
(2016) 07 SHI CK 0038
In the High Court Of Himachal Pradesh
Case No : O.S.A. No. 1 of 2009

M/s. Durga Gram Udyog

APPELLANT

Vs

United India Insurance Company

RESPONDENT

Date of Decision : 04-07-2016

Acts Referred:

Citation : (2016) 166 AIC 289 : (2016) 4 HimLR 2245

Hon'ble Judges : Mansoor Ahmad Mir, CJ. and Tarlok singh Chauhan, J.

Bench : Division Bench

Advocate : Mr. Rajneesh K. Lal, Advocate, Vice Mr. Sanjeev Sood, Advocate, for the Appellants; Mr. Ashwani K. Sharma, Senior Advocate with Mr. Nishant Kumar, Advocate, for the Respondents

Final Decision : Dismissed

Judgement

Tarlok Singh Chauhan, J.—Plaintiffs are the appellants whose suit for recovery of Rs. 14,43,400/- by way of damages was dismissed by the learned Single Judge (for short trial Court) and aggrieved by the judgment and decree so passed have filed the instant appeal.

2. The main plank of the appellants' suit on which the entire edifice has been built is that they suffered extensive damage on account of floods due to heavy rains during the intervening night of 13/14th August, 1995, whereby its stocks of coal, unfired bricks, labour huts etc. to the tune of the aforesaid amount were washed away.

3. It was the pleaded case of the appellants that appellant No. 1 was a society registered under the Societies Registration Act, 1860 and owns brick kilns in village Basdehra, Tehsil Mehatpur, District Una. Its stock and raw material had been insured to the extent of Rs. 26,00,000/- against the damage by flood, fire etc. with respondent No. 1. It was averred that during the intervening night of 13/14th August, 1995 there were heavy rains in Tehsil Una including the place where the brick kiln was situated, resulting in floods. The appellants suffered

extensive damage on account of these floods, whereby its stocks of coal, unfired bricks, labour huts etc. were washed away. The appellants had promptly informed the respondents and on their asking had supplied all the documents so demanded, but despite this, its claim was refuted, that too on extraneous grounds, constraining it to file the instant suit.

4. The respondents contested the claim and pleaded that the appellants had concocted the story of damages, as the surveyor deputed by them did not find any loss being caused to the appellants as was otherwise being claimed by them.

5. Out of the pleadings of the parties, the learned trial Court settled the following issues:-

"1. Whether M/s. Durga Gram Udyog Bricks Workers Welfare Association is not a juristic person and the suit filed in the name of plaintiff No. 1 is not maintainable?

OPD.

2. Whether the terms and conditions of "Fire Policy" have been breached on account of setting up of fraudulent claim based on misrepresentation and misdescription and thereby the contract of insurance has become voidable?

OPD.

3. Whether the cover note dated 3.7.1995 was issued and premium accepted by a person authorised to do so on behalf of the Insurance Company?

OPP.

4. Whether the Insurance Policy was not issued/delivered to the plaintiff by the Insurance Company? If so, its effect?

OPP.

5. What is the effect of the arbitration clause of policy of insurance and on this count, whether the present suit is not maintainable?

OPD.

6. Whether the plaintiffs are guilty of suppression of material facts and whether they have concocted and fabricated the documents, as alleged? If so its effect?

OPD.

7. Whether the suit is within limitation?

OPP.

8. Whether the plaintiff No. 2 is authorised and competent to file the present suit?

OPP.

9. Whether there were heavy rains and floods on 13.8.1995/14.8.1995 in the area of the brick kiln of the plaintiff?

OPP.

10. Whether the plaintiffs had suffered any loss to the stocks of coal, infrastructure of the brick kiln, as alleged, on account of the floods?

OPP.

11. What was the quantity of stocks of coal at the site, at the relevant time?

OPP.

12. Whether the plaintiffs are entitled to any amount as compensation on account of loss sustained due to floods in the area of brick kiln, if so to what extent?

OPP.

13. In the event of issue No. 10 being proved, whether the plaintiffs are entitled to claim any interest, if so at what rate, from which date and on what amount?

OPP.

14. Relief."

6. The learned trial court after recording the evidence and evaluating the same, dismissed the suit of the appellants vide judgment and decree dated 8.9.2008. Aggrieved by the aforesaid judgment and decree, the plaintiffs/appellants have filed the instant appeal, mainly on the ground that there is perversity in the findings recorded by the learned trial Court.

We have heard Mr. Rajneesh K. Lal, learned counsel for the appellants and Mr. Ashwani K. Sharma, Senior Advocate, assisted by Mr. Nishant Kumar, Advocate, for the respondents.

7. At the outset, we may observe that the case of the appellants hinges entirely upon issues No. 9 and 10 and can only succeed in case they are able to prove that there were heavy rains on the fateful day, on account of which they suffered huge losses, as the onus to prove these issues is heavily upon the appellants.

8. Learned counsel for the appellants has vehemently contended that the finding recorded by the learned trial Court, particularly on Issues No. 9 and 10 is perverse, in as much as, it not appreciated the statements of PW-6 Sh. Lachman Dass, PW-7 Dinesh Kumar and PW-8 Sh. Vinod Sharma in its right perspective, whereby these witnesses clearly proved that not only the area where the brick kiln of the appellants was situated was flooded, but even the stocks, coal and unfired bricks etc. lying there at the spot had been washed away, thereby causing heavy loss to the appellants.

9. Adverting to the evidence in support of these issues, we may firstly advert to the statement of PW-6, Sh. Lachman Dass Kaundal, who at the relevant time was Naib Tehsildar and deposed that Deputy Commissioner, Una had forwarded an

application submitted by appellant No. 1 regarding issuance of certificate regarding damage caused to the appellants, pursuant to which he had issued certificate Ex. PW-6/A, which states that according to the report made by Patwari Halka and Girdawar Kanungo, the plaintiffs (appellants herein) suffered considerable loss on 14th August, 1995 on account of floods caused by heavy rains.

10. In cross-examination, this witness categorically stated that he himself had not visited the spot and had no personal knowledge about the damage and his certificate regarding the heavy rains was based upon the report submitted by Patwari Halka and Girdawar Kanungo. Relevant portion of his statement in cross-examination is revealing and is extracted below:-

"At present I am not in possession of the original application which was received by me through Deputy Commissioner as I am posted now out of Una. Record was summoned from me, but I have not brought the said record today. My certificate, Ex.PW- 6/A is based on the reports obtained from Patwari Halqua and Girdawar Kanungo. I did not visit the spot myself. I have no personal knowledge about the damage and my certificate is based on the report received from the aforesaid officials. The report received from the aforesaid two officials was specific about the damage caused to the brick kiln of plaintiff No. 1 because of heavy rains. I am not in possession of the reports received from the aforesaid two officials, today. I have issued the certificate as per the orders of the Deputy Commissioner. I am not in possession of the office copy of this certificate. File and dispatch number is not mentioned in the said certificate. It is correct that at the relevant time I was holding the office of Naib Tehsildar, but certificate, Ex.PW-6/A, has been issued by me as Tehsildar?.."

11. Indisputably, the two officials, i.e. Patwari and Kanungo have not been produced in evidence and even the report made by them, which forms the basis of Ex. PW-6/A, has also not been proved by the appellants. Evidently, even the report Ex. PW-6/A, besides generalising the fact that damage has been caused does not show anything beyond that.

12. Sh. Dinesh Kumar, Secretary Nagar Panchayat Mehatpur appeared as PW-7 and proved on record certificate Ex. PW-7/A, which reads thus:-

"Pramanit kiya jata hai ki dinank 13/14.8.1995 ko bhari barsha ke karan va barh ke karan, logon ka va Nagar Panchayat, Mehatpur/Basdehra ka bahut nuksan huya hai. Logon ke bahut makan Dhwest hue hain." (Certified that on 13/14.8.1995 because of heavy rains, people and Nagar Panchayat, Mehatpur/Basdehra have suffered heavy losses. Lot of houses have been damaged)."

13. It is evident from the certificate that it does not in any manner establishes, much less prove the case of the appellants, as it states nothing about the damage allegedly suffered by them.

14. At this stage, Mr. Rajnish K. Lal, learned counsel for the appellants would

place heavy reliance on the testimony of PW-8, Sh. Vinod Sharma, who was working as Junior Assistant/Observer in the Meteorological Department, D.C. Office, Una and had brought the record of the department pertaining to 13/14th August, 1995, which showed that the rainfall at Una on both these days was 119.4 mm. Though he stated that Mehatpur and Basdehra also falls within the same region, but in cross-examination he categorically admitted that the rainfall at both these places on the aforesaid dates had not been measured. He further admitted that in rainy season there may be rainfall at one place, but may not be so in the adjoining area.

15. The statement of this witness even if taken on its face value, only establishes that there was rainfall of 119.14 mm at Una, but then it does not carry the case of the appellants any further.

16. PW-15, Rameshwar Dutt is a resident of Village Basdehra and has stated that on the intervening night of 13/14th August, 1995, there were heavy rains and caused accumulation of large quantities of water in the Chos (seasonal streams) and the brick kiln of the appellants was washed away. He also makes a general statement of damage being caused to the brick kiln and the material lying on the spot on the fateful day. But then in cross-examination, this witness categorically states that he resides at Mehatpur, which at a distance of five kilometers from the place of occurrence and further states that he visited Basdehra only on 14th August, 1995, which establishes that he was not at spot on the fateful day.

17. In addition to the aforesaid, the other witness who has been examined by the appellants is one Sh. Subash Chand, who has been authorised to make a statement on behalf of the plaintiffs vide resolution Ex. PW-18/A. Though, this witness would claim that there were heavy rains on the night intervening 13/14th August, 1995, which resulted in heavy losses to the appellants, but then he in his cross-examination has clearly stated that no bricks are prepared during rainy season. He further admits that 12 to 14 labour sheds at the spot were lying unoccupied, as the labourers were not there.

18. As against the aforesaid evidence, respondents have examined DW-2 Sh. Sanjeev Duggal, Chartered Accountant, who in his assessment Ex. DW-2/B after visiting the spot had found that no loss had in fact been caused to the appellants. To the similar effect is the report Ex. DW-3/A prepared by the Investigator, wherein it has been clearly mentioned that the claims lodged by the appellants was false.

19. This is the entire evidence led by the parties on the aforesaid issues and as already observed earlier the entire foundation of the appellants' case is dependent upon Issues No. 9 and 10 and therefore, once the edifice forming the foundation of the structure of the main case falls through, the other questions like the value and quantity of stocks actually lying on the spot etc. is only rendered academic and therefore, need not be gone into because even if findings on other issues is rendered in favour of the appellants, it will not lead their case

any further.

20. In view of the aforesaid discussion, we find no merit in this appeal and the same is accordingly dismissed, leaving the parties to bear their costs.