

(2001) 03 MAD CK 0106
In the Madras High Court
Case No : C.S. No. 1601 of 1993

Marthi Crystal Salt Co. Ltd.		APPELLANT
	Vs	
The Oriental Insurance Company Limited		RESPONDENT

Date of Decision : 05-03-2001

Acts Referred:

Insurance Act, 1938 — Section 64, 64VB, 64VB(2)
Limitation Act, 1963 — Section 14

Citation : AIR 2001 Mad 288

Hon'ble Judges : M. Chockalingam, J

Bench : Single Bench

Advocate : S. Sampathkumar, for the Appellant; R. Nageswaran, for the Respondent

Final Decision : Dismissed

Judgement

M. Chockalingam, J.—This suit has been filed for a money decree against the defendant for a sum of Rs. 17,42,519.46 with further interest at the rate of 18% per annum on Rs. 10,74,303/- from the date of plaint till realisation and for costs.

2. The plaint averments are as follows: Plaintiff is engaged in the manufacture of salt. One Mr. T.M. Venkatesh, Development Officer of the defendant had been approaching the plaintiff offering to effect insurance of their salt works at Thiruporur. Plaintiff took a policy decision to insure various risks for Rs. 14.00 lakhs. On 3-5-90 the defendant through Mr. T.M. Venkatesh offered to insure the risk for a premium of Rs. 19,950/- The plaintiff sent two cheques for Rs. 10,000/- and Rs. 9,950/- respectively by letter dated 4-5-90. They were received and duly acknowledged on 4-5-90 itself. The plaintiff was informed that the cover note would be issued shortly as the forms were not readily available. In the said letter, it was clearly mentioned that the risk of cyclone, flood, inundation, theft, S.R.C.C. risks, etc., should be covered in respect of their works at Tiruporur, with immediate effect. A proposal in pro forma with a covering letter was sent to the defendant on 7-5-90. Neither the cover note nor the insurance policy were

forthcoming. There were heavy rains and cyclone at Tiruporur between 7-5-90 and 12-5-90, which resulted in flood, causing sudden entry of water into the salt platforms, where the salt stocks were kept. The date and time of actual loss was on 9-5-90 in the night between 9 P.M. and 3 A.M. of 10-5-90. The occurrence was promptly informed to the defendant on 10-5-90. The defendant appointed one Mr. C. Venkatasubramanian, Surveyor to assess the loss, who attended the salt works at Tiruporur on 12-5-90. Plaintiff received a letter dated 10-5-90 from the defendant that the insurance cannot be accepted. The defendant's stand is unbecoming of an insurer. The plaintiff responded by its letter dated 16-5-90. By letter dated 28-6-90, the defendant informed the plaintiff that there was no concluded contract of insurance, which is unjust and unethical on the part of the defendant. The contract was concluded by the defendant offering to insure, quoting a premium and the plaintiff accepting the offer. Each of the issues in the letter dated 28-6-90 have been promptly replied by the plaintiff by letter dated 10-7-90. Plaintiff had lost a huge stock of insured salt due to flood and inundation.

The plaintiff made a claim for Rs. 13,53,300/-. The surveyor assessed the loss at Rs. 10,74,303/-. Plaintiff preferred a complaint before the State Consumer Disputes Redressal Commission in O.P. No. 89 of 1991. After trial, by a judgment, the defendant was directed to pay the plaintiff a sum of Rs. 9,77,623.92 with interest at 18% per annum from 14-6-91. The defendant filed an appeal before the National Commission at New Delhi. The National Commission directed the plaintiff to seek remedy by way of regular suit. Plaintiff preferred SLP before the Supreme Court, which was dismissed by order dated 8-7-93 however granting the benefit of Section 14 of the Limitation Act and directing the plaintiff to move the Civil Court for appropriate directions. The defendant is liable to pay interest at 18% per annum. Hence the suit.

3. The defendant filed a written statement alleging that the plaint itself is misconceived. On 7-5-90, the Development Officer Mr. T.N. Venkatesh attached to City Branch Office No. 1, submitted the letter of the plaintiff dated 4-5-90 alongwith two cheques. He got a proposal form and resubmitted the same after getting the signature of the plaintiff in the evening of 7-5-99, the Senior Divisional Manager, after hearing about the proposal, advised the Branch Office to return the same to the Development Officer With instructions to return them to the plaintiff as not accepted on 7-5-90 its since the risk factor had already intervened. A circular dated 5-6-84 was also issued by the defendant insurance company. As requested by the plaintiff, the cheque was accepted as such deposit and the defendant proceeded to inspect the site at Tiruporur. Inspection was done on 10-5-90. The cyclone storm has set in even on 6-5-90 and on 7-5-90 itself the subject matter of stock have been totally washed away. Hence no contract of insurance ever came into existence. A Development Officer cannot straightway effect any insurance without the proposal being accepted by the insurance company concerned. Until the offer is made and accepted by the Insurance Company the question of insurance company on risk does not arise.

The alleged cheques were made only on 6-5-90, since the cyclonic storm with tidal waves and heavy rain had already set in motion on 6-5-90 itself. The plaintiff has suppressed the fact that the cyclonic stormy weather and gale wind started on 6-5-90 itself and further fact that there was a clear forecast of impending cyclone in newspapers, radio and television on 5-5-90 itself. The offer of the plaintiff was never accepted by the defendant. The plaintiff has not given correct information in the proposal form to assess the risk to be covered. The defendant is not liable to pay either principal or Interest to the plaintiff. The suit is barred by limitation. Hence the suit has to be dismissed with costs.

4. The following issues were framed:

1. Did no contract of insurance come into existence between the plaintiff and the defendant regarding the subject matter of the suit?
2. Is not the defendant liable to pay the loss suffered by the plaintiff?
3. What is the quantum of loss suffered by the plaintiff?
4. Is the defendant, liable to pay any interest?
5. To what relief the plaintiff is entitled?

5. Issues 1 to 5 :--The plaintiff has filed the suit seeking for a decree against the defendant insurance company for a sum of Rs. 17,42,519.46 with further interest at the rate of 18% p.a. from the date of the suit on Rs. 10,74,303/- till the date of payment alleging that there was a concluded contract of insurance with the defendant in respect of their salt works at Tiruporur; that there was a loss of huge stock of insured salt due to flood and inundation and hence the defendant is liable to indemnify the loss sustained by the plaintiff, which is seriously contested by the defendant on various grounds.

6. Mr. T. Ramaswamy, a Director in the plaintiff company was examined as P.W.1. Exs. P1 to P29 were marked on the side of the plaintiff. On the side of the defendant D.Ws. 1 to 5 were examined and Exs. D1 to D24 were marked.

7. The letters sent by the plaintiff to the defendant regarding the coverage of risks of cyclone are marked as Exs. P1 and P2. Ex. P3 is the proposal form submitted by the plaintiff. Ex.P4 is another letter sent by the plaintiff. The telegram sent by the plaintiff is marked as Ex. P5. The defendant sent a letter dated 10-5-90 to the plaintiff is marked as Ex. P6. Letter from the Tahsildar, Chengelpet District to the Sub-Collector, Chengelpet, is marked as Ex. P7. Ex. P8 is the reply from the plaintiff to the defendant dated 16-5-90. Letter dated 27-6-90 from the plaintiff to the defendant is marked as Ex. P9. Reply from the defendant to the plaintiff is marked as Ex. P10 dated 28-6-90 Ex. P11 is the letter sent by the plaintiff to the surveyor while Ex.P12 dated 8-8-90 and Ex. P13 dt. 28-8-90, are the plaintiff's letters to the defendant. The letter dated 30-10-90 sent by the surveyor to the plaintiff is marked as Ex. P14. Ex. P15 is the plaintiff's reply. Further reply by the plaintiff is marked as Ex. P16. The

reminders sent by the plain-tiff to the defendant are marked as Exs. P17 to P19 respectively. Ex. P20 dated 26-2-91 is the reply by the defendant. The explanation given by the plaintiff is marked as Ex.P21 The report of the Meteorological Department is marked as Ex.P22 dated 26-6-90. Ex.P23 is the Lay Out. Office note of the defendant is marked as Ex.P24. The Judgment delivered by the State Commission is marked as Ex. P25 dated 18-3-92. The Judgment rendered by the National Commission is marked as Ex. P26. Ex. P27 is the Judgment of the Supreme Court dated 20-9-93. Ex. P29 is the notice given by the plaintiff.

8. The notice sent by the defendant is marked as Ex. D1 dated 13-8-98. Ex. D2 dated 8-5-90 is the Office letter of the plain-tiff to the Salt Department. Plaintiffs monthly return of salt manufacture is marked" as Ex.D3. Ex.D4 is the plaintiff's application to Salt Commissioner dated 29-5-90. Statement of rainfall given by the plaintiff is marked as Ex.D5. Government Order in G.O.Ms. No. 1031 dated 25-9-90 is marked as Ex. D6. Ex. D7 is the insurance manual. The defendant's letter to its divisions and branches is marked as Ex. D8 dated 5-6-84. Ex.D9 is the letter sent by the plaintiff. The survey report is marked as Ex. D10. Exs. D11 and D12 are the letters sent by the surveyor to the defendant. Ex; D13 is the letter sent by the defendant to Ministry of Industry. The letter sent by the Government of India to the defendant is marked as Ex. D14 dated 27-9-90. Ex. D15 is the survey report dated 21-1-91. Ex.D16 is the letter sent by the defendant to its development officer. The defendant company's order is marked as Ex. D17 dated 3-12-96. Ex. D18 is the defendant's order dated 17-4-95. The details of salt insurance is marked as Ex. D19. The defendant's circular is marked as Ex. D20. Ex. D21 is the defendant's interoffice letter. The defendant's circular is marked as Ex. D22. Ex. D23 is the letter sent by the defendant to Mr. R.M. Krishnaswamy, while Ex. D24 is the reply by Mr. R.M. Krishnaswamy to the Disciplinary Authority of the defendant company.

9. Arguing for the plaintiff, the learned Counsel would submit that the plaintiff is owning a salt factory at Tiruporur that D.W.1 Mr. T.M. Venkatesh, Development Officer of the defendant Insurance company approached the plaintiff for insurance of the salt stocks and the factory that following the discussions and negotiations, the Development Officer quoted the premium at Rs. 19,950/- and the plaintiff accepted the offer made by the defendant and paid the preimum on 4-5-90 by two cheques; that during the night of 9-5-90 between 9 P.M. and 3 A.M. of 10-5-90, the stocks and the factory suffered damages by, reason of flood and inundation, which fact was immediately informed to the defendant by telegraphic message on 10-5-90, that the surveyor, appointed by the defendant verified the loss and assessed the same at Rs,. 10,74,303/- that the defendant failed to indemnify the plaintiff in respect of the loss so suffered; that the plaintiff was constrained to prefer a complaint before the State Consumer Disputes Redressal Com-mission, Madras wherein the defendant was directed to pay Rs. 9,77,623.92 p with interest arid costs; that on an appeal, the Apex Court directed that the dispute should be settled by a Civil Court and under such

circumstances, the plaintiff has instituted the present suit; that the defendant through its Development Officer had approached the plaintiff and made the offer for insurance; that he quoted the premium payable and it was accepted by the plaintiff, which fact has been clearly deposed by P.W. 1; that the most crucial aspect of the contract of insurance was the payment of premium of Rs. 19,950/- received by the defendant through the Development Officer on 4-5-90; that the said fact has been clearly mentioned in the accompanying letter under Ex. P1; that from the documents it would be clear that the premium was paid towards the coverage of salt works of the plaintiff at Tiruporur against the risk of cyclone, flood, inundation, etc., that the reading of Ex. P1 would make it clear that the payment has been received by the Development Officer on 4-5-90 without any reservation or qualification whatsoever; that the said amount of Rs. 19,950/- represents exactly the amount of premium that was payable by the plaintiff for the contract of insurance in question; that this fact has not been disputed by the defendant in the written statement; but on the contrary D.W. 1 has stated that he came to know later from the office that the premium collected by him was correct premium; that though D.W. 1 has subsequently changed his version by stating that he has indicated only a probable premium, the fact remains that the correct premium was quoted by him and received by him on behalf of the defendant insurance company; that though the contention of the defendant was that there was no concluded contract of insurance, it has encashed the cheques issued by the plaintiff as late as 11-5-90 despite the fact that the loss had occasioned prior to 10-5-90 itself, that the stipulation of the full premium and receipt of the same could only be at the culmination of the negotiations for insurance and assessment of the risk on behalf of the defendant by its Development Officer; that during the correspondence with the plaintiff, the defendant never made any attempt to return the premium, which they received from the plaintiff; that while the defendant ought to have in the normal course issued a policy of insurance, it was attempting to take advantage of its own failure to do so; to contend that it had received the payment from the plaintiff only as a deposit and not as premium; and that there was no concluded contract; that the defendant was obviously taking a fraudulent stand in order to escape from its liability; that it is pertinent to note that though the defendant has received the premium on 4-5-90, it had not issued the policy on 7-5-90, 8-5-90, 9-5-90 or 10-5-90 before receiving the intimation of loss; that had taken place on 10-5-90; that after receiving the intimation, the defendant has been conveniently making attempt to gain advantage of its own lethargy and inaction by disputing the existence of the contract; that in the light of the acceptance of the premium, factually and legally the defendant cannot deny the contract of insurance from 4-5-90; that it. has been well settled by the Judicial pronouncements that a policy of insurance ought to be issued from the date of the receipt of the premium; i.e. on 4-5-90 in the instant case; that it has also been well settled by the Supreme Court in 1984 ACJ 345 : AIR 1984 SC 1014, that the general rule is that the contract of insurance will be. concluded only when the party to whom the offer has been made, accepts it unconditionally and

communicate its acceptance to the person making the offer and whether the final acceptance is that of the assured or the insurer, however, depends simply on the way in which negotiations for an insurance has progressed; that in the present case, as seen from Ex.P1, the; plaintiff has been approached by the Development Officer, who had, discussions and received the full premium; that the plaintiff having accepted unconditionally the offer of the defendant to insure, there is a concluded contract of insurance; that it is relevant to point out that even in the written statement, the defendant has stated that in certain insurance schemes/portfolios, the insurance company makes offer through various persons and on acceptance by the concerned customer, the contract of insurance in such cases would immediately come into existence and however the cases in which the present suit is concerned is not under any such scheme and in such a case, the one with which the present suit is concerned, the offer should emanate from the customer; that if the above contention of the defendant is true, the burden of proof is entirely on the defendant to, show by positive evidence as to what are the schemes to which such process of formation of contract would apply and also that the salt insurance was excluded from such process, but the defendant has failed to place any such evidence; that the defendant has relied upon certain internal manuals, circulars and correspondences which are under Exs. D7, D8, D19, D20, D21 and D22 to make out as if the Regional Office alone had the authority to authorise the present Insurance and not the Development Officer or the Divisional/Branch Office; that the plaintiff was not aware of the existence of such documents nor had he been informed of the same by any Officer of the defendant prior to the payment of the premium or making any such claim, but it was only after the loss had occasioned, the defendant came up with such an unacceptable plea; that when the plaintiff was not put on notice of such procedure and documents, no reliance can be placed upon the same; that the Apex Court has well settled the legal position that even the conditions of policy not disclosed to the insured could not be relied upon by the insurance company to deny the liability and hence the defendant having acted through the Development Officer cannot be permitted so to rely upon such undisclosed internal documents to deny its liability; that the Development Officer in an insurance company is engaged in the task of procuring business for the insurer from the public; that D.W. 1 has admitted in his evidence that his duty is to procure the business for the defendant company and that in the course of his duty and official capacity, the Development Officer had discussions with the plaintiff, quoted the premium and received the same without any protest or reservation; that at the time of making the payment, plaintiff was not informed of the requirement of the approval by the Regional Office and thus the plaintiff was in fact dealing with the defendant itself considering the fact that the role and function of the Development Officer is to procure business for the insurance company; that the legal position under the above situation is that the terms of agency on the, contract between the insurer and their agents govern the relations inter se and insofar as the third parties are concerned unless they are fixed with the knowledge of these terms, they are entitled to proceed on the

footing that the agent has authority to do what in actual practice the insurer allowed him to do and hence the defendant cannot wriggle out of the concluded contract or liability by saying that the Development Officer was not competent to enter into a contract; that in any event, it is clearly established from the evidence that the Regional Office of the defendant had approved the Insurance; that the defendant has filed Ex. D24, wherein D.W. 3 Senior Divisional Manager has categorically admitted that on Thursday 9-5-90 on the arrival of the Regional Executives from tour, he contacted Mr. P. Sampathkumaran, Manager, Development over telephone and explained the submissions made by Mr. Ramaswamy of M/s. Maruthi Crystal Salt and on Instructions of Mr. Sampathkumaran D.W. 3 authorised the Branch Manager to issue the receipt, that nothing more, is necessary than the above document of the defendant to show that there was approval in the present case even from the Regional Office of the defendant for acceptance of the insurance; that D.W. 1 has corroborated the above documents in his cross-examination by stating that in the domestic enquiry, Mr. Krishnasamy established that he obtained approval of the Regional Office for this transaction; that the defendant has not examined any of the Regional Office Officials to dispute this evidence; that in the face of the above evidence, there cannot be any doubt that the contract of insurance was already approved and authorised by the Regional Office and hence the denial of contract of Insurance by the defendant was not only untenable but mala fide; that the defendant's plea was that the amount received from the plaintiff was kept in deposit and was not received as premium and if the amount was not collected towards premium, it need not issue any policy of insurance; that when the amount has been admittedly collected by the defendant as premium under Ex. P1, the burden of proof is entirely on the defendant to show by documentary evidence that It had kept the amount not as premium but only as deposit, but absolutely there is no evidence on the side of the defendant to establish the said plea; that D.W. 3 has admitted that only after getting clearance from Mr. Sampathkumaran he gave instructions to the Branch Manager to issue the receipt; that in Ex. P24 which is a note written by D.W. 3 to the Regional Office, he has mentioned "enclosing a copy of the receipt dated 9-5-90"; that D.W. 3 has stated that a receipt was issued. that he did not remember the receipt number, but he has denied the suggestion that the receipt was not issued; that the copy of the receipt would be available in the Office and whether a copy has been produced in the Court or not; that since the defendant has not produced any receipt or at least a copy of the same available with it, the Court has to necessarily draw adverse inference against the defendant; that it is pertinent to note that D.W. 3 has categorically admitted that there is no separate deposit account and the only one account available with the defendant is the premium account; that the defendant is also guilty of suppression, since it has failed to produce the original of Ex. P1 which is in its custody, despite the notice to produce the original, given by the plaintiff under Ex. P29, that on the said letter sent by the plaintiff, the officials of the defendant had made notings which would show that the payment made thereunder was accepted and instructions had

been made for issuing a receipt; that unfortunately the said notings in the xerox copies produced under Ex. P5 are illegible and not clear; that the further contention of the defendant is that the cheques which were borne out by records were given by the plaintiff to the officer of the defendant on 4-5-90 and it was actually given on 6-5-90 and anti-dated to 4-5-90; that such plea cannot stand even for a moment in view of the evidence of D.W.1, who has collected the cheques and who has categorically stated that the cheque was received on 4-5-90 only and that the charge that he had received anti-dated cheques was a false charge and hence such contention of the defendant has got to be rejected and thus the defendant approached with an offer to issue insurance to the plaintiff and after discussions and negotiations between the defendant through its Development Officer and the plaintiff, the premium was quoted and was accepted and thus there was a concluded contract. Added further the learned Counsel that the contention of the, defendant disputing the date of loss has got to be rejected; that according to the defendant the loss had not taken place on the night of 9-10/5/90 but much earlier on or before 7-5-90; that the defendant has relied on a copy of the telegram under Ex. P5 sent by the plaintiff to the defendant immediately on occurrence; that D.W. 3, Senior Divisional Manager has admittedly inspected the salt factory on 9-5-90 during the day as mentioned by him in his office note Ex. P24 dated 10-5-90; that if the loss had already taken place on 7-5-90 itself, D.W. 3 a responsible officer would not have omitted to mention such a serious aspect; that D.W.3 had sought approval for the insurance on 9-5-90 from the Regional Office and on receipt of the same, instructed to issue the receipt by the Branch Office; that the singular fact of D.W.3 having not mentioned anything about the loss having taken place despite inspection either in Ex. P6 or Ex. P24 alone is sufficient to prove that the loss had not taken place even during the day time of 9-5-90, but only thereafter as stated by the plaintiff; that the defendant is making an attempt to rely on certain letters under Exs. D2 to D4; that those documents could not be relied on in evidence without proving the contents of the documents through proper witnesses; that if the contents of the documents are to be taken as proved, it could be only by examining the person having custody of the originals thereof; that the contents of the documents have to be proved independently for the same to be relied upon or accepted; that the report of the second surveyor D.W. 5 relating to the date of loss is entirely based on such documents; and as such it should not be relied upon, that there is no material to establish that the loss has already occasioned prior to the night of 9-5-90; that the loss has been assessed by the first surveyor D.W.4 at Rs. 10,74,303/- which would establish the suit claim in full; that the defendant has made a feeble attempt to show that it is liable only for a lesser amount as per the report of the second surveyor under Ex.D15; that it is significant to note that the second survey or, has reduced the loss only by confining; the assessment to salt in the pans and not in the ridges; that there was no pleading in the written statement that its liability is restricted to only a portion of loss on the ground. that salt in ridges was not covered; that it is not the case of the defendant that the major quantity lost was not stocked in the

pans but only in ridges; that unless such dispute as to the quantity available at different places had been raised by, the defendant, it cannot reduce the loss that has been assessed by its own Surveyor D.W. 4 under Ex. D10 and; thus the defendant should not be permitted to point to a lesser liability; that it is very pertinent to note that the second surveyor D.W. 5 visited the factory more than four months after the loss had taken place whereas the first surveyor visited the factory within two days; that the very purpose of the second survey after four months after the loss that has occasioned was only with a mala fide intention on the part of the defendant to escape from the huge liability and thus from the above, it would be clear that the defendant has been vexatiously refusing to honour its liability under the contract of insurance, and indemnify the plaintiff in respect of the clear and established loss and thus the plaintiff has proved its claim beyond doubt, and hence the suit has got to be decreed as prayed for.

10. Countering to all the above contentions of the plaintiffs side, the learned Counsel appearing for the defendant insurance company with vigour and vehemence would submit that the plaintiff is not entitled to claim relief against the insurance company since there was no concluded contract of insurance; that the case of the plaintiff is that on 4-5-90, there was a concluded contract by virtue of the Development Officer of the defendant making an offer to insure the salt works which was accepted by them under Ex. P1 letter addressed to the defendant, the very same day enclosing their sister concern's cheque for Rs. 19,950/- handed over to D.W. 1; that it is pertinent to note that 4-5-90 was a Friday and the following days i.e. 5-5-90 and 6-5-90 were holidays for the defendant; that the cheque has been handed over after the office hours viz. 7 PM i.e. at 19.00 hrs., that in para 6 of the plaint it is admitted that on 7-5-90 they forwarded the letter Ex. P3 with prescribed proposal form wherein it is admitted that on the day when they filled in the proposal form, there were heavy rains and cyclone at Thiruporur where the works of the plaintiff is situated between 7th and 12th May, 1990; that there was sudden entry of water into the salt platforms where salt stocks were kept and the actual loss took place after 9 PM on 9-5-90 and before 3 PM on 10-5-90, that the main contention of the insurance company is that there was no concluded contract on 4-5-90 when the Development Officer received Ex. P1 letter; that the risk operated on 7-5-90 itself before the receipt of the cheque; and the proposal duly filled in, but the plaintiff is silent about what transpired during 7th, 8th and 9th May, 1990; that the plaintiff has deliberately with ulterior intention suppressed the events which transpired between those dates; that the salt works of the plaintiff was damaged by cyclone and heavy rains before the acceptance of the offer made by the plaintiff inasmuch as the very proposal form reached the defendant only after the operation of the peril and at no point of time the offer of the plaintiff was accepted by them and hence there was no concluded contract; that it is true that there was a survey in respect of the damages because the defendant was anxious to ascertain the extent of the loss without prejudice to their legal rights and contentions and hence a surveyor was deputed at the first instance on

12-5-90 itself, who assessed the loss as per Ex. D10; that subsequent scrutiny of the proposal from Ex. P3 received thereafter under the covering letter Ex. P4 7th May 1990 by recorded delivery, it was clearly understood that the intention of the insured was only to insure the salt on all platforms and not their works and salt works, as originally indicated in Ex. P1; that in order to ascertain the quantity of salt stocks on the platforms, the defendant under Ex. D13 wrote to the Deputy Superintendent of Government of India, Ministry of Industry, Covelong Salt Factory, Kelampakkam seeking specifically information as to when the excess water due to cyclone washed away the salt stock of the plaintiff and details regarding the production of salt stock during the relevant period; that the said Department by reply under Ex. D14 has confirmed that the salt on platform as 1100 metric tonnes and also confirmed that the plaintiff lost 7992 metric tonnes of salt which was lying on ridges of crystallizers of salt pans as unstored salt during flood/cyclone occurred on 7th and 8th May, 1990; that this necessitated the appointment of the second surveyor to go into the question of what was lost by the plaintiff which was on platforms as originally intended to be covered and reflected in the proposal Ex. P3; that the second surveyor gave his extensive survey report after verification of the records as exhibited in Ex. D15; that in view of the assertion, the plaintiff suffered loss only on 9-5-90, the surveyor reckoned the loss of the plaintiff in the light of the particulars furnished in Ex. D14 issued by the Public Authority monitoring the production and distribution of the salt manufactured, assessed the loss at 749 metric tonnes being the closing stock on platforms at, Rs. 51,793.56; that the defendant were not at all liable or responsible for the alleged loss and since the loss has occurred on 7th and 8th May 1990, there was no consensus between the parties as to what was to be insured; that consequently even if by any remote possibility, the defendant should be held liable, for the loss sustained by the plaintiff, their claim could be only with reference to the salt stocks on the platform as reflected in the proposal form which was received by the defendant insurer much after the operation of the peril in question; that at any rate, the plaintiff was not entitled for any relief as sought for Added further, the learned Counsel that there was no concluded contract on 4-5-90 as alleged by the plaintiff; that in the normal practice, every contract of insurance shall be concluded only when there must be an offer put forward by one party to the contract and acceptance by the other; that an offer is usually made by the proposer who completes, the proposal form and sends it to the insurance company for their consideration; that the plaintiff has not explained as to how the plaintiffs case is abnormal or extraordinary to make a deviation from the normal practice of handing over a completed proposal form for due consideration by the defendant; that on the contrary, the plaintiffs contention that there was a concluded contract was thoroughly nullified by the deposition of P.W. 1 a Director in their company, who has deposed that the Development Officer Mr. Venkatesh only acknowledged the receipt of the cheques but he has proceeded to say that the plaintiff has submitted and filled up a proposal form the next working day i.e., on 7-5-90; that Ex. P3 is the office copy of the proposal form while Ex. P4 is the office copy of the covering letter; that he

has further conceded that a proposal form is made as a prelude for concluding a contract of insurance and proposal form is made by the insured to the insurer; that they have not asked for any written offer from the defendant for concluding the contract; that the witness further added that he was not aware personally as to what transpired during the concluding portion of the discussion; that he knew that the Development Officer informed Mr. Ganapathysubramanian that a proposal form was to be filled in and signed by the plaintiff for considering the insurance cover for plaintiff's works; that he knew what was a cover note; that Ganapathysubramanian asked Mr. Venkatesh to issue a cover note; that he told him that it would be issued shortly by the company; and thus it would be clear from the admissions of P.W. 1 that the Development Officer did not make an offer, but he has insisted upon a proposal form in the format to be signed by the plaintiff for consideration by the defendant company; that though a cover note was asked for, he made it clear that only the company could issue a cover note after, considering the proposal and thus the above admission of P.W. 1 clearly nullified the theory of concluded contract on 4-5-90 propounded by the plaintiff to suit their convenience totally contrary to the true state of affairs that it is also admitted by P.W.1 that he checked with Mr. Ganapathysubramanian who signed Ex P1 regarding the negotiations and that he was told negotiations were completed; that the witness has further admitted that he did not know when and where Ex. P1 was typed; that he has further agreed the signatory to Ex. P1 was not only the author of Ex. P1; that he has further stated that a proposal should contain the details of cover/risk required to be covered, and other information/answers as called for in the proposal form; that he has further admitted that there was no reference to the conclusion of contract in Ex. P1 specifically; that it is pertinent to note that the premium cheques two in numbers reflected under Ex. P1 were for insurance cover both for salt works and salt stocks, but P.W.1 has admitted that Ex.P4 is the covering letter with which Ex. P3 proposal form was sent by recorded delivery; that there was no proof of delivery in person on 7-5-90; that further he has admitted that he knew the proposal form was given to the Managing Director for perusal and approval; that this admission would go to show that the letter dated 4-5-90 Ex. P1 was a formal request to be followed with a proper proposal to be signed by the competent authority viz., the Managing Director of the plaintiffs company and that this would belie the contention of the plaintiff that there was concluded contract which came into existence on 4-5-90; that apart from the incompetence on the part of the persons who signed Ex. P1 on behalf of the plaintiff, the Development Officer who received the letter Ex. P1 was not competent to represent the defendant insurance company to conclude any contract, which has been specifically pleaded by the defendant in the written statement; that the insurance in respect of the salt stocks and salt works could be concluded only after getting approval from the Regional Office of the defendant company and after due inspection by the Regional office as per the circular dated 5-6-84; that the said circular has also been filed by the defendant's side that the Development Officer like D.W. 1 cannot enter into a contract without a proper proposal for due consideration by

the competent authority; that D.W.1 has deposed that he was not familiar with the rate of premium; that he has given only an approximate rate after discussion which was only an rough indication to the particular reference to salt works as told by the plaintiff; that he has further con-firmed that there was no request for immediate coverage and that he had no power to issue any cover note in respect of salt insurance; that there was no authority for the development Officer to make an offer at all; that he was authorised only to invite the proposals from the prospective clients and customers which would be very clear from Ex.D19 a letter dated 1-5-84 from defendant's Head Office to the defendant's Regional Office pursuant to which the circular Ex. D8 was issued; that the abovesaid documentary evidence coupled with the oral evidence of. the Development officer would clearly prove that the normal practice of the proposal should be made by the insured to the insurer for due consideration only after an acceptance could be communicated for bringing into effect a concluded contract and thus the contention of the plaintiffs side that there was a concluded contract on 4-5-90 was with an ulterior motive; suppressing the truth as regards the very proposal reaching the defendant insurer after operation of the peril; added further the learned Counsel that Ex. P1 was incomplete; that it refers to a discussion with the Development Officer D.W. 1; that it was a request for proposal form and other documents; that it was a confirmation of the enclosures for issue of cheques for a policy; that a perusal of Ex. P1 would indicate that it is silent about the offer by D.W. 1 Development Officer or the acceptance or a request for a cover note; that even Ex. P1 is incomplete offer; that in the subject portion of Ex. P1 originally it is typewritten as insurance pertaining to salt works and the salt works is valued at Rs. 14.00 lakhs which is inserted; in the manuscript and whether the value of Rs. 14.00 lakhs inserted was for salt stocks alone or inclusive of both stocks and works is not clear; that it is not specific as regards the location of the salt stocks; that the location of the salt stocks should be specifically indicated in a completed proposal, form; that a perusal of the proposal form would make it clear and show that Ex. P1 is not an offer; that Ex. P1 is only a request for issue of a proposal form; that it was admitted by P.W. 1 that a proposal form should be filled in as a prelude for a contract of insurance; that from the perusal of Ex.P3 proposal form, it would be clear that in the concluding portion of the proposal form, there is a declaration; that in the proposal it has been declared by the plaintiffs Managing Director only on 7-5-90 that they desire to effect an insurance as described in the proposal form and also agreed that the said proposal and declaration found in Ex. P3 alone should be the basis of contract between the plaintiff and the defendant; that there is an indication in the said declaration that they agreed to accept the policy subject to the condition prescribed by the company; that the proposal was sent with Ex. P4 covering letter which admittedly was despatched by recorded delivery; that at the bottom of Ex. P4 it is stated check proposal form with Managing Director and issue covering letter O.K.; that this remark was made by P.W. 1 who was then only a coordinator, and who also deposed that the Managing Director was the only person who is competent to sign on behalf pf the company and under the

above facts and circumstances, it would be evident that Ex.P1 was an incomplete offer followed by a complete proposal, which was despatched with the covering letter only on 7-5-90; that the said covering letter would have reached only after 8-5-90; that P.W. 1 has also confirmed that they have no proof of delivery of the said communication Ex. P4; that it has to be pointed out that the plaintiff in no one of the communications from 4-5-90 till 10-5-90 has made mention of the alleged concluded contract; that Ex. D9 was a reply by the plaintiff dated 10-5-90; that the plaintiff has conveniently ignored to produce this document because it contained certain crucial facts contrary to the contention of the plaintiffs side; that in Ex. D9 it is clearly stated that on 4-5-90, there was conclusions of negotiations to cover their properties including stocks; that this would indicate every on 10-7-90, they were not sure of the subject matter of the insurance whether it was only the salt stocks or the salt, works which would include earth work and mud work also Added further the learned Counsel that the proposal was never accepted by the defendant for the simple reason that the peril sought to be insured under the proposal commenced its operation even prior to the date of completed proposal form being submitted to the defendant for due consideration; that even as per the admissions in the plaint, it is clear that there was heavy rains and cyclone at Thiruporur between 7-5-90 and 12-5-90; that Ex. P22 is the weather report issued by the Meteorological Department for the period between 4-5-90 and 9-5-90; that the wind speed on 4th, 5th, 6th, 7th and 8th May 1990 was progressively increasing from 31 KMPH to 76 KMPH on 24 hours; that this would clearly indicate that there was worst cyclone which took place between 5th, 6th, 7th and 8th because the rainfall recorded at 8.30 hrs. on 6-5-90 would indicate 24 hrs. from 8.30 hrs. on 5th morning; and thus this would be evidence that there was worst weather condition on 6th and 7th May 1990, that taking into consideration the weather report and the admissions made by the plaintiff in Exs. D2 to D6, it would be clear that the plaint pleading that the loss of the salt stock took place on 9-5-1990 between 9PM and 3 AM on 10-5-90 was totally false and it has been stated to suit their illegal claim that the loss has taken place after the acceptance of the cheque on 9th evening pursuant to the persuasions of P.W. 1 as recorded in Ex. P6 dated 10-5-90; that Ex. P24 was marked before the State Consumer Disputes and Redressal Commission; that the defendant did not object to the document being marked though it is an inter office correspondence because it was reflecting the true state of affairs; that P.W. 1 has categorically admitted that he was being apprised about the developments in the factory premises and that he also knew about the developments in the factory both on 7th and 8th May, 1990 brought to his notice by the Works Manager; and he did not inform about the exigencies that were encountered at the factory on 7th and 8th May 1990, recorded in Exs. D2 to D4 when the Senior Divisional Manager speaks to him in phone and on 9th morning indicating that he wanted to inspect the factory; that he fairly conceded that the proposal for insurance cover was pending with the defendant in respect of which the Senior Divisional Manger spoke to him; that it is pertinent to note that Exs. D2 to D5 were marked through P.W. 1 and he has admitted that the Works

Manager is the best person to testify the actual occurrence at the works and that Ex. D5 contains the narration of events by the Works Manager, that the loss took place on 7th night and before 8th afternoon and from his evidence, it would be clear that the plea of the plaintiff that the loss took place on 9th night is absolutely false; that all those documents have emanated from the Government office and the contention of the plaintiff that those documentary evidence should not be considered by the Court was made since the said documentary evidence would prove that the plaintiff has come to Court with unclean hands and thought it fit to misrepresent at the time of occurrence of peril on 9-5-90 only to synchronise it with the date of acceptance of the cheque in the deposit account and thus from the evidence, the defendant has proved that the peril sought to be insured operated even before considering the proposal made by the plaintiff; that in India there is a statutory bar on the part of the insurer in assuming risk until the premium payable is received by the insurer or guaranteed to be paid by such person in such manner and within such time as may be prescribed or unless or until deposit of such amount as might be prescribed is made in advance in the prescribed manner; that Sub-section 2 of Section 64VB of the Insurance Act provides for assumption of risk in respect of which premium can be ascertained in advance on the date of payment of premium in cash or by cheque to the insurer and in the instant case no premium was received by the insurer until 9th evening when the cheque was received; that in the absence of payment of premium and in the absence of assumption of risk as content plated u/s 64VB of the Act, the defendant should not be held liable for the reported loss. Relying upon a judgment of the Apex Court in AIR 1984 SC 1014 the learned Counsel would urge that there was no assumption of risk until there was payment of premium; that any, material change which takes place should be notified to the insurer, that in the instant case, even assuming that Ex. P1 dated 4-5-90 was handed over to the Development officer after office hours at about 19.00 hrs, in view of the following holidays before Ex. P1 could be tendered in the office of the insurer, there was a material change inasmuch as the risk commenced operation and as a matter of fact on 7th and 8th May 1990 itself the works of the plaintiff suffered extensive loss; that from the evidence it would be very clear that P.W.1 notwithstanding information from his works Manager as to such loss has suppressed the facts and persuaded the Divisional Manager to accept the cheque tendered which resulted in the acceptance of the cheque on 9th evening on deposit account and this would be indicative: of the absence of Uberrirriafides. Making further submissions, the learned Counsel for the defendant would submit that the plaint was signed by P.W. 1 who was a Director on the date of the presentation of the plaint and who was not the competent person to institute the suit; that even for a proposal form if the Managing Director was the final authority in respect of the suit, none else could sign and verify the plaint and institute the suit unless there is a special resolution in favour of a particular person empowering him to do such act on behalf of the company. The learned Counsel replying on a decision reported in Nibro Ltd. Vs. National Insurance Co. Ltd., would urge that there is no pleading or proof as regards competence of P.W.

1 to institute action on behalf of the plaintiff company which is fatal and for all the reasons, the plaintiffs claim has got to be rejected and the suit is liable to be dismissed.

11. In answer to the contentions of the defendant's side, the learned Counsel for the plaintiff would submit that salt works includes salt stocks also that the plaintiff was not at all aware of tariff; that exact premium was calculated by the defendant; that the parties clearly agreed about the subject matter insured; that most importantly, rain and cyclone cannot be suppressed; that absolutely no suppression of any fact at any time; that Section 64 of Insurance Act supports the case of the plaintiff.

12. As narrated above, the learned Counsel appearing for the parties relied on the evidence both oral and documentary and made elaborate deliberations in respect of their sides. The claim of the plaintiff is based on the fact that there was a concluded contract on 4-5-1990 between the plaintiff salt company on the one side and the defendant insurance company on the other. The case of the plaintiff is stoutly contested by the defendant on the ground that there was no concluded contract at all and hence no liability can be fastened on the defendant. Much reliance was placed on Ex. P1 among various documents filed by both parties, apart from the evidence of P.W. 1 Mr. T. Rarnaswamy, a Director in the plaintiff's company aid the evidence of D.W. 1 Mr. T.M. Venkatesh, who was a Development officer working in the defendant insurance company during the relevant period.

13. It is contended by the plaintiff s side that there was an offer by the defendant through D.W. 1; that there were discussions and negotiations; that a premium of Rs. 19,950/- was quoted by D.W. 1 and tire said offer was accepted by P.W. 1 and the said premium was paid on 4-5-90 by two cheques and thus there was a concluded contract and the same will be evident from the contents of Ex.P1 letter. Before going into the contents of Ex. P1 letter, it is necessary to look into the sequence of events which preceded Ex. P1 letter. In order to prove this contention that there was a concluded contract on 4-5-1990, the only witness examined by the plaintiff is P.W.1 and hence his evidence has got to be carefully scrutinised. It is not in controversy that 4-5-90 was a Friday and 5-5-90 and 6-5-90 were holidays to the defendant insurance company. According to P.W. 1, in May 1990, he was a coordinator overseeing the activities of the plaintiff company and thus he was fully aware of the plaint transactions. Though it is stated by the witness that a policy decision was taken at Board level and it was decided to insure the salt works of the plaintiff at Tiruporur for Rs. 14.00 lakhs, no document is filed by the plaintiff's side. He has deposed that on 3-5-90, Mr. Venkatesh visited their office and indicated the premium amount as Rs. 19,950/- which was accepted and on 4-5-90 two cheques one for Rs. 10,000/- and the other for Rs. 9,950/- were given to him and the original of Ex. P1 letter was given and DVW.1 Development Officer acknowledge the receipt of the cheques. From the evidence of P.W.1, it cannot be disputed that he had enough experience

to deal with the insurance matters in his past service and he thoroughly knew the process of taking insurance cover. He has admitted that the proposal is made as a prelude for concluding a contract of insurance; that he knew D.W. 1 for about 10 years before he took charge in the plaintiff company and DW1 was working with him, when they were in Kothari's; that on 3-5-90 P.W.1 had no designation in the plaintiff company but he was only a coordinator; that D.W. 1 made the offer to Mr. L.N. Ganapathysubramanian, a Director of the plaintiff company; that P.W. 1 was present in a couple of discussions; that there was no offer in writing; that they did not ask for any written offer from the defendant for concluding the contract; that the two cheques issued were drawn by Mr. Ganapathysubramanian on behalf of the plaintiff; that he did not know exactly who signed those two cheques and from which account those cheques were drawn; that he was not aware personally as to what transpired during the concluding portions of the discussions; that D.W. 1 informed Mr. Ganapathysubramanian that the proposal was to be filled in and signed by the plaintiff for considering the insurance cover for the plaintiffs work; that he was not able to recollect as to who drafted Ex. P1 letter or when and where it was typed; that he was not present in the office when Mr. Ganapathysubramanian prepared and signed Ex. P1; that he did not witness the process of receiving the original of Ex. P1 by D.W. 1 that he checked with Mr. Ganapathysubramanian as to what was the urgency in handing over Ex. P1 at 7 PM after the office hours; that according to Ex. P1, it has been reflected that the cover required is in respect of salt works for the plaintiff at Tiruppur; that in Ex. P1 there is an insertion in the subject portion salt stocks valued at Rs. 14 lakhs, but in para 2 of Ex. P1 there is a reference only to salt works and not salt stocks; that at the time of handing over of Ex. P1 to D.W. 1 no proposal form was given by the plaintiff; that there is no reference in writing regarding the conclusion of the contract in Ex. P1 specifically. Thus from the evidence of P.W. 1 much relied on by the plaintiff, it would be abundantly clear that he is unable to precisely say what was the concluding discussions between D.W.1 on the one side and Ganapathysubramanian Director of the plaintiff on the other side. The witness had no knowledge about the contents of Ex. P1, who typed the same, who signed the cheques and when they were handed over. While it is admitted by P.W.1 that it was Mr. Ganapathysubramanian who had final discussions with D.W. 1 and especially when Ex. P1 communication was addressed to the defendant insurance company by Ganapathysubramanian, the plaintiff should have examined Ganapathysubramanian to prove those facts, but has failed to do so The Plaintiff had not come with any explanation why and under what circumstances Ganapathysubramanian has not been examined. As narrated above, the evidence of P.W.1 could neither be useful to nor be relied upon by the plaintiff to support its contention that there was a concluded contract between the plaintiff and the defendant and it is also evidenced by Ex. P1.

14. The defendant insurance company 1 has examined Mr.T.M. Venkatesh, Development Officer as D.W. 1, who admittedly received the two cheques along

with Ex. P1 letter from the plaintiff company. He has. categorically deposed that on 4-5-90, Ganapathysubramanian was present who called him for insuring the salt works and that when the discussions were progressing they wanted to know the approximate rates of premium and since he was not familiar with the rates of premium payable, he told that he had to refer with his higher officials that after looking into a copy of the insurance policy issued by the defendant company to one M/s. Tamil Nadu Salt Corporation, he gave approximate rate of premium for the salt stocks to be issued but he clearly informed that it was only a provisional rate of premium and that they were to give a proposal for the cover; that no proposal form was given on 4-5-90; that he was asking the plaintiff for the details such as how much salt were stored in the salt platforms and other details normally to be furnished in the proposal form; which Mr. Ganapathysubramanian was not in a position to furnish on 4-5-90; that Mr. Ganapathysubramanian informed him that he has to consult the Works Manager to ascertain the details; that on 4-5-90, the plaintiff company handed over Ex. P1 letter and two cheques along with the letter; that there was no request from Ganapathysubramanian for an immediate cover or insurance on 4-5-90; that Ex. P1 was handed over to him at 7 PM on 4-5-90; that Ganapathysubramanian did not request for a cover note or a slip from the defendant company; that in respect of salt insurance, the witness had no power to issue cover note or insurance; that he did not assure or inform Ganapathysubramanian that the defendant company will give the cover from 7.00 PM on 4-5-90 itself; that in Ex.P1 there is a reference that the proposal form was to be forwarded; that referring to other documents in Ex. P1 they, meant the policy, receipts and other documents; that it was not in practice to issue insurance policy in the absence of duly filled up proposal forms; the purpose of taking the proposal from plaintiff company was to process, scrutinise and assess the viability of issuing a policy by the defendant company; that for insurance cover of the salt works and salt stocks, the defendant company would require the production details of the previous years; that there was no reference as to the production details in Ex. P1; that he handed over Ex. P1 and two cheques to his office at about 10.00 AM on the next working day. thus from the evidence of D.W.1, who was admittedly present with Ganapathysubramanian at the time of discussion and handing over of Ex.P1 along with two cheques to him it would be clear that he has neither given any assurance nor concluded a contract by receiving the cheques. He has not issued any cover note. But he has made it clear to Mr. Ganapathysubramanian, the need for filling up a proposal form with all detailed particulars as to the subject matter to be covered, to be forwarded to the higher officials. At this juncture, it would be more appropriate to look into the contents of Ex.P1, which reads as follows:

May 4, 1990

The Oriental Insurance Co Ltd. City Branch Office No. 1 68 Nungambakkam High Road, MADRAS 600 034.

Dear Sirs:

Insurance Policy--Coverage of risks of cyclone, flood; inundation, theft. SRCC risks, etc. pertaining to our salts works at Tiruporur--Salt stock valued. at Rs. 14 lakhs

This has reference to our discussions today With your Mr. T.M. verikatesh, Development Officer.

As requested, please send us the proposal forms and other documents in due course, in the mean time, Kindly arrange to have the risks of cyclone, flood, inundation, theft SRCC risks, etc, covered in respect of our salt Works at Tirupprur, with immediate effect,

We are enclosing two cheques issued by M/s. Sree Rayalaseema Alkalies and Allied; Chemicals Ltd., in your favour on Indian Bank, Raja Annamalaipuram Branch, Madras-28, as detailed below, towards the premia payable in respect of the policy covering the above risks to be issued by you:

1. Cheque No. 685234 dt. 4-5-90 for Rs. 10,000/- 2. Cheque No. 685235 dt. 4-5-90 for Rs. 9,950/- _____ Total premia payable. Rs. 19,950/-

Kindly acknowledge receipt and advise us of the action taken. Please also arrange to issue the policy, as aforesated, at the earliest.

Thanking You, Yours faithfully,

For MARTHI CRYSTAL SALT CO. LTD.

Received the above 4-5-90 19.00 hrs.

L.N. GANAPATHISUBRAMANIAN DIRECTOR Enc Two Cheques.

From the perusal of the above document, it is crystal clear that Ex. P1 is dated 4-5-90 and it is signed by Mr. L.N. Ganapathisubramanian, Director for the plaintiff company and addressed to the Oriental Insurance Co. Ltd, City Branch No. 1, Nungambakkam High Road, Madras. Admittedly the said document along with the two cheques for Rs. 19,950/- were handed" over to D.W. 1 Development officer, who has been examined by the defendant. Though this document is relied on by the plaintiff to a great extent, they have not chosen to examine Mr. Ganapathisubramanian, without whose evidence, the plaintiff cannot be permitted to say anything as to what transpired at the time of Ex. P1 As narrated above, the evidence of P.W.1 cannot be relied on by the plaintiff and in particular with reference to Ex. P1. Ex. P1 letter was not addressed to D.W. 1 but the Oriental Insurance Company.

15. Admittedly D.W.1 a regular official of the defendant insurance company was in the office of the plaintiff company at 7 PM on 4-5-90 i.e. outside the office hours of the parties. It is not the case of the plaintiff that inspection of the salt factory was made by! any official of the defendant insurance company either before Ex. P1 letter or the handing over of two cheques at 7 PM on 4-5-96. Ex. P1 does not speak about any concluded contract either, or the acceptance of the

offer or acknowledgment of the receipt of the premium. It is true that D.W. 1 has made an endorsement "received the above 4-5-90 19.00 hrs." in Ex. P1. But D.W.1 has explained how and under what circumstance he received the two cheques and made the endorsement. It is pointed out in Ex. P1 that discussions were made on 4-5-90 only/with D.W.1 and with no other officials of the defendant company, In Ex. P1 there is a reference that the proposal form was to be forwarded and the policy, receipts and other documents are referred to as other documents. Nowhere the details of the salt works or production of the plaintiffs factory and other necessary details are mentioned in Ex. P1. The relevant paragraph in Ex. P1 viz. "As requested please send us the proposal forms and other documents in due course. In the meanwhile kindly arrange to have the risks of cyclone, flood, inundation, theft, SRCC risks etc covered in respect of our Salt Works at Tiruporur, with immediate effect. We are enclosing two cheques.... Kindly acknowledge receipt and advise us of the action taken; Please also arrange to issue the policy as aforesaid, at the earliest" would go to show that it was in the nature of an offer made by the plaintiff company to the defendant along with two cheques with approximately calculated premium and with a request to acknowledge the receipt of the same and to arrange to cover the risk. In Ex. P1 in the subject portion it is originally typewritten as Insurance pertaining to Salt works and subsequently salt stock valued at Rs. 14 lakhs was inserted by pen, and whether the value of Rs. 14 lakhs inserted was for salt stocks alone or inclusive of both stocks and works is not made known in Ex. P1.

16. Admittedly, the plaintiffs Managing Director has made his declaration in the proposal form Ex. P3 only on 7.5.90, which runs as follows:

We hereby declare and warrant that the above statements are true and complete, we desire to effect an insurance as described here with the company and we agree that this proposal and declaration shall be the basis of the contract between us and the company and we agree to accept a policy subject to the condition prescribed by the company.

Thus from the above declaration as found in Ex. P3, the plaintiff has given the statements and has agreed that the proposal and declaration should be the basis of the contract between the parties. The court is very to Ex. P1 under Ex. P3 stating that the commencement of the coverage was from the time of Ex. P1 but nothing is found therein. It has got to be stated that when Ex. P1 letter and two cheques were handed over by Mr. Ganpathisubramanian to D.W. 1, he was not aware of the terms and conditions of the policy either, or the details of the subject matter to be covered by the contract. As stated above, the only witness examined by the plaintiff viz. P.W. 1 has admitted that the proposal should be filled in as a, prelude for a contract of insurance. The learned Counsel appearing for the defendant brought to the notice of the Court that despite number of communications between the parties 4-5-90 till 7-7-90, in no occasion, the plaintiff has stated that there was a concluded contract but the plaintiff has no explanation in this regard. In order to prove that a binding contract of insurance

was concluded, there should be an offer put forward by one party to the contract and an acceptance of the same by the other party. It cannot be disputed that the usual practice is that an offer is made by the proposer who completes the proposal form and sends it to the insurer for their consideration, which should be followed by a valid acceptance. In the instant case, Ex. P3 proposal containing all the material terms was put forth by the plaintiff only on 7-5-90 alongwith the covering letter as found under Ex. P4. An acceptance would be of no effect unless the parties have agreed upon every material term of the contract they wish to make. In a contract of insurance, the definition of the risk to be covered the duration of the insurance cover, the amount and the mode of payment of premium and the amount of insurance payable in the event of loss, all must be stated only then, it can be stated that there was consensus ad idem. The commencement and duration of the risk must be agreed and it should be mentioned in the document. Looking from the above legal position, Ex. P1 cannot be called either there was a valid contract or there was a valid acceptance by the defendant company, but it could be termed only as an offer by the plaintiff company.

17. Insofar as the subject matter of insurance is concerned, there should not be any ambiguity and if there was any ambiguity in respect of the subject matter, it could be safely concluded that there was no contract of insurance at all. As stated above in Ex. P1 in the subject portion, it is typewritten appertaining to our salt works at "Tiruporur and it is further written by ink "salt stocks valued at Rs. 14 lakhs" But in para 2 of Ex. P1 it is stated "in respect of our salt works at Tiruporur"., In Ex. P3 proposal form in Clause 6 it is stated "Indicate Sum insured proposed for Insurance: a) Earthwork/(sic)--Nil; b) stock of salt--i) No. of platforms: 24 Nos.; ii) Approximate No. of (sic) on each platform : 240; iii) Total sum assured on salt on all platforms : 10,000 M.T. Rs. 14 lakhs." It is specifically pleaded in para 5 of the plaint that "offering to effect insurance of their salt works at Tiruporur. It then took a policy decision to insure various risks for a sum of Rs. 14.00 lakhs." Nowhere in the plaint, the plaintiff has stated that the subject matter of insurance was only the salt stocks in its factory. It cannot be disputed that salt works would include earth work, mud work stock of salt etc. In Ex.P1 it has been inserted by pen that the salt stocks are valued at Rs. 14.00 lakhs. But in Ex. P3 proposal form, earth work and mud work are not shown as the subject matter of insurance, but the stocks of salt only is shown and valued at Rs. 14.00 lakhs. P.W.1 when questioned in this regard, deposed that the salt works is different from the salt stocks and therefore under the insurance policy, the subject matter would be salt works or salt stocks or both and it was only the salt works and not the salt stock what is referred to in para 5 of the plaint. A comparison of Exs. P1 and P3 would clearly reveal that the subject matter under the coverage is not the same. Thus all would go to show that the plaintiff cannot urge that Ex. P1 is clear in respect of the subject matter of insurance but no doubt it is ambiguous. Hence from that angle also, it cannot be termed that there was a concluded contract.

18. The learned Counsel appearing for the plaintiff with vigour and vehemence would stress that the defendant insurance company after receiving the premium under two cheques on 5-6-90 through D.W. 1 should not be permitted to say that there was no concluded contract. It is true that D.W. 1 has received the two cheques for Rs. 19,950/- on 4-5-90 at 7 PM from Mr. Ganapathisubramanian, a Director of the plaintiff company along with Ex. P1. D.W.1 has been examined by the defendant to explain the fact that under what circumstances he received Ex. P1 along with two cheques. The plaintiff has not examined Mr. Ganapathisubramanian with whom D. W. 1 had discussions and who was the signatory under Ex. P1 and who handed over the two cheques to D.W. 1. The plaintiff is unable to put forth any reason or circumstance why the evidence of D.W. 1 has to be disbelieved. Relying upon a decision reported in *Oriental Fire and General Insurance Co. Ltd. Vs. Panvel Industrial Co-operative Estates Ltd.*, , the learned Counsel appearing for the defendant; would urge that the mere payment of premium amount and its acceptance by D.W. 1 cannot amount to concluded contract of insurance and there should not be any assumption of risk on the part of the insurance company. In that decision it has been held thus:

In the present case, the agent of the appellant insurance company approached the respondent for the purpose of insuring his shed and ascertained the premium. A cheque towards premium was given to the agent by the respondent. The agent was not ready to issue the cover note unless the proposal form was duly filled in and the site was inspected by him to enable him to know the nature of the risk. Therefore, no cover note was issued. On the next day of the acceptance of the cheque, the shed in question caught fire and was damaged extensively. The cheque was not encashed, but it was returned to the respondent after about 4 months. There was no full disclosure of all the material facts on the part of the respondent to enable the appellant to accept the risk. There was no agreement between the parties on the fundamentals of insurance proposed particularly regarding the nature of the risk, the period of insurance and the rate of premium. The appellant declined to pay damages suffered by the respondent on the ground that it had not accepted the risk.

Held that there was no concluded contract of insurance between the parties, nor was there any absolute and unqualified acceptance of risk by the appellant insurance company so as to foist liability upon it. There was no implied or express acceptance of alleged proposals by the appellant. There was no positive conduct on the part of the appellant indicating such acceptance. Mere ascertainment of premium and acceptance of cheque towards premium or keeping the cheque for 4 months would not amount to implied acceptance by conduct and a concluded contract. Similarly, it is the recognised practice to issue cover-notes which ordinarily incorporate the terms and conditions of policy, though it is a stop-gap arrangement. Therefore, it was not correct to hold that as there was no provision in the Insurance Act, 1938 in respect of cover-note, it cannot be considered to be a requirement.

19. In the instant case, it is evident that D.W.1 has received two cheques for Rs. 19,950/- along with Ex.P1. It is contended by the plaintiff's side that the receipt of the premium of Rs. 19,950/- under two cheques would be indicative of a concluded contract, But the Court is of the view that by the mere payment of premium amount and the receipt of the same by D.W. 1 cannot amount to a concluded contract of insurance, in the absence of any material or evidence to show that there was a concluded contract. The mere ascertainment of premium and acceptance of cheque towards premium or keeping the cheque for long time would not amount to the implied acceptance by conduct or a concluded contract. In the case cited above, as a stop-gap arrangement, a cover note was given by the insurance company to the insured. But in the instant case not even a cover note was given to the plaintiff. In the absence of a concluded contract of insurance and in the absence of any absolute and unqualified acceptance of the risk by the defendant insurance company, it would be very difficult to foist the liability upon it. A careful scrutiny of Ex. P1 and the evidence adduced by both parties in that regard and other circumstances would be indicative of the fact that there was no concluded contract between the parties. Needless to say that the contract of insurance is a contract uberrimafides. By reason of the said principle, a duty is cast upon the assured to disclose any material alternative in the risk which comes to his knowledge and notice at any time upto the conclusion of the contract. The material means in the context anything which would influence a prudent insurer in deciding whether to accept the risk and on what terms. The assured is also obliged to correct, insofar as it has ceased to be true any material representation of fact made by him to the insurer in negotiation for the insurance. After careful scrutiny of the available evidence, the court is of the considered view that the plaintiff has suppressed the material facts and has not disclosed the alteration in the risk despite his fullfledged knowledge before the conclusion of the contract, and thus there was a thorough lack of bona fide on the part of the plaintiff. 20. Ex. P1 was an offer made on 4-5-1990 by one of the Directors of the plaintiff company along with two cheques for approximately calculated premium. Ex. P3 proposal form dated 7-5-90 was sent by the plaintiff along with Ex. P4 covering letter. P.W. that categorically admitted that he did not (know) whether there was any proof to show that Exs. P3 and P4 were despatched by recorded delivery on 7-5-90 and in the normal course it takes atleast 24 hours by postal department to deliver the articles to the addressee even if it is in the local area. It has been specifically pleaded in the plaint that a damage to the salt stock took place at 9 PM on 9-5-90 till 3 AM on 10-5-90. Had it been true that damage took place only after 9 PM on 9-5-90, the petition to, the Tashildar would have been given only after the dawn of 10-5-90. P.W. 1 has categorically admitted that there was cyclone from 7-5-90 which was preceded by equally and rainy water for a day. He has fairly admitted that Ex. D2 It the xerox copy of the letter dated 8-5-90 which is signed by the works Manager; that Ex. D3 is the copy of the enclosure to Ex. D2 and Ex. D3 is also again signed by the Salt Factory officer; that according to Ex. D3 I.e. the monthly return given by the plaintiff company even on 8-5-90, the salt factory

and stock were damaged. A perusal of Ex. D4 letter addressed to the salt Commissioner by the plaintiff company would reveal that the plaintiff company has applied for the ex-gratia grant of Rs. 20,20,000/- for carrying out the repairs in their factory which was damaged by rain, cyclone and flood that occurred on: 7th and 8th May 1990. In Ex. D5 it is stated that on the 7th night and 8th day time throughout they experienced heavy rains accompanied by gale winds (squally weather); that the water gushed into the inland salt works and inundated/submerged the salt works by about 1.5 meters of water within the hours on the 8th afternoon. Thus from the declaration given by the plaintiff in Ex. D5. it would be seen that the damage to the plaintiff's salt work and stocks took place on the 7th night and before 8th afternoon. The (sic) report issued by the Indian Meteorological Department for the period between 4-5-90 and 9-5-90, as evidenced by Ex.P22 would clearly reveal that the wind Speed was going on increasing from 4-5-90 to 8-5-90 and which would indicate that there was a cyclone that took place between 5th, 6th, 7th, and 8th May, 1990 because of a heavy rainfall. In the face of the said place of evidence, it cannot be disputed that there was worst weather condition on 6th and 7th May, 1990 and there was a heavy rainfall before the dawn of 8th May, 1990. The contents of the weather report and the contents of the declaration made by the plaintiff before the Salt Commissioner would clearly point to the fact that the salt works salt stocks should have been damaged to a great extent even prior to 9-5-90 P.W.1 has conceded that he was being apprised about the development in the factory premises from 7-5-90 onwards and it was brought to his notice by the works Manager and there. But he did not inform the same to the insurance company. P.W. 1 has stated that there is no specific reason as to why the plaintiff company informed the defendant only on 10-5-90 by a telegram and there was no communication from the defendant before 10-5-90 except the plaintiff's proposal for cover of salt works and salt stocks. Thus the available evidence would certainly and clinchingly point to the fact that the peril commenced its operation even on 7-5-90. Under the stated circumstances, a duty was cast upon the plaintiff to disclose the said material alteration in the risk, which was in the knowledge of the plaintiff before the conclusion of the contract. Having made all their claims of ex-gratia payment before the Commissioner of Salt stating that their factory was seriously damaged on 7th and 8th May, 1990, the plaintiff has failed to bring it to the notice of the insurer till 10-5-1990 when it gave a telegraphic message. This would clearly point to the lack of bona fide on the part of the plaintiff.

20. Apart from the above the plaintiff suppressing all the above facts has come with a specific pleading that the date and time of the actual loss was on 9-5-90 between 9 PM and 3 AM on 10-5-90, which in the opinion of the Court is a suppression of a material fact by the plaintiff. The learned Counsel for the plaintiff also added that a survey was conducted to estimate the loss and damages in the plaintiff's salt works by the defendant company on 12-5-1990 and if there was no concluded contract, there was no necessity for the plaintiff

company to depute its surveyor to assess the loss and damages and this will also indicate that there was a concluded contract. Countering to this contention, the learned Counsel appearing for the defendant would submit that there was an offer made by the plaintiff company under Ex. P1 on 4-5-90 which was followed by a regular proposal form with all necessary details and declaration only on 7-5-90 and pending consideration and before acceptance of the said offer, on 9-5-90, the General Manager of the plaintiff made a request to the Senior Divisional Manager of the defendant to arrange for an inspection and then proposed the proposal and a survey was made without prejudice and apart from this, since the survey was made even before the acceptance of the offer, it will not in any way either strengthen the case of the plaintiff stating that there was a concluded contract or to fasten the liability on the defendant. From the available evidence it would be very clear that there was no concluded contract and hence the contention of the plaintiff that there was a survey by the defendant and hence it has to be taken that there was a concluded contract cannot be countenanced.

21. The learned Counsel for the defendant also brought to the notice of the Court that either P.W. 1 or the signatory under Ex. P1 viz. Mr. Ganpathi Subramanian a Director, cannot enter into a contract on behalf of the plaintiff company in view of the admission of P.W. 1 that even the proposal form was to be approved and signed only by the Managing Director, Since he was the final authority to sign on behalf of the plaintiff company and also in view of the fact that as per the circular of the defendant company dated 5-6-84 under Ex. D8, the acceptance of an offer for Insurance of salt works could be made only by the Regional office, after careful consideration of all the aspects of the matter and hence D.W. 1 was not competent to enter into any contract of insurance with the plaintiff. The learned Counsel for the plaintiff would urge that D.W. 1 as a Development officer of the defendant company has entered into the contract and received the cheques and hence it will bind the defendant company, But it has been pointed out that the plaintiff has not brought forth any material to prove that either Ganapathi Subramanian or P.W. 1 was competent to enter into a contract on behalf of the plaintiff. Attractive though the arguments and contentions put forth by the plaintiff and narrated as above, they do not stand the scrutiny of law. The Court is afraid whether it could countenance the plea of the plaintiffs side that there was a concluded contract between the parties, in view of the evidence both oral and documentary adduced by the parties and discussed as above.

22. In view of the available evidence, it has got to be necessarily held that no contract of insurance came into existence between the plaintiff and the defendant, regarding the subject matter of the suit, and hence no liability can be fastened on the defendant to pay any damages as claimed by the plaintiff. All the above issues are answered accordingly.

23. In the result, this suit is dismissed. Considering the facts and circumstances, there shall be no order as to the costs. As regards Appln. No. 674/97, the

learned Counsel for the applicant the defendant submitted that he is not pressing the application. In view of the same Appln. No. 674/97 is dismissed.