(2018) 02 DEL CK 0434

In the Delhi High Court

Case No : Civil Suit (OS) No. 1408 Of 1979 & Civil Suit (OS) No. 1409 Of 1979

Elephanta Oil Vanaspati Industries Ltd. APPELLANT

Vs

New India Assurance Co. Ltd. & Anr RESPONDENT

Date of Decision : 19-02-2018

Acts Referred:

Citation : (2018) 02 DEL CK 0434

Hon'ble Judges : Valmiki J. Mehta, J

Bench : Single Bench

Advocate : Sangeeta Chandra, Sunita Dutta

Final Decision : Dismissed

Judgement

Valmiki J. Mehta, J

1. This suit is also dismissed by adopting the discussion, reasoning and conclusions given while dismissing CS (OS) No. 922/2004 and which discussion,

reasoning and conclusions will apply mutatis mutandis to the facts of the present case where the Bill of Lading has been proved as Ex.PW1/5,

Mateâ??s Receipt has been proved as Ex.PW1/4 and Weighment Certificate has been proved as Ex.PW1/3.

2. In this suit the goods which were to be supplied by the foreign seller were Cloves of Zanzibar quality. The amount claimed in the suit is

Rs.2,77,44,026.68/-.

3. One another aspect to be noted is that plaintiff/company has gone into liquidation and now is being represented through the Official Liquidator

attached to the High Court of Delhi.

4. The issues framed in the present suit are as under:-

â??1. Has defendant no.2 been joined as a defendant within time, if not, to what effect?

2. Whether the plaintiff agreed to purchase and the said Bentrex & Co agreed to sell to the plaintiff 300 metric Tons of Cloves (Zanzibar Quality) as

alleged in paragraph 3 of the plaint?

3. Whether the plaintiff opened an irrevocable letter of credit in favour of the sellers through the Punjab & Sind Bank, the predecessor in interest of

the 2nd Defendant for US $ 22,500 as alleged in paragraph 4 of the plaint?

4. Whether any goods were unconditionally appropriated to the contract in favour of the plaintiff by the sellers as alleged in paragraph 5 of the plaint?

5. Whether the Uni Q marine Services of Singapore issued a weight certificate dated 6th August 1979 containing the statements alleged in paragraph

5 of the plaint?

6. Whether cloves packed in 6000 bags bearing No.Victor Bombay 16000 were duly loaded and shipped on board the SS Averilla at Singapore as

alleged in paragraph 6 and 7 of the plaint?

7. Whether there was a contract of a-ffreighment contained in a bill of lading bearing No.AB-21 dated 7th August 1979 issued by the Wellway Lines

as alleged in paragraph 7 of the plaint?

8. Whether the plaintiff was the buyer of any goods or was the owner of the Cloves of the value of Rs.2,74,19,500 or any other value as alleged in

paragraph 8 of the plaint?

9. Are the pleas embodied in the Issues No.4 to 10 available and open to the defendants?

10. Whether the Insurance Policy is void ab initio and unenforceable for the reasons alleged in para 4 of the written statement of the defendant?

11. Whether the plaintiff was a privy or a party to a fraud intended and calculated to fraudulently obtain an insurance policy and/or to obtain

fraudulently a claim thereunder as alleged in paragraph 4(a) of the written statement of defendant no.1?

12. Whether the policy of Insurance is liable to be avoided by the 1st defendant as alleged in paragraphs 4(b) and 4(c) of the written statement of

defendant No.1?

13. Whether the transactions in suit were calculated to cause injury to the Ist

Defendant and/or make unlawful gains for the plaintiff and are therefore

uneforceable, null and void as alleged in paragraph 4(d) of the written statement of defendant No.1?

14. Whether the policy of Insurance is void on the ground of mistake as alleged in paragraph 4(e) of the written statement of defendant No.1?

15. Whether the suit transactions are a result of a conspiracy between the plaintiff and one Mr. C.S. Aujla or are founded in illegalities as alleged in

paragraph 7 and 11 of the written statement of defendant no.1?

16. Whether the plaintiffs have forfeited their rights to recover any money or any liquidated sum under the Insurance Policy by reasons of the

allegations made in paragraph 7 of the written statement of defendant No.1?

17. Whether the Insurance Policy is void for the reasons alleged in paragraph 7 of the written statement of defendant No.1?

18. Whether the plaintiff had interest in the goods or have insurable interest as alleged in paragraphs 9 and 18 of the plaint?

19. Whether the said goods became a total loss by reason of the perils insured against as alleged in paragraph 9 of the plaint?

20. Whether the replacement import licences for the consignment of cloves alleged to be lost were available or could have been obtained by the

plaintiff as alleged in paragraph 10 of the written statement?

21. Whether the plaintiff did not behave as a prudent person as alleged in paragraph 16 of the written statement of defendant No.1?

22. Whether the documents relied upon by the plaintiff have discrepancies and/ or are vitiated as alleged in paragraph 16 of the written statement of

defendant No.1?

23. Whether the plaintiffs are entitled to recover a sum of Rs.2,74,19,500/- or any other sum under the Insurance Policy as alleged in paragraphs 15

and 16 of the plaint?

24. What is the effect of the claim made by the second defendant in its written statement on its behalf?

25. Whether the plaintiff has not paid any consideration in respect of the purported goods and has refused to make payment under the letter of credit

as alleged in paragraph 22 of the written statement of defendant No.1. If, so, to what effect?

26. Whether the plaintiff is entitled to receive any amount from defendant No.1?

27. Can now defendant No.1 raise the pleas embodied in the Issues No.11 to 18 in view of the objections raised by the plaintiff in preliminary objection

No.1 in the replication?

28. Is the plaint vague and indefinite as alleged by the defendants in preliminary objections No.3 in the written statement, if so, to what effect?

29. Relief.â??

Issue Nos. 1, 11 to 13, 15 to 17, 20, 21, 22, 25, 27 and 28

5. These issues are not pressed on behalf of defendant no. 1/insurance company as it has otherwise been held under the relevant issues that the goods

which were the subject matter of the policy/cover note were never supplied and hence there is no liability of the defendant no.1/insurance company

under the subject insurance policy/cover note.

Issue No. 2

6. On behalf of defendant no. 2 it is not disputed that there was a contract entered into by the plaintiff company with M/s. Bentrex and Company. This

issue is decided accordingly.

Issue No. 3.

7. Counsel for defendant no. 1/insurance company does not dispute that plaintiff's bank had opened a letter of credit in favour of the sellers, and this

issue is therefore decided accordingly.

Issue Nos. 4, to 10, 14, 17, 18 and 19

8. These issues are decided in favour of the defendant no. 1/insurance company by holding that the goods which were subject matter of the cover

note/insurance policies did not come into existence inasmuch as mere existence of the Bill of Lading or Mateâ?s Receipt is held to be no proof of

factum of actual loading/shipment of goods and as already discussed in detail while deciding CS (OS) No. 922/2004. I may note that counsel for the

plaintiff had relied upon the Weighment Certificate proved as Ex.PW1/3 to argue that loading on the ship did take place, however it is seen that this

Weighment Certificate is not a Weighment Certificate after the goods entered into port/dock area and that this Weighment Certificate is a certificate

only of the goods in warehouse of the seller M/s. Bentrex and Company. Therefore this Weighment Certificate will not help the plaintiff to prove that the goods which are subject matter of the insurance policies entered into the port/dock area or commenced their shipment/journey in terms of the Bill

of Lading.

9. Accordingly, these issues are decided in favour of the defendant no. 1/ insurance company holding that though there was a cover note/insurance

policy, however since the goods which are subject matter of the cover note/ insurance policies were never loaded on to the ship MV AVERILLA and

the goods never entered into the port/dock area at Singapore so as to be loaded on to the ship MV AVERILLA and that therefore the insurance

policies do not come into operation because the goods which are subject matter of the policies never commenced their shipment on the ship MV

AVERILLA.

Issue No. 24

10. Since the second defendant has not contested the suit and in fact no relief is prayed against the defendant no.2. This issue is not called for

decision.

Issue Nos. 23, 26 and 29

11. In view of the detailed discussion given in CS (OS) No. 922/2004 and which will mutatis mutandis apply in this case, and the according decision on

aforesaid issues, the plaintiff is not entitled to any relief of grant of money decree in its favour and against the defendant no. 1/insurance company.

12. The suit is therefore dismissed, leaving the parties to bear their own costs.

