
(2010) 08 CHH CK 0007
In the Chhattisgarh High Court
Case No : First Appeal No. 88 of 1996

United Engineering Company	Vs	APPELLANT
Oriental Insurance Company Limited and Others		RESPONDENT

Date of Decision : 06-08-2010

Acts Referred:

Cantonments (House Accommodation) Act, 1923 — Section 2
Civil Procedure Code, 1908 (CPC) — Section 96
Contract Labour (Regulation and Abolition) Act, 1970 — Section 10(1)
Housing Act, 1996 — Section 6B(1)

Citation : AIR 2011 Chh 47 : (2011) 1 CGLJ 484

Hon'ble Judges : N.K. Agarwal, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

N.K. Agarwal, J.—This is Plaintiffs appeal u/s 96 of Code of Civil Procedure, 1908, against the judgment and decree dated 25-8-1995, passed by the IIIrd Additional District Judge, Raipur, in Civil Suit No. 30-B/1989, whereby and whereunder the Plaintiff's suit has been dismissed.

2. Brief facts of the case are that, the Plaintiff M/s. United Engineering Company is a partnership firm engaged in manufacturing of high and low density polythene pipes and polythene films etc. and is registered under small scale industries, Raipur.

3. The Plaintiff secured loan from Defendant No. 2/Bank by hypothecating with it its goods finished and unfinished. A fire policy was obtained from Defendant No. 1/insurance company by the Plaintiff through bank to cover the risk of goods, building, plant and machinery to the extent of Rs. 11,30,000/- by paying a premium of Rs. 4831/-. On 3-8-1985, based on Plaintiffs proposal (Ex. D/1), the cover note (Ex. P/2) was issued. Later on, policy was also sent.

4. Fire occurred on 25-5-1996 at about 11-40 a.m. in the stocks of HD Pipes stored in the open yards about 52 feet away from the factory shed but inside the

boundary wall of the factory premises which resulted in loss of stock lying in that area.

5. Loss intimation was given to Defendant No. 1/insurance company, who in turn, appointed Shri H.C. Shukla as Surveyor. As per survey report, no exact cause of fire could be known hence it can be taken as incidental fire. The Surveyor assessed the loss to the tune of Rs. 91,315/-.

6. The Defendant No. 1/insurance company rejected the Plaintiff's claim on the ground that the goods kept, stored and lying inside the buildings only were insured as per proposal made by the Plaintiff. The loss in question occurred to the goods lying outside the building i.e. kept outside the godown in the open area.

7. As per plaint averment the cover note No. A/596956, dated 3-8-1985 besides the other particulars contained the description of the particulars of risk covered by the insurance taken out by the Plaintiff was as under:

(i) "Rs. 1,70,000/- (Rupees One Lakh, Seventy Thousand) One building of 1st class construction situated at 27, Industrial Estate, Raipur belonging to owner. Building used for Engineering Workshop.

(ii) Rs. 6,00,000/- (Rupees Six Lakhs) on stock of raw materials, finished and unfinished goods i.e. H.D. Pipes, bags, sheets and other goods.

(iii) Rs. 3,60,000/- (Rupees Three Lakhs Sixty Thousand) on plant and machineries, 3 Nos. Extruder Mechanical Dyes of all types, Lathe Machine, flint plant and compressor some-rector etc.

8. The Defendant No. 1/insurance company did not issue the policy till 30-5-1986; i.e. prior to incident of fire, however, the description or particulars of risk said to be covered under the policy is as under:

(i) "Rs. 1,70,000/- (Rupees One Lakh Seventy Thousand) One building of 1st class construction situated at Industrial Estate, Raipur belonging to Insured's own use for purpose of engineering Workshop.

(ii) Rs. 6,00,000/- (Rupees Six Lakhs) on stock of raw materials, finished and unfinished goods i.e. H.D. Pipes, bags, sheets high density and or finished, semi-finished, unfinished goods and goods in process, while lying in the building as referred in item No. 1.

(iii) Rs. 3,60,000/- (Rupees Three Lakhs Sixty Thousand) on plant and machineries, 3 Nos. Extruder machines, dyes of all types, Lathe Machines, flint film plant and compressor motor, main switch, cutter machine, specialize machine, temperature control machine used in many of H.D. Pipes pertaining to insured, referred in item No. 1 above.

9. The Defendant No. 1/Oriental Insurance Company Ltd. has made an endeavour to classify the materials as "materials inside building" and "material

outside building" which was never a term of contract as evidenced from the "Cover Note" dated 3-8-1985. In order that this classification of "inside the building" and "Outside the building" may be binding there should have been acceptance by the Plaintiff, which is not present in this case. Any condition or term unilaterally imposed is not binding on the Plaintiff. Accordingly, the policy No. 15231/10/00842/85 is not enforceable and is not a valid contract and the Defendant is liable to pay damages on account of the loss sustained by the Plaintiff on the strength of cover note issued before the fire took place and which has binding effect on both the parties which says no such classification.

10. The Defendant No. 1, in its written statement, denied the allegations and it has been stated that the policy issued is strictly in the terms of the proposal and the goods lying inside the building are only insured by the defendant and the suit is liable to be dismissed.

11. It appears that, during the course of argument before the trial Court it was also argued by the Plaintiff that the open area of building covered by the boundary wall where damaged goods were lying at the time of incident comes within the purview of definition of building.

12. As per description of building given in survey report (Ex. D/2), the factory shed is built in the area of 76 x 41 ft. i.e. 3,116 sq. ft. it has partitions inside for storage of finished goods, Bank Godown, Unfinished goods. Machine Room Office and servant quarters etc. The shed is 15' height from the plinth having a Steel Trusses covered with A.C. Sheets. The building referred in the policy is a first class construction having a Hall measuring about 41 x 76 feet covered with A.C. Sheets. The Hall is divided inside for the purpose of office, storage and tool room. Rest of the hall is used as manufacturing Floor. In the rear, it has an open area and is secured by a 4' high compound wall. In the open area, it has a tube-well and small hutments used as residence. The front is secured by iron gate in the compound wall. The Industry is built on the plot allotted by Small Scale Industries Department, Government of Chhattisgarh, in Raipur Industrial Estate. The plot is on lease. As per the Surveyor, the fire occurred on 25-5-1986 at about 11-40 a.m. in the stocks of HD Pipes stored in the open yards about 52 feet away from the factory shed in the area measuring about 76 x 41 feet. It was Sunday and the plant was closed. There was only one person staying inside the premises. The Defendant has not suffered any loss against the plant and machinery, the loss sustained is in the stocks only.

13. Narsing Das Bagdi (RW. 1), in his statement para 9, has deposed "copy of statement of hypothecated goods was given to the Bank and a copy of which was also retained by the Plaintiff. Further, in his statement para 10 he has deposed "it is true that the goods lying inside the compound open to Sky but outside the factory building were damaged and factory building and machinery lying inside the factory were not damaged". D.D. Joseph (D.W. 1), Asstt. Divisional Manager, Oriental Insurance Co., Raipur, has deposed that the policy was issued strictly in terms of the proposal form (Ex. D/1). Harishankar Shukla (D.W. 2) has deposed

in para 4 of his statement that damage was caused to the material placed outside the building i.e. in the backside of the building.

14. As per proposal form (Ex. D/1), clause 5.c, stock-in-trade (in shop or godown), consisting of stock of raw materials, H.D. Pipes, Bags, Sheets, high density and/or finished, semi-finished and/or unfinished goods and goods in process were proposed to be insured.

15. The trial Court, on the basis of pleadings of the parties, evidence adduced thereon and documents placed, dismissed the Plaintiff's suit, holding damage goods, lying outside the building, not covered under the policy of insurance.

16. Shri Arvind Dubey, learned Counsel appearing for the Appellant, by placing reliance upon the judgments of Supreme Court in cases of *Indian City Properties Ltd. and Another Vs. The Municipal Commissioner of Greater Bombay and Another*, *Jai Narain Parasrampuria (Dead) and Others Vs. Pushpa Devi Saraf and Others*, and *International Airport Authority Employees' Union v. International Airports Authority of India* 2001 (1) SCC 205 : AIR 2001 SC 276 would submit that the area in which the damaged goods were lying, satisfied the definition of "building" and therefore, the trial Court has erred in dismissing the Plaintiff's suit which deserves to be allowed with costs.

17. On the other hand, Shri Raj Awasthy, learned Counsel appearing for the insurance company supported the judgment and decree and contended that in the facts and circumstances of the case, the trial Court has rightly dismissed the suit and judgment and decree passed by the trial Court deserves to be upheld.

18. I have heard the counsel appearing for the parties, perused the judgment and decree and records of the trial Court.

19. The plea taken by the Plaintiff that as per cover note (Ex. P/2), there is no condition that goods lying in the building are only insured, is sans substance, as the insurance company will not insure the abandoned goods lying anywhere and are not secured.

Therefore, the only question arises for determination of this Court would be whether in the facts and circumstances of the case, the damaged goods lying within the boundary Wall but outside the building covered with roof and outside the godown can be said to be stored in the building so as to treat it "insured goods".

20. The relevant facts necessary to resolve the above question can be summarized as under:

i. As per plaint averment, policy was issued subsequent to occurrence of incident mentioning term therein that only goods lying inside the building are insured, is contrary to the terms mentioned in the cover note and therefore, is unenforceable, being not accepted by the Plaintiff.

ii. As per proposal form (Ex. D/1) clause 5.c, stock-in-trade (in shop or godown),

consisting of stock of raw materials i.e. H.D. pipes, bags, sheets, high density and/or finished, semi-finished and/or unfinished goods and goods in process were proposed to be insured.

iii. The Insurance cover was taken by the Bank on behalf of Plaintiff who advanced loan to the Plaintiff firm by mortgaging/hypothecating the goods/stock.

iv. As per surveyor report (Ex. D/2), the building is consisting of factory shed built in the area of 76 x 41 ft. i.e. 3,116 sq. ft. It has partitions inside for storage of finished goods, bank godown, unfinished goods, machine room office and servant quarters etc.

v. The Plaintiff has not filed any documents showing the place where goods mortgaged/hypothecated were kept.

21. None of the parties have filed the policy conditions showing any definition of the word "building". Therefore, the definition of word "building" has to be gathered from the facts and circumstances of the case.

22. Ordinarily the bank keeps the goods mortgaged with it under lock and key in a godown and advances loan against such goods. It is also common practice bank advances loan against the stock lying in the shop i.e. in physical possession of the party upon furnishing its correct statement. None of such statement has been filed in the instant case. Admittedly, the policy of insurance was procured by the bank on Plaintiff's behalf.

In the above circumstances, the definition of word "building" cannot be stretched so as to bring within its sweep the open area covered by the boundary wall.

23. The Supreme Court, in case of Jai Narain Parasrampunia (dead) v. Pushpa Devi Saraf (supra), while interpreting the word "house" occurring in an agreement to sale has observed in paras 71 & 72 as under:

71. In P. Ramanatha Aiyar's Advanced Law Lexicon, Volume 2, 2005, the word "house" has been defined to mean:

"House" means a house suitable for occupation by a Military Officer or a military mess. The term includes the land and buildings appurtenant to a house. (Cantonment (House Accommodation) Act (6 of 1923), Section 2(f)).

"House" includes any building or part of a building with its appurtenances and outhouses used for any purpose whatsoever (Orissa House Rent Control Act, 1967 (4 of 1968), Section 2(3)).

"House" includes:

(a) any part of a building occupied or intended to be occupied as a separate dwelling, and

(b) any yard, garden, outhouses and appurtenances belonging to it or usually enjoyed with it (Housing Act, 1996 (Act 52 of 1996), Section 6-B(1).)

72. In "Words and Phrases, Permanent Edition, Volume 19-A, it is stated:

The word "building" necessary embraces the foundation on which it rests, and the cellar, if there be one, under the edifice, is also included in the term "house" or "building". If there be a cellar, the word "building" includes it, unaffected by the height above the foundation *Benedict v. Ocean Ins. Co.*

Furthermore, it is now well settled that the building includes the land on which it stands, unless by express stipulation it is excluded. (See *T. Lakshmipathi and Others Vs. P. Nithyananda Reddy and Others*,).

24. The Supreme Court in case of *Indian City Properties Ltd. (supra)*, while interpreting the word "building" occurring in Section 299 of the Bombay Municipal Corporation Act, 1888, has held in paras 19 & 20 as under:

19. The word "structure" is used as a generic term so that while all buildings may be structures, all structures are not buildings. That structure which is not a building and is a platform, verandah, step, or some other such structure external to a building may be taken over by the Commissioner u/s 299(1) if it is within the regular line of the street. The words "some other such" must be construed as structures similar or like platform verandah and step. The words must be read ejusdem generis with the preceding words since the word "such" means "of the type previously mentioned". The word "other" has also been held to indicate that it must be construed ejusdem generis. The underlying characteristic of platforms, verandahs and steps is that they are not independent structures and are external to a building, that is they are attached to the outside and form an inessential part of a building. In our opinion, therefore in order to be a building for the purpose of Section 299 the structure would have to be an independent, permanent structure. Thus there is no repugnancy if one were to read the definition of building and Section 299 and in our opinion the word "building" has been used in Section 299 in the sense defined in Section 3(s).

20. Of the six items listed by the Commissioner in his report, learned Counsel appearing on behalf of the Respondents has, as we have noted earlier, already conceded that the part of the main structure described against serial No. 6 would be excluded from the purview of the action proposed in the impugned notice u/s 299. Even without the concession in our view, applying the test of independence and permanence each of the items falls within the definition of "building" in Section 3(s) of the Act, and therefore, fall outside the purview of Section 299.

25. The Supreme Court in case of *International Airport Authority Employees' Union (supra)*, while construing the word "building" in the context of Section 10(1) of Contract Labour (Abolition & Regulation) Act, 1970, has held in para 2 of its judgment as under:

2. The sweepers with whom we are concerned in these interlocutory applications work in the car parks in the Santacruz and Sahar Airport at Mumbai and they are six in number. It is difficult to conceive of the airport being functional without a

car park and that the car park is not a part of the building. The airport includes not only landing and taking-off areas for the aircraft, the runways and aircraft maintenance areas, but also passenger facilities. Passenger facilities would certainly include car parking and it cannot be said that car parking is not a part of the building. Building in its ordinary sense would include appurtenances which form (sic part) thereof, unless it be that the expression building is to be understood as was done in Merchant of Venice with reference to a pound of flesh. Therefore, we cannot agree with the stand of the Respondents.

26. From the law laid down by the Hon^{ble} Supreme Court in the above referred cases, no common definition of word "building" can be culled out. The Hon^{ble} Supreme Court has construed the definition of word "building" in the context in which the word "building" has been used.

27. As per Black's Law Dictionary (8th Edn.) building means a structure with walls and roof esp. a permanent structure.

28. In view of above, in the considered opinion of this Court, the trial Court has rightly held that open place inside the boundary wall where incident of fire occurred does not come within the definition of word "building" used in the policy, and has rightly dismissed the suit.

29. No other points have been raised.

30. In view of foregoing, the appeal being devoid of substance is liable to be and is hereby dismissed. However, in the facts and circumstances of the case, there is no order as to costs.