

(1994) 01 BOM CK 0025

In the Bombay High Court

Case No : Civil Revision Application No. 474 of 1988

M/s. Indian Dyestuff Industries Limited and another	APPELLANT
Vs	
M/s. Mehta Transport Company	RESPONDENT

Date of Decision : 27-01-1994

Acts Referred:

Bombay Stamp Act, 1958 — Article 25, 5
Constitution of India, 1950 — Article 59
Insurance Act, 1938 — Section 2(13A)
Marine Insurance Act, 1963 — Section 3, 4
Stamp Act, 1899 — Article 47A, 47B, 2(20)

Citation : AIR 1994 Bom 209 : (1994) 4 BomCR 297 : (1995) 2 MhLj 127

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

Bench : Single Bench

Advocate : Miss P.D. Ankalesaria as Amicus Curie, Rajesh Behere, A.G.P., V. Ramdas and Sonji Ramdas, for the Appellant; G.V. Parmar, for the Respondent

Judgement

1. Two important questions of law pertaining to proper stamp duty applicable to a marine insurance policy for carriage of goods by rail or road and to a letter of subrogation from the insured to the Insurance Company fall for determination in this case.

2. The material facts are as follows:

The first petitioner obtained an open marine insurance policy for a period of one year from 1 April 1979 to 31 March 1980 from the second petitioner to recover the transit risk of consignments despatched by it. During this period, certain consignments were entrusted for carriage by the petitioner to respondent Mehta Transport Company. As the respondent-carrier failed to deliver the said consignments, the first petitioner preferred claim with second petitioner-the Insurance company. The said" claim was settled by the second petitioner in terms of the above policy of insurance and a sum of Rs. 38,016.48 was paid to the first petitioner in settlement of the claim. On receipt of the said amount, the first petitioner executed a letter of subrogation in favour of the second petitioner

authorising it to recover from the respondent-carrier the amount of loss suffered by the first petitioner. Thereafter the first petitioner filed a suit against the respondent-carrier for recovery of a sum of Rs. 38,016.48 with interest and cost. The second petitioner-insurance company also joined the first petitioner as a plaintiffs in the said suit. In the course of evidence, the petitioners witness produced before the trial court the marine insurance policy and a letter of subrogation dated 17 February 1981. The production of the above two documents was objected to by the respondent on the ground that the said documents were insufficiently stamped. According to the respondent, the appropriate stamp duty leviable on a marine insurance policy was the one provided under article 47A of the Indian Stamp Act, 1899 ("the Act") and not 50 paisa. Similarly it was contended that the appropriate stamp duty for the letter of subrogation was the duty applicable to conveyance which was specified under article 25 of the Bombay Stamp Act, 1958. The contention of the petitioners, on the other hand, was that both the documents were properly stamped. According to the petitioners, stamp duty of 50 paisa only was chargeable on the policy of insurance in the instant case as it was covered by article 47B of the Indian Stamp Act and not article 47A as contended by the respondent. It was further submitted that the letter of subrogation was properly stamped with stamp of Rs. 5/- as it was an agreement and not a conveyance. The trial court accepted the contention of the respondent and held that the insurance policy as well as the letter of subrogation were inadequately stamped and therefore impounded the same. He calculated the stamp duty chargeable on the insurance policy at the ad-valorem rate specified in article 47A of the Indian Stamp Act and the stamp duty applicable on the letter of subrogation at the rate applicable to conveyance as provided under article 25A of the Bombay Stamp Act. He determined the stamp duty payable on the marine insurance policy at Rs. 76,625/- and "imposed a penalty of Rs.7,66,250/-. Similarly, the appropriate stamp duty payable on the letter of subrogation was calculated at Rs. 1,155/- and after deducting the amount of Rs.5/- already paid, the deficit was determined at Rs. 1,150/ -. A penalty amounting to Rs. 11,500/- calculated at the rate of 10 times the amount of deficit stamp duty was also levied. The above order of the trial court is the subject matter of challenge in this revision application.

3. The contention of the petitioners is that both the documents viz. the Insurance policy as well as the letter of subrogation are adequately stamped as required by the provisions of Indian Stamp Act, 1899 and the Bombay Stamp Act, 1958 respectively. It is contended that the insurance policy in the instant case was intended to cover the risk of loss and damage etc. to the goods while in transit by "lorry/tanker/rail". In terms of the policy, the insurance was to commence from the time the goods were loaded on the ship or vessel i.e. lorry / tanker/ rail, and continued till their safe delivery to the insured. It is contended that article 47A of the Indian Stamp Act prescribes the rates of stamp duty applicable to "Sea insurance" only. Other classes of insurance covering goods etc. against loss or damage, fall under article 47B.

4. I have carefully considered the above submission. Article 47, so far as relevant, is as under;

(See table)

The expression policy of Sea-Insurance" or sea policy has been defined in clause (20) of section 2 of the Indian Stamps Act in following terms:

"Policy of sea-insurance or "sea-policy" -

(a) means any insurance made upon any ship or vessel (whether for marine or inland navigation), or upon the machinery, tackle or furniture of any ship or vessel, or upon any goods, merchandise or property of any description whatever on board of any ship or vessel, or upon the freight of, or any other interest which may be lawfully insured in, or relating to, any ship or vessel, and

(b) includes any insurance of goods, merchandise or property for any transit which includes, not only a sea risk within the meaning of clause (a), but also any other risk incidental to the transit insured from the-

47. POLICY OF INSURANCE:

A. SEA INSURANCE If drawn singly If drawn in duplicate, for each part

(2) for time -

(iii)

in respect of every full sum of one thousand rupees and also any fractional part of one thousand rupees insured by the policy

Where the insurance shall be made for any time exceeding six months and not exceeding twelve months.

Twenty-five naye paise. Fifteen naye paise

B.

Fire-insurance and other classes of insurance, not elsewhere included in this Article, covering goods, merchandise, personal effects, crops and other property against loss or damage-

Proper Stamp duty

(1) in respect of an original policy -

(i)

when the sum insured does not exceed Rs. 5,000/-

Fifty naye paise.

(ii) in any other cases one rupee

(2)

in respect of each receipt for any payment of a premium on any renewal of an original policy

One-half of the duty payable in respect of the original policy in addition to the amount, if any, chargeable under No. 53.

(Emphasis supplied)

commencement of the transit to the ultimate destination covered by the insurance.

Where any person, in consideration of any sum of money paid or to be paid for additional freight or otherwise, agrees to take upon himself any risk attending goods, merchandise of any description whatever while on board of any ship or vessel, or engages to indemnify the owner of any such goods, merchandise or property from risk, loss or damage, such agreement or engagement shall be deemed to be a contract for sea-insurance.

The expression "policy of insurance has also been defined in clause (19) to include, inter alia:

(a) any instrument by which one person, in consideration of a premium, engages to indemnify another against loss, damage or liability arising from an unknown or contingent event.

The expression "marine insurance has been defined in the Insurance Act of 1938 in clause (13A) of section 2 to mean:

"marine insurance business" means the business of effecting contracts of insurance upon vessels of any description, including cargoes, freights and other interest which may be legally insured, in or in relation to such vessels, cargoes and freights, goods, wares, merchandise and property of whatever description insured for any transit by land or water, or both, and whether or not including warehouse risks or similar risks in addition or as incidental to such transit, and includes any other risks insured against in marine insurance policies."

The Marine Insurance Act of 1963 which has codified the law relating to marine insurance defines "marine insurance" in section 3 as under:

"A contract of marine insurance is an agreement whereby the insurer undertakes to indemnify the assured, in the manner and to the extent thereby agreed, against marine losses, that is to say, the losses incidental to marine adventure."

The expression "marine adventure" and "maritime perils" have been defined in clauses (d) and (e) of section 2 of the said Act as follows:

(d) "marine adventure" includes any adventure where -

(i) any insurable property is exposed to maritime perils;

(ii) the earnings or acquisition of any freight, passage money, commission, profit

or other pecuniary benefit, or the security for any advances, loans, or disbursements is endangered by the exposure of insurable property to maritime perils;

(iii) any liability to a third party may be incurred by the owner of, or other person interest in or responsible for, Insurable property by reason of maritime perils;

(e) "maritime perils" means the perils consequent on, or incidental to the navigation of the sea, that is to say, perils of the seas, fire, war perils" pirates, rovers, thieves, captures, seizures, restraints and detentions of princes and peoples, jettisons, barratry and any other perils which are either of the like kind or may be designated by the policy.

A reading of the definition of "marine insurance" contained in the Marine Insurance Act of 1963 and "marine insurance business" contained in the Insurance Act of 1938 clearly goes to show that in the Insurance Act of 1938, the expression "marine insurance business" has been used in much wider sense to mean the business of effecting contracts of insurance upon vessels of any description, including cargoes, freights etc. for any transit by rail or water or both. It thus covers both sea-insurance as well as insurance of carriage of goods by road, rail or other means of transport. Article 47 of the Indian Stamp Act provides different rates for sea insurance and other insurance. On a perusal of the definition "sea insurance" contained in clause (20) of section 2 of said Act, it becomes abundantly clear that a policy of sea insurance is confined to cover insurance of goods against sea risk. By sub-clause (b) thereof, such insurance has been extended to cover other risks "incidental to the transit from the commencement of the transit to the ultimate destination covered by the insurance". This thus takes within its ambit risk to the goods while in transit even by road or rail but it is only when such risk is "incidental to transit by any ship or vessel". Thus clause A of article 47 applies only to policies of insurance of goods covered by sea policies. The definition of the expressions "marine insurance", "maritime adventure" and "maritime perils" contained in the Marine Insurance Act also goes to show that this Act applies only to marine insurance which is intended to indemnify the insurer against marine losses i.e. losses incidental to marine adventure. It is only by virtue, of section 4 of said Act that a contract of marine insurance under the said Act may cover mixed sea and land risks. Section 4 of the Marine Insurance Act, 1963 provides as under:

4. (1) A contract of marine insurance may, by its express terms, or by usage of trade, be extended so as to protect the assured against losses on inland waters or on any land risk which may be incidental to any sea voyage.

(2) Where a ship in course of building, or the launch of a ship, or any adventure analogous to a marine adventure, is covered by a policy in the form of a marine policy, the provisions of this Act, in so far as applicable, shall apply thereto, but, except as by this section provided, nothing in this Act shall alter or affect any rule of law applicable to any contract of insurance other than a contract of

marine insurance as by this Act defined.

Explanation-- "An adventure analogous to a marine adventure" includes an adventure where any ship, goods or other movables are exposed to perils incidental to local or inland transit.

A conjoint reading of all the above provisions clearly goes to show that article 47A of the Indian Stamp Act, 1899 is applicable only to a policy of insurance falling within the description of "sea insurance". Other policies of insurance of goods against risks in transit are covered by article 47B which provides for a fixed slump duty of Re. 1/- in cases where the sum insured is Rs. 5,000/- or more. To say which of the two clauses of article 47 is applicable, we will have to consider the true nature of the policy in the instant case to decide whether it can be described as-"sea policy" or not.

5. I have carefully perused the policy. The policy is described as "marine insurance". It is in the printed form. Certain insertions have been made by typing. The policy is for a period of one year. The subject matter of the policy is all transit risk to goods carried by "lorry/tanker or rail". Against the column "in the ship or vessel called the" in the printed form of policy, the words "Lorry/ Tanker/ Rail" have been inserted by typing. The uncontroverted factual position also is that no movement of goods by ship or sea was contemplated by the above policy. This policy is clearly a policy to cover loss to the goods in transit while being carried from one place to another by "lorry/tanker or rail". The policy of course, everywhere refers only to ship, vessel or sea. But that is not relevant in view of the fact that by the insertions made in the printed form of the policy it is absolutely clear that it is intended to cover the transit risk during carriage of goods by lorry/tanker or rail. It does not contemplate any sea journey at all and hence the question of carriage by lorry etc. as incidental to the sea journey does not arise, in this case.

6. The practice of using printed forms of marine insurance policy intended to cover generally carriage of goods by sea or inland navigation described as "marine policy" with some modifications to cover risk to goods carried by road or rail is very common. I do not find any difficulty in taking a judicial notice of such practice. There is no serious controversy also in regard to the fact that while using the form of policy intended for sea insurance for other types of insurances, printed forms of policy are used. Some of the clauses which are not applicable to the subject matter are often not struck off. Such defects have been noticed by various authors of book on shipping laws. Reference may be made in this connection to Arnould's Law of Marine Insurance and Average, Vol. 1 (16th Edition). The learned author taking note of the difficulty faced by the courts in construing the marine insurance policy in such cases, has stated that the written clauses have greater weight than the printed and formal parts of the policy. The following observations are pertinent in this connection :

"One difficulty which has arisen from time to time in construing marine insurance

policies is that of reconciling phrases or sentences which have been written into the document with one or more of its printed terms. This results from the fact that after inserting the terms which have been specially agreed there is a tendency, on the part of those responsible, to leave the policy as it stands, without taking care to strike out those parts of it which have been rendered otiose by the special terms. When such a state of affairs is found to exist the parties may be presumed to have given careful thought to the written or typewritten words which they have inserted and therefore it is reasonable to look for their intention in what they wrote rather than in the printed clause. It has, indeed, long been the practice of the courts to deal with such a situation in this way. The ratio decidendi was well explained by Lord Ellenborough as long as 1803 in the following passage "if there is any doubt about the sense or meaning of the whole, the words superadded in writing are entitled to have a greater effect attributed to them than the printed words, inasmuch as the written words are the immediate language and terms selected by the parties themselves for the expression of their meaning."

In *Dudgeon v. Pajnbroke* 1877 36 LT 382 where the Lloyd's form of policy was filled up as a time policy on ship, it was argued that various clauses which were clearly only intended to refer to a voyage policy, but which had, nevertheless, been in this case, as in other similar cases, left standing, therefore, applied to the policy in question. The House of Lords, however, reversing the judgment in the Exchequer Chamber, decided otherwise. "It has been suggested," said Lord Penzance, "that by reason of the policy having been drawn up on a printed form, the printed forms of which are applicable to a voyage, and also to goods as well as to the ship, the policy is something less or something more than a time policy. But the practice of mercantile men of writing into their printed forms the terms by which they desire to describe and limit the risk intended to be insured against, without striking out the words which may be applicable to a larger or different contract, is too well known, and has been too constantly recognised in courts of law, to permit of any such conclusion."

Hence, it is, that in the familiar instance of words written in the margin, or at the foot of policies, such written words are considered as applying indefinitely to the whole of the policy, and as controlling the sense of those parts of the printed policy to which they apply. Thus, where the word "ship" or "freight" or "goods", is written in the margin of the policy, the general terms of the policy, applicable to other subjects besides the particular one mentioned on the margin, are thereby considered as narrowed in point of construction by relation to the word so written.

Moreover, printed words of general application may be entirely rejected when they are inapplicable to the insurance intended by the parties."

To the same effect is the following observation in *Insurance Law* by MacGillivray & Parkington (Eighth Edition):

"Where a policy contains clauses in print and type the court will endeavour to

give effect to both equally, but, if it is plain that a written clause manifestly cannot be reconciled with one or more printed conditions, the former overrides the latter, inasmuch as the written words are the immediate language and terms selected by the parties themselves for the expression of their meaning with relation to the particular risk and the printed words are a general formula applied equally, to all insurance in the same class of risk.

It sometimes happens that certain of the standard printed clauses contained in the contract cannot be reconciled with the expressed objects and subject-matter of the insurance. It is frequently the case with commercial contracts such as contracts of insurance and charter parties that there are to be found in them all sorts of provisions and clauses which may or may not be applicable to the particular contract, so that a court will not be afraid to ignore them in so far as they are inapplicable. The printed form of policy used, moreover, may be inapplicable to the particular risk, as where a policy adapted for marine risk is used to cover risks on land or vice versa, or where a policy adapted for original insurance is used to express a contract of reinsurance, or where the conditions in some other company's policy are incorporated by reference. In such cases the conditions will be enforced in so far as they are not inconsistent with the contract to which they are applied. A condition not in terms applicable to the risk may be applied *mutatis mutandis*."

Reference may be made to the Halsbury's Laws of England, Fourth Edition, Volume 25, where dealing with the construction of marine policy and, the inconsistencies between printed and written words, it has been observed:

"Greater weight is, in case of inconsistency, given to a written than to a printed clause, inasmuch as the written words are the immediate language and terms selected by the parties themselves for the expression of their meaning, whereas the printed words are a general formula adapted equally to their case and that of all other contracting parties upon similar occasions and subjects.

Printed words will, therefore, be considered as struck out if they are completely inconsistent with the written words, or if it is clear that the latter were to be in substitution for the former. For instance, the printed clause of the standard form of Lloyd's policy describing the subject-matter insured is applicable where both ship and goods are insured, but the subject-matter really insured in any particular case is always specified in writing at the foot or in the margin of the policy, as, for example, "on goods", "ship", "freight", "1,000 bags of rice" etc.; in such cases the written words are considered as substituted for the printed words, even though the latter are not struck out of the policy.

For a similar reason no effect will be given to a printed clause in a policy where it is inconsistent with the object and purpose of the insurance."

My attention was also drawn to the report of the All India Marine Cargo Tariff, Tariff Advisory Committee. Though the heading of the publication is Marine Cargo Tariff, separate tariff has been provided for cargo carried by different modes of

transportation. To wit, Chapter 2 -- Inland Transit (Rail or Road) Tariff, Chapters -- Inland Vessels Tariff, Chapter 8 -- Sailing Vessels Tariff, Chapter 7 -- F.O.B. (Coastal and Overseas) and Shut-out Cargo Tariff, Chapter 6 --Indian Coasts Ports Tariff etc.

7. From the above discussion it is evident that the policy in question is not a sea policy within the meaning of Article 47A of the Indian Stamp Act and, as such, the rate of duty applicable to the policy under consideration is Re. 1/- as provided in Article 478 of the Act. The learned trial Court was, therefore, not justified in impounding the said policy on the ground of the same being inadequately stamped.

8. So far as the letter of subrogation in insurance cases is concerned, it is clear that upon paying the insured his loss, the insurer is entitled to the benefit of all the remedies of the insured against the persons liable for the loss, whether in contract or in tort. He is entitled to sue in the name of the insured. Subrogation as observed in Halsbury's Laws of England (Fourth Edition, Volume 16, para 889) is a convenient way of describing a transfer of rights from one person to another, without assignment or assent of the person from whom the rights are transferred and which takes place by operation of law in a whole variety of widely different circumstances. Subrogation is a remedy rather than a right. Some categories of subrogation are contractual in origin, but others are in no way based on contract and appear to defy classification except as an empirical remedy to prevent a particular kind of unjust enrichment.

The doctrine of subrogation is applied at law in cases of insurance, where the insurance is a contract of indemnity only. Upon paying the insured his loss, the underwriter or insurer is entitled to the benefit of all remedies of the insured against persons liable for the loss, whether in contract or in tort, and is entitled to sue in the name of the insured, but he may not sue in his own name. Subrogation does not have the effect of transferring to the insurer any cause of action which the insured may have had against a third party. The right arises in equity and does not depend on the contract between the parties.

9. The letter of subrogation in the instant case is unilateral declaration in the form of a letter addressed to the insured which has been treated as an agreement by the parties for the purpose of stamp duty and has been stamped at the rates applicable to an agreement or memorandum of an agreement. The trial Court held it to be a "conveyance" falling under Article 25 of the Bombay Stamp Act, 1958. Article 25 of the Bombay Stamp Act, so far as relevant, is in the following terms:

25. CONVEYANCE (Not being a transfer charged or exempted under Article 59) -

On the market value of the property which is the subject matter of the conveyance -

(a) If relating to move-able property, for Fifteen rupees, every rupees 500 or

part thereof;

Conveyance has been defined in clause (g) of S. 2 of the Bombay Stamp Act, 1958. This definition, as it stood at the material time, is in the following terms:

(g) "Conveyance" includes,--

(i) a conveyance on sale,

(ii) every instrument, and

(iii) every decree or final order of any Civil Court,

by which property, whether moveable or immovable, or any estate or interest in any property is transferred to, or vested in, any other person, inter vivos, and which is not" otherwise specifically provided for by Schedule 1;

Explanation -- An instrument whereby "a co-owner of any "property transfers his interest to another co-owner of the property and which is not an instrument of partition, shall, for the purposes of this clause; "be deemed to be an instrument by which property is transferred inter vivos.

Evidently by the above letter of subrogation, no property, moveable or immovable, or any estate or interest in any property is transferred to, or vested in, any other person. The insurer, in fact, gets a right to be indemnified by operation of law. The letter simply reiterates and reaffirms the legal position. It does not have the effect of transferring any right or title in any property, moveable or immovable, or any cause of action in the insurance company. Such a letter cannot be described a "conveyance" within the meaning of Article 25 of the Bombay Stamp Act, 1958. It is because of this legal position that despite the letter of subrogation in the instant case the suit was filed by the first petitioner itself as plaintiffs against the carriers.

10. In view, of the foregoing discussion, it is clear that the letter of subrogation in the instant case cannot be termed as "conveyance and the trial Court was therefore not correct in holding that the said letter was not properly stamped and in impounding the same. In that view of the matter, I hold that both policy of insurance and letter of subrogation were adequately stamped and the trial Court committed a manifest error in holding otherwise and impounding the said documents.

11. The impugned order of the trial Court is, therefore, set aside. The rule is made absolute. Under the facts and circumstances" of the case, there shall be no order as to costs.

12. Certified copy expedited.

13. "Rule made absolute.