there was a serious explosion inside the extended portion of the building of cold storage and thereby the entire building was crumbled down causing damage to the plant, machinery, racks, electrical equipments including potatoes stored therein. On March 20, 1986 the plaintiff intimated about the said explosion inside the extended portion of building of the cold storage to the Branch Manager of the defendant insurance company for making inspection to ascertain the damage suffered by the plaintiff. On April 18, 1986 the plaintiff filed an application to the defendant insurance company claiming a sum of Rs.12,50,000/- on account of damage of the building of the cold storage, Rs.2,85,000/- on account of damage of insulation materials, Rs.1,31,500/- on account of damage of racks and Rs.50,000/- on account of damage of electrical fittings of the said cold storage, which was duly accepted by the defendant insurance company. On May 25, 1987 the defendant insurance company repudiated the claim of the plaintiff on flimsy and frivolous ground. The defendant insurance company clearly admitted in the cover note that first class building materials were used for construction of extended portion of the cold storage. Ultimately, the defendant insurance company refused to grant the claim of plaintiff on the ground that the damage was caused to the building of the cold storage for faulty design and the loss suffered by the plaintiff does not fall within the scope and ambit of the policy granted to the plaintiff by the defendant insurance company. Accordingly, the plaintiff instituted the suit against the defendant insurance company and its Regional Manager and Divisional Manager for realisation of Rs.17,16,500/- along with interest accrued thereon at the rate of 18% per annum from the date of filing of the claim by the plaintiff on April 18, 1986 till the date of realisation of the entire amount from the defendant insurance company. The suit was initially instituted in the Court of Learned Assistant District Judge, Burdwan, but the same was filed before the High Court at Calcutta after return of the plaint by Learned Assistant District Judge.

3. The defendant insurance company and its Divisional Manager of Durgapur Divisional Office filed two separate written statements by which the defendant insurance company disputed and denied the allegations made in the plaint. The specific case made out by the defendant insurance company is that the extended portion of the cold storage was constructed by the plaintiff with inferior and substandard materials without having any structural stability for construction of the extended portion of the cold storage. It is alleged that the plaintiff did not obtain permission from the Licensing Officer for storage of potatoes in the extended portion of the cold storage with effect from March, 1986. The further case made out by the defendant insurance company is that there was no explosion inside the extended portion of the cold storage for which the plaintiff is alleged to have suffered damage. On May 25, 1987 the defendant insurance company repudiated the claim of the plaintiff after making proper scrutiny of the said claim. The defendant insurance company has specifically denied the claim of the plaintiff to the extent of Rs.17,16,500/- on account of damage suffered by

the plaintiff.

4. On the above pleadings the issues framed are recast as follows:

(i) Is the suit maintainable in its present form and in law?

(ii) Had the plaintiff started storing potatoes in the extended portion of the cold storage after obtaining licence and permission from the concerned authority?

(iii) Does the insurance policy bearing no.1327800411 cover the claim of the plaintiff for the damage in the extended portion of the cold storage on March 19, 1986?

(iv) Did the plaintiff suffer the damage due to explosion inside the extended portion of the cold storage on March 19, 1986 and if so, to what extent?

(v) Is the plaintiff entitled to get the decree as prayed for?

(vi) Is the plaintiff entitled to get other reliefs?

5. Issue No.(i): This issue is not pressed at the time of final hearing of the suit. Moreover, it appears from the document marked Exhibit-Q that the plaintiff was registered under Indian Partnership Act on July 29, 1976. The specific case made out by the plaintiff is that the defendant insurance company repudiated the claim of the plaintiff in spite of extensive damage suffered by the plaintiff due to explosion in the extended portion of the cold storage on March 19, 1986, when the same was covered under Insurance Policy bearing No. 1327800411 issued by the defendant insurance company. The plaintiff has impleaded not only the defendant insurance company, but also the officers of the said defendant insurance company and the bank from which the plaintiff took the loan for construction of extended portion of the cold storage. So, I cannot persuade myself to hold that the suit is bad for defects of parties or the suit is not maintainable on the ground that the plaintiff is not registered firm. The instant suit was instituted within the prescribed period of limitation in the year 1988 after repudiation of claim of the plaintiff by the highest authority of the defendant insurance company. However, the plaint was returned by Learned Assistant District Judge, Burdwan on January 6, 1996 and thereafter the plaint was presented before this Court and the present suit was instituted in the year 1996. In view of my above findings issue no.(i) is decided in favour of the plaintiff.

6. Issue No.(ii): The plaintiff was granted licence for storing of 18,448 quintals of potatoes during the period from March 10, 1986 to March 9, 1988 by the Director of Marketing and Ex-Officio Additional Director of Agriculture (Marketing), West Bengal on May 2, 1987 as reflected from the document marked Exhibit-S. It appears from the document marked Exhibit-T that the Director of Marketing and Ex- Officio Additional Director of Agriculture (Marketing), West Bengal granted permission to the plaintiff for extension of the cold storage under Section 10 (1) (b) of the West Bengal Cold Storage (L & R)

Act, 1966. The United Bank of India, Nutanganj Branch, Burdwan sanctioned loan of Rs.14.94 lakh in favour of the plaintiff for extension of the cold storage. It transpires from the oral evidence of Bhagabati Ghosh, partner of the plaintiff firm that the construction of extended portion of the cold storage was started in May, 1985 and the same was completed on January 15, 1986. By giving answer to question no.293 the said witness Bhagabati Ghosh has stated that on February 24, 1986 the Executive Agricultural Refrigeration Engineer, Directorate of Agriculture and Marketing, had inspected the extended portion of the cold storage. The said witness Bhagabati Ghosh has categorically stated in reply to questions no.304 and 305 that the plaintiff started storing potatoes in the extended portion of the cold storage from March 9, 1986. The plaintiff stored about 30,000 gunny bags of potatoes - each gunny bag containing 60 kgs of potatoes till March 19, 1986. The document marked Exhibit-W indicates that the plaintiff filed an application before the Director of Agriculture (Marketing), Government of West Bengal praying for inspection of the extended portion of the cold storage and issuance of licence granting permission to the plaintiff for storing of potatoes and the said application was received by the Director of Agriculture (Marketing), Government of West Bengal on February 12, 1986. The document marked Exhibit-Y indicates that on March 5, 1986 the plaintiff again prayed for issuance of licence from the Director of Agriculture (Marketing), Government of West Bengal. Even the plaintiff deposited the licence fee by challan marked Exhibit-X. However, there is nothing on record to indicate that permission was granted by the Director of Agriculture (Marketing), Government of West Bengal for storing of potatoes in the extended portion of the cold storage by the plaintiff. Nor is there any document to establish that licence was issued by the Director of Agriculture (Marketing), Government of West Bengal in favour of the plaintiff for storing of potatoes in the extended portion of the cold storage. The witness Bhagabati Ghosh has stated in reply to question no.286 and question no.288 that there is no document to show that licence was given to the plaintiff for storing of potatoes in the extended portion of the cold storage. It passes my comprehension to believe that the plaintiff obtained verbal order from the Director of Agriculture (Marketing), Government of West Bengal for storing of potatoes in the extended portion of the cold storage as stated by the witness - Bhagabati Ghosh.

7. By Memo No.2575 dated April 23, 1986 (Exhibit-AB), the Director of Marketing and Ex-Officio Additional Director of Agriculture (Marketing), Government of West Bengal issued show cause notice to the plaintiff for using the extended portion of the cold storage to store potatoes without obtaining clearance from the said authority and for violation of the provisions of the West Bengal Cold Storage (Licensing and Regulation) Act, 1966. The plaintiff gave reply to the said show cause notice on June 12, 1986 which is marked as Exhibit-8. It appears from the said document (Exhibit-8) that the plaintiff admitted the lapse on the part of the plaintiff by storing potatoes in the extended portion of the cold storage without obtaining permission from the Director of Agriculture (Marketing), Government of

West Bengal and tendered apology for unintentional violation of the provisions of the West Bengal Cold Storage (Licensing and Regulation) Act, 1966. In view of the above evidence on record, I can safely hold that the plaintiff started storing potatoes in the extended portion of the cold storage from March 9, 1986 without obtaining proper licence and without obtaining permission from the Director of Agriculture (Marketing), Government of West Bengal. This issue is, thus, decided against the plaintiff.

8. Issue No.(iii): The cover note (Exhibit-A) was issued by the defendant insurance company in favour of the plaintiff on March 11, 1986 for a sum of Rs.18,20,000/- for the period of 12 months from March 11, 1986 to March 11, 1987 on payment of premium of Rs.6,743/-. The Insurance Policy bearing No.1127800411 (Exhibit-B) issued by the defendant insurance company in favour of the plaintiff indicates that the insurance covers damage to the property of the plaintiff by fire including fire resulting from explosion, lightening, explosion of boiler used for domestic purpose and explosion of gas used for domestic purpose for a total sum of Rs.18,20,000/- with the following breakup: Rs.12,50,000/- for damage of the building including extended portion, Rs.3,50,000/- for damage of insulation materials, Rs.1,50,000/- for damage of racks and Rs.70,000/- for damage of electrical fittings including ceiling fans. The defendant insurance company claimed balance premium of Rs.1,149/- from the plaintiff by issuing one letter on March 12, 1986 (Exhibit-C). The witness Bhagabati Ghosh has stated in reply to question no.81 that the said balance amount of premium was paid by cheque and this fact is not disputed by the defendant insurance company and as such the said balance amount of premium of Rs.1,149/- is considered to be paid by the plaintiff. The document marked Exhibit-3 and marked Exhibit-D goes to establish that on March 20, 1986 the plaintiff intimated the Branch Manager of the defendant insurance company about damage caused to the building of extended portion of the cold storage due to explosion on March 19, 1986 at about 8:00 p.m. and the said intimation was duly received by the defendant insurance company on March 20, 1986 at about 4:30 p.m. The document marked Exhibit- BB indicates that the plaintiff also intimated to the officer-in-charge of Ausgram Police Station about the cracking sound causing damage to the extended portion of the cold storage on March 19, 1986 at about 7:30 p.m. This intimation was recorded in G.D. Entry No.549 dated March 20, 1986 at Ausgram Police Station (Exhibit-Z1). The said G.D. Entry (Exhibit-Z1) points out that the sound of explosion inside the extended portion of the cold storage of the plaintiff was heard at about 7:30 p.m. on March 19, 1986 and thereby damage was caused to the building of the cold storage. It appears from the document marked Exhibit-10 that the Sub-Divisional Magistrate, Burdwan had to promulgate prohibitory order under Section 144(2) of the Code of Criminal Procedure on March 25, 1986 to prevent breach of peace in the locality due to damage of roof and wall of the extended portion of the cold storage of the plaintiff on March 19, 1986. The defendant insurance company gave reply to the plaintiff on March 21, 1986 (Exhibit-E) in connection with the intimation given by

the plaintiff about the explosion which took place on March 19, 1986. It appears from the said reply of the defendant insurance company (Exhibit-E) that the plaintiff was advised to remove the materials from the cold storage. Ultimately, on April 18, 1986 the plaintiff claimed Rs.17,16,500/- from the defendant insurance company as damage with the following break-up: Rs. 12,50,000/- for damage to the extended portion of the building, Rs.2,85,000/- for damage to the insulation materials, Rs.1,31,500/- for damage to the racks and Rs.50,000/- for damage to the electrical fittings including ceiling fans. The said claim application is marked both Exhibit-H and Exhibit-4. This claim of the plaintiff is repudiated by the defendant insurance company by giving a letter on May 25, 1987 which is marked Exhibit-5 and Exhibit-G. It appears from the said letter dated May 25, 1987 (Exhibit-G and Exhibit-5) that the defendant insurance company refused to make payment to the plaintiff on the ground that the damage was not caused due to explosion as claimed by the plaintiff, but the damage was caused due to faulty design and faulty construction of the extended portion of the building of the cold storage. The evidence on record indicates that the plaintiff pursued the claim by writing letters to various authorities of the defendant insurance company time and again. The document marked Exhibit-K indicates that the plaintiff had written to the Regional Manager of the defendant insurance company to consider the case sympathetically on December 22, 1987, but the claim was again repudiated by a letter dated January 8, 1988 marked Exhibit-L. Even on April 4, 1989 the plaintiff had written a letter to the Chairman of General Insurance Corporation of India (Exhibit-M) for payment of the amount covered by the insurance policy issued in favour of the plaintiff. However, on May 10, 1989 (Exhibit-N) the claim of the plaintiff was again repudiated.

9. The above documentary evidence coupled with the oral evidence given by the witness Bhagabati Ghosh in reply to question no.401, 409, 410, 422, 423 to 426, indicate that there was an incident of explosion of valve in the refrigeration plant situated on the 4th Floor of the extended portion of the cold storage and thereby the valve blasted with huge smoke and fire. The consistent evidence of the said witness is that there was an explosion during storing of the potatoes in the extended portion of the cold storage on March 19, 1986. There is no term and condition incorporated in the policy issued in favour of the plaintiff by the defendant insurance company to the effect that the defendant insurance company can repudiate the claim of the plaintiff for storing of potatoes in the extended portion of the cold storage without obtaining licence or without obtaining permission from the Director of Agriculture (Marketing), Government of West Bengal. The cover note issued in favour of the plaintiff (Exhibit-A) unerringly points out that the damage by explosion is covered under the policy. Moreover, the said cover note (Exhibit-A) indicates that the plaintiff has used first class building materials for construction of extended portion of the cold storage. Since the defendant insurance company has disclosed in the cover note of the insurance policy issued in favour of the plaintiff (Exhibit-A) that the plaintiff used first class building materials for construction of the extended portion of the cold

storage, the defendant insurance company is estopped from repudiating the claim of the plaintiff on the ground that the damage was caused to the extended portion of the building for faulty design of the building or on the ground that there was no damage due to explosion as claimed by the plaintiff. In view of the discussion made by me herein above, I am of the view that the plaintiff has been able to establish by adducing oral and documentary evidence that on March 19, 1986 there was an explosion in the extended portion of the cold storage and thereby the claim of the plaintiff is covered by the insurance policy no.1327800411 issued by the defendant insurance company in favour of the plaintiff. This issue is, thus, decided in favour of the plaintiff.

10. Issue No.(iv): It appears from the document marked Exhibit-D that on March 20, 1986 the partner of the plaintiff firm intimated the Branch Manager of the defendant insurance company that the building of the cold storage was badly damaged due to explosion on March 19, 1986 at about 8:00 p.m. Similarly, the document marked Exhibit-BB indicates that on March 20, 1986 the partner of the plaintiff firm submitted an application before the Officer-in-charge of Ausgram Police Station conveying the fact that on March 19, 1986 at about 7:30 p.m. one cracking sound was heard inside the extended portion of the cold storage and thereby the walls of the cold storage were found to be in inclined position and the roof of the building was lowered down. The G.D. Entry No.549 dated March 20, 1986 of Ausgram Police Station (Exhibit-Z1) corroborates the above documentary evidence that on March 19, 1986 at about 7:30 p.m. a sound of explosion was heard inside the cold storage and damage was caused to the building of the cold storage due to the said incident. The witness Bhagabati Ghosh has stated in reply to question no.401 during cross-examination that the valve of the refrigeration unit of the cold storage situated in the 4th Floor blasted and thereby the roof of the building was lifted from 8 to 9 inches. The said witness has stated in reply to question nos.409 and 410 that only the roof of the building was lifted due to explosion, though the building was intact. On conjoint reading of the reply given to question no.422 to question no.428 by the witness Bhagabati Ghosh during his cross-examination, it appears that the witness Bhagabati Ghosh has candidly admitted that the work of storage in the extended portion of the cold storage is carried on after renovation work and the damage was done only to the roof of the extended portion of the building. This witness has specifically admitted in reply to question no.428 during cross-examination that the answer given by him in reply to question no.256 to the effect that the old structure was demolished and new structure was raised, was wrong. Since the witness Bhagabati Ghosh has candidly admitted during cross-examination that the work of storage is going on in the extended portion of the cold storage after renovation work and the damage was caused to the roof of the building due to explosion, I am unable to accept that the plaintiff suffered loss on account of damage to insulation materials or on account of damage to racks or on account of damage to the electrical fittings including ceiling fans for which the plaintiff claimed a sum of Rs.2,85,000/-, Rs.1,31,500/- and Rs.50,000/- respectively. In

view of my above findings I have no hesitation to hold that the plaintiff suffered loss due to damage to the building of the extended portion of the cold storage for which the plaintiff is entitled to claim Rs.12,50,000/- from the defendant insurance company under Insurance Policy No.1327800411. This issue is, thus, decided in part in favour of the plaintiff.

11. Issues No.(v) and (vi): Both these issues are interconnected and as such the same are taken up together for convenience of discussion. I have already observed during discussion on issue no.(iii) that the claim of the plaintiff for the damage caused to the extended portion of the cold storage on March 19, 1986 is covered by the Insurance Policy bearing No.1327800411 issued by the defendant insurance company in favour of the plaintiff. I have also observed during discussion on issue no.(ii) that the defendant insurance company has failed to disclose any term and condition in the Insurance Policy bearing No.1327800411 to the effect that the defendant insurance company can repudiate the claim of the plaintiff for storing of potatoes in the extended portion of the cold storage without obtaining licence and permission from the Director of Agriculture (Marketing), Government of West Bengal. It has also been held by me during discussion on issue no.(iv) that the plaintiff is unable to establish by adducing evidence that any damage was caused to the insulation materials, racks or electrical fittings inside the cold storage due to explosion which took place on March 19, 1986. In my view, the plaintiff has claimed Rs.2,85,000/- on account of damage to the insulation materials, Rs.1,31,500/- on account of damage to the racks and Rs.50,000/- on account of damage to the electrical fittings on the basis of surmise and conjecture without having any basis for the said claim. The upshot of my entire above observation is that the plaintiff is entitled to claim Rs.12,50,000/- from the defendant insurance company for the damage to the extended portion of the cold storage due to explosion on March 19, 1986 under Insurance Policy No.1327800411. Since the defendant insurance company has not paid the said amount of Rs.12,50,000/- to the plaintiff, the plaintiff is entitled to claim interest on the said amount of Rs.12,50,000/- from the defendant insurance company @ 8% per annum from the date of claim on April 18, 1986 till the date of realisation of the said amount from the defendant insurance company.

12. The plaintiff, thus, do get decree against the defendant insurance company for realisation of Rs.12,50,000/- along with interest accrued thereon @ 8% per annum from April 18, 1986 till the date of realisation of the entire decretal dues. Both issues no.(v) and (vi) are, thus, decided in part in favour of the plaintiff. The suit is, thus, decreed in part with proportionate cost. The department is directed to draw up the decree expeditiously.

The urgent xerox certified copy of the judgment and order, if applied for, be given to the parties on priority basis after compliance with all necessary formalities.

