
(2018) 05 DEL CK 0244
In the Delhi High Court
Case No : RFA No.423 OF 2018

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APPELLANT

Vs

GOLDEN EAGLE COMPANY LIMITED & ORS

RESPONDENT

Date of Decision : 18-05-2018

Acts Referred:

Code of Civil Procedure, 1908 — Section 96
Marine Insurance Act, 1963 — Section 7, 8
Sale of Goods Act, 1930 — Section 46, 47

Citation : (2018) 05 DEL CK 0244

Hon'ble Judges : VALMIKI J.MEHTA

Bench : Single Bench

Advocate : Shilpi Jain Sharma

Final Decision : Dismissed

Judgement

VALMIKI J. MEHTA, J.

C.M. Appl. No. 20573/2018 (exemption)

1. Exemption allowed subject to just exceptions. C.M. stands disposed of. RFA No.423/2018

2. This Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908 (CPC) is filed by the plaintiff in the suit impugning the judgment of

the trial court dated 11.1.2018 by which the trial court has dismissed the suit filed by the appellant/plaintiff for recovery of Rs.8,56,180. Suit was filed

against the three defendants. Respondent no. 1/defendant no. 1/company was the buyer of the goods situated at Vietnam. Respondent no. 2/defendant

no. 2/ was the insurance company of the respondent no. 1/defendant no. 1/ buyer. Respondent no. 3/defendant no. 3 is the New India Assurance

Company Limited with whom the appellant/plaintiff had insured the exported

goods.

3. The facts of the case are that the appellant/plaintiff filed the subject suit pleading that between the appellant/plaintiff and the respondent

no.1/defendant no. 1 there was a contract to supply Deoiled Rice Bran Extraction. Appellant/plaintiff claimed to have supplied 4040 bags of 200.28

MT of goods at a unit price of US\$ 226 per MT and for which invoice no. GEX/0097 dated 1.11.2012 was raised upon the respondent no.1/defendant

no. 1/buyer. Appellant/plaintiff further pleaded that it had taken a marine insurance policy from the respondent no.3/defendant no. 3 on Cost Insurance

Freight (CIF) basis for the consignment. The consignment was shipped on board on 14.11.2012 under the shipping bill dated 9.11.2012. Consignment

was insured with the respondent no.

3/defendant no. 3, for the journey from the appellant/plaintiff's warehouse at Kolkata to the respondent no. 1/defendant no. 1/buyer's warehouse at

Hochiminh City, Vietnam. The respondent no. 1/defendant no. 1 had also separately taken an insurance policy for the goods from the respondent no.

2/defendant no. 2. In mid December, 2012, the appellant/plaintiff received information that a portion of the cargo was damaged and accordingly the

appellant/plaintiff informed the respondent no.3/defendant no.3/insurance company, vide the appellant/plaintiff's letter dated 20.12.2012. Respondent

no. 3/defendant no. 3 failed to take action and therefore appellant/plaintiff appointed its independent surveyor namely Intertek India Private Limited

which gave its survey report dated 31.12.2012 that 10% of the bags were damaged. At the request of the appellant/plaintiff the respondent no.

1/defendant no. 1/buyer also appointed its surveyor which surveyed the damage to the cargo which occurred during the voyage to Hochiminh Port.

Appellant/plaintiff raised the claim upon the respondent no. 3/defendant no. 3 vide its letters dated 23.1.2013 and 29.1.2013. The claim amount was

US\$ 19129 i.e US\$ 17757 for the claim and US\$ 1372 towards inspection charges. In the meanwhile the respondent no. 1/defendant no. 1 had refused

to take the responsibility for the damaged consignment and it only paid US\$ 3771.27 to the appellant/plaintiff and the appellant/plaintiff was to take

over the balance liability for which the appellant/plaintiff received the debit note dated 6.3.2003 of US\$ 14035.73 from the respondent no.1/defendant

no. 1. Respondent no. 3/defendant no. 3/Insurance company repudiated the

claim vide its e-mail dated 29.11.2013. Appellant/plaintiff had also approached Insurance Regulatory Development Authority (IRDA) but its grievances were not resolved. Appellant/plaintiff therefore issued a legal notice dated 28.8.2014 to the respondent no.3/defendant no. 3 claiming the suit amount along with interest, and thereafter the subject suit was filed.

4. Respondent nos. 1 and 2/defendant nos. 1 and 2 did not appear in the suit and were proceeded ex-parte. The respondent no. 3/defendant no. 3 filed

its written statement and contested the claim of the appellant/plaintiff. The case of the respondent no.3/defendant no.3 was that no doubt the

insurance policy was taken and loss was reported by the appellant/plaintiff but the suit was not maintainable as the consignment which was dispatched

by the appellant/plaintiff was sold on CNF terms and consequently it was the buyer/respondent no. 1/defendant no. 1 who had to take the insurance

coverage for the goods. It was also pleaded by the respondent no.3/defendant no.3 that the loss caused could not be attributed to any damage to the

goods caused during the voyage and hence no amount was payable. It was pleaded by the respondent no.3/defendant no. 3 that the liability, if any,

was of the respondent nos.1 and 2/defendant nos. 1 and 2.

5. After pleadings were complete, the trial court framed the following issues:-

â??(1) Whether the plaintiff is entitled to a decree of Rs.8,56,180/- OPP.

(2) Whether the plaintiff is entitled to the interest, if so, at what rate? OPP

(3) Whether the plaintiff has got no cause of action to file the present suit against defendant no.3? OPD3

(4) Whether the suit of the plaintiff is bad for mis-joinder of necessary parties? OPD3

(5) Relief.â??

6. Before this Court, as also before the trial court, the issue is/was as to whether appellant/plaintiff had â??insurable interestâ? in the insured goods

for being successful in claiming the amount of the suit from the respondent no.3/defendant no. 3. In this regard trial court has held that since property

in goods/title of goods had already passed from the appellant/plaintiff to the respondent no. 1/defendant no. 1/buyer, therefore the appellant/plaintiff

cannot be said to have any insurable interest over the goods, resulting in the insurance policy having been validly repudiated by the respondent

no.3/defendant no.3. Trial court also held that even if property in goods passes to the buyer yet in case the seller has control of the goods, even in such

circumstances there would be an insurable interest but in the present case the appellant/plaintiff had retained no control over the goods.

7. Trial court has very exhaustively discussed all these aspects from paras 21 to 24 of the impugned judgment, and since the discussion is very

illuminating and thorough, I would seek to reproduce these paras instead of giving my own words and reasoning. These paras 21 to 24 read as under:-

21. First of all in order to sustain a claim for marine insurance the insured must possess requisite insurable interest in the goods at the relevant point of

time. Now Sections 7 and 8 of the Marine Insurance Act, 1963 provide as under:-

7. Insurable interest defined.- (1) Subject to the

provisions of this Act, every person has an insurable interest who is interested in a marine adventure. (2) In particular a person is interested in a

marine adventure where he stands in any legal or equitable relation to the adventure or to any insurable property at risk therein, in consequence of

which he may benefit by the safety or due arrival of insurable property, or may be prejudiced by its loss, or by damage thereto, or by the detention

thereof, or may incur liability in respect thereof.

8. When interest must attach.

(1) The assured must be interested in the subject-matter insured at the time of the loss, though he need not be interested when the insurance is

effected: Provided that, where the subject-matter is insured "lost or not lost", the assured may recover although he may not have acquired his interest

until after the loss, unless at the time of effecting the contract of insurance the assured was aware of the loss, and the insurer was not.

(2) Where the assured has no interest at the time of the loss, he cannot acquire interest by any act or election after he is aware of the loss

22. In the judgment titled as Contship Container Lines Ltd. V. D.K. Lall reported as (2010) 4 SCC 256 the Hon'ble Supreme Court has observed: "20.

Halsbury's Laws of England, 4th Edn., Vol. 25 (para 190) has, while dealing with the expression "insurable interest" under the Marine Insurance Act,

1906 prevalent in that country, explained the purport of the expression "interest" in a marine adventure in the following words: 190. Meaning of

insurable interest.-.. A person may be said to be interested in an event

when, if the event happens, he will gain an advantage, and, if it is frustrated, he will suffer a loss, and it may be stated as a general principle that to constitute an insurable interest it must be an interest such that the peril would by its proximate effect cause damage to the assured, that is to say cause him to lose a benefit or incur a liability.â??

21. Halsbury's refers to the decision of House of Lords in *Lucena v. Craufurd* (1806) 2 Bos & PNR 269 as to the meaning of the expression

â??insurable interestâ?: â??.....A man is interested in a thing to whom advantage may arise or prejudice happen from the circumstances which may

attend it;...and whom it importeth that its condition as to safety or other quality should continue. Interest does not necessarily imply a right to the whole

or part of the thing, nor necessarily and exclusively that which may be the subject of privation, but the having some relation to, or concerning the

subject of the insurance; which relation or concern by the happening of the perils insured against, may be so effected as to produce a damage,

detriment or prejudice to the person insuring. And where a man is so circumstanced with respect to matters exposed to certain risks and dangers as to

have a moral certainty of advantage or benefit but for those risks and dangers, he may be said to be interested in the safety of the thing. To be

interested in the preservation of a thing is to be so circumstanced with respect to it as to have benefit from its existence, prejudice from its

destruction.â??

22. Dealing with the question whether the seller of goods retains any insurable interest, Halsbury explains (in Pare 201): â??201. Seller and buyer.-

When, however, the property which is the subject matter of the contract of sale has completely passed from the seller to the buyer or when it has

under the contract of sale become completely at the buyers' risk, the seller ceases to have any insurable interest, and the buyer acquires one. Thus,

a contract for the sale of goods to be supplied on board, a particular vessel may be so framed that the property in them and the risk of their loss do not

pass to the buyer until a complete cargo has been loaded, in which case the buyer has no insurable interest until the complete cargo has been loaded;

or the contract may be so framed that the property in and the risk as to any part of the goods passed to the buyer on shipment, in which case the

buyer acquires an insurable interest on any part of the goods then shipped.â??

23. Reference may also be made by us to MacGillivray on Insurance Law. While dealing with insurable interest under contracts for the sale of goods,

the author has the following to say: “The unpaid seller of goods who has parted with property in them has no insurable interest in them unless either

they remain at his risk or he has a lien, charge or other security interest over them for the price. So long as the risk remains with him, he has an

interest whether the property has passed or not, and the measure of his interest is the purchase price or the actual value of the goods, whichever is the

greater. Even when risk and property have both passed, the seller retains an insurable interest in the goods while he still possesses them because, if he

is unpaid in whole or part on account of the buyer’s insolvency or for other reasons, he has an interest in respect of his lien for the purchase money.

His possession of the goods would also permit him to insure on the buyer’s behalf if his intention is clear and the policy does not forbid it.”

31. Coming to the case at hand, the contract of sale was on f.o.b. basis even when the contract of insurance proceeded on the basis that the

transactions between the seller and the purchaser and meant to be covered by the policy would be on c.i.f. basis. The distinction between c.i.f. (cost,

insurance and freight) and f.o.b. (free on board) contracts is well recognized in the commercial world. While in the case of c.i.f. contract the seller in

the absence of any special contract is bound to do certain things like making an invoice of the goods sold, shipping the goods at the port of shipment,

procuring a contract of insurance under which the goods will be delivered at the destination etc., in the case of f.o.b. contracts the goods are delivered

free on board the ship. Once the seller has placed the goods safely on board at his cost and thereby handed over the possession of the goods to the

ship in terms of the Bill of Lading or other documents, the responsibility of the seller ceases and the delivery of the goods to the buyer is complete.

The goods are from that stage onwards at the risk of the buyer.

32. It is common ground that the seller had, in the case at hand, reserved no right or lien qua the goods in question. In the absence of any contractual

stipulation between the parties the unpaid seller’s lien over the goods recognised in terms of Sections 46 and 47 of the Sale of Goods Act, 1930 stood

terminated upon delivery of the goods to the carrier. The goods from that stage onwards held by the carrier at the risk of the buyer and the property in

the goods stood vested in the buyer.

33. The principle underlying transfer of title in goods in f.o.b. contracts was stated by a Constitution Bench of this Court in *B.K. Wadaya v.*

Daulatram Rameshwarlal [AIR 1961 SC 311]. The question as to the transfer of title in the goods arose in that case in the context of a fiscal provision

but the principle relating to the transfer of title in goods in terms of FOB contract was unequivocally recognised. This Court held that in FOB contracts

for sale of goods, the property is intended to pass and does pass on the shipment of the goods. The National Commission was, therefore, right in

holding that the seller had no insurable interest in the goods thereby absolving the insurance company of the liability to reimburse the loss, if any,

arising from the mis-delivery of such goods.....â??

23. Adverting to the facts of the present case it is seen that as per commercial invoice Ex.PW1/D-1 the material was sold on CNF basis. The correct

expression for CNF under Incoterms, 2010 is CFR (Cost & Freight). Under a CFR (CNF) contract the risk passes on to the buyer when the goods

have been placed safely on board and therefore the risk of the plaintiff ceased once the goods passed through the ship's rails. Accordingly, in the

present case when the cargo was delivered on board the risk passed on to the buyer i.e. the defendant no.1. No evidence has been led by the plaintiff to

establish as to when the property in the goods was intended to pass. The contract was for sale of specific goods in deliverable state, though they were

to be weighed etc., and therefore the under the normal course the property in the goods passed on to the buyer at any rate before the goods were

delivered on board. Conversely, there is no evidence to show that the property in the goods had not passed on to the buyer at the time of loading of

goods on board or that the parties had agreed that the property in the goods shall pass on a later date.

24. Be that as it may, after loading of the cargo on board, the cargo was at the risk of the defendant no.1 as the contract was a CFR (CNF) contract

and therefore the plaintiff had no insurable interest in the cargo thereafter. As per the case of the plaintiff the cargo was damaged during the course

of voyage. As per section 8 of the Marine Insurance Act the plaintiff must establish insurable interest in the goods at the time of the loss/when

damage was caused to the goods. The result is that the plaintiff has failed to

show any insurable interest in the cargo during the voyage when it was allegedly damaged since the risk already stood transferred to the buyer i.e. the defendant no.1. Since there was no insurable interest at the time of the loss the plaintiff is not entitled to any insurance claim with respect to the damaged cargo and the insurance claim was therefore rightly repudiated by the defendant no.3 Insurance company.â?? (underlining added)

8. A reading of the aforesaid paras of the impugned judgment shows that trial court has rightly arrived at a finding that the appellant/plaintiff had no insurable interest because ownership of the goods had passed to the respondent no.1/defendant no.1/buyer. Once the appellant/plaintiff had no insurable interest because ownership of the goods had passed on to the responded no.1/defendant no.1, hence the appellant/plaintiff was not entitled to amount under the insurance policy from the respondent no.3/defendant no.3. I may note that it is settled law that loss of goods is upon the owner of the goods and therefore it is the owner of the goods being the respondent no. 1/defendant no.1 who had to insure the goods and not the appellant/plaintiff. Even if the appellant/plaintiff had taken an insurance policy, then that insurance policy to be valid had to have as the beneficiary of the policy as the respondent no.1/defendant no.1 and who had an insurable interest in the goods being the owner, however admittedly the beneficiary under the insurance policy of the appellant/plaintiff with the respondent no.3/defendant no.3 was the appellant/plaintiff and not the respondent no.1/defendant no.1. No fault therefore can be found with the impugned judgment of the trial court dismissing the suit against the respondent no.3/defendant no.3 on the ground that the appellant/plaintiff had no insurable interest in the goods.

9. As regards the respondent no.2/defendant no.2, and which is the insurance company with whom the respondent no.1/defendant no.1/buyer had insured the goods, trial court has rightly dismissed the suit against the respondent no.2/defendant no.2 because admittedly the appellant/plaintiff had no privity of contract with the respondent no.2/defendant no.2 as the respondent no.2/defendant no.2 had issued the policy in favour of the respondent no.1/defendant no.1.

10. As regards the respondent no.1/defendant no.1 trial court has dismissed the suit by observing that the appellant/plaintiff itself had accepted the

debit note of the respondent no.1/defendant no.1 and consequently the appellant/plaintiff to the extent of giving discount of the goods will not be

entitled to such amount from the respondent no.1/defendant no.1. This is so stated by the trial court in paras 36 and

37 of the impugned judgment and these paras read as under:-

36. In so far as the defendant no.1 is concerned, the plaintiff has itself proved the debit note dated 06.03.2013 for an amount of USD 14035.73. A

perusal of the said debit note Ex.PW1/12 reveals that the same has been issued towards Discount for damaged and bad cargo for USD

14,035.73

37. The said debit note was issued by the plaintiff and signed by the Vice President (Finance) and Company Secretary of the plaintiff company. The

same has been exhibited as Ex.PW1/12 by PW1. Since the plaintiff had voluntarily given a discount on account of damaged and bad cargo to the

defendant no.1, the plaintiff is not entitled to recover the said amount from the defendant no. 1 also. No evidence has been adduced by the plaintiff to

show that at any point of time the plaintiff had communicated to the defendant no. 1 that the said amount is payable by the defendant no. 1. Neither

there are proper pleadings in this respect nor appropriate evidence has been adduced on this count. Thus the plaintiff is not entitled to recover the said

amount from the defendant no.1 also.

11. In view of the aforesaid discussion, I do not find any merit in the appeal. Trial court has rightly dismissed the suit against the three defendants in

the suit, being the respondent nos. 1 to 3 in this appeal. Dismissed.