

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
SUIT NO. 1372 OF 1981

The United India Insurance Co. Ltd.,)
a nationalised Insurance Company having its)
registered office at 24, Whites Road, Madras-600 014)
and a Divisional Office at Cambatta Building,)
3rd Floor, Above Eros Cinema, 42, Maharshi Karve)
Road, Bombay-400 020)..Plaintiffs.

vs.

1. Pratapsinh Shoorji Vallabhdas of Bombay,)
Indian Inhabitant, residing at Cutch Castle,)
4th floor, Near Opera House, Sandhurst Bridge,)
Bombay-400 004)
2. Dilipsinh Shoorji Vallabhdas of Bombay,)
Indian Inhabitant residing at Cutch Castle)
4th floor, Near Opera House, Sandhurst Bridge,)
Bombay-400 004)
3. Aditya Pratapsinh Vallabhdas of Bombay,)
Indian Inhabitant, residing at Cutch Castle,)
4th floor, Near Opera House, Sandhurst Bridge,)
Bombay-400 004)
4. Jyotsna Vikramsinh Shoorji Vallabhdas of)
BombayIndian Inhabitant, residing at)
Cutch Castle, 4th floor,)
Near Opera House, Sandhurst Bridge, `)
Bombay-400 004)..Defendants

Coram: S. J. Kathawalla, J.

Date: 28th August 2015

Mr. Rajiv Singh, i/b. M/s. Crawford Bayley & Co. for the Plaintiff.

Mr. Karl Shroff, alongwith Mr. Shailesh Poria and Mr. Swapnil Gupte i/b. M/s. Hariani & Co. for the Defendants.

ORAL JUDGMENT:

1. The present Suit is filed on the basis of the terms of an insurance policy dated 19 May 1973 protecting property of a Company i.e. Western India Spinning and Manufacturing Co. Ltd. against damage by fire.
2. The following issues were framed on 3 July 2001:
“
 1. *Whether the suit filed by the Plaintiffs is barred by law of limitation?*
 2. *Whether the Plaintiffs have not paid the full Court Fees payable on the Plaint and whether the suit is therefore liable to be rejected?*
 3. *Whether the Plaintiffs prove that the Defendant No.3 was the Director of the Company in liquidation?*
 4. *Whether the suit is bad for non-joinder of the Western India Spinning and Manufacturing Co. Ltd. and or the Official Liquidator as the Liquidator of the said Company?*
 5. *Whether the Defendant Nos. 1, 2 & 3 agreed to give personal guarantee and or create equitable mortgage as alleged in para 6 of the Plaint?*
 6. *Whether the Defendant Nos. 1, 2 & 3 gave guarantee dated 3-4-1975 as alleged in para 8 of the plaint?*
 7. *Whether the Defendant Nos. 1, 2 & 4 created equitable mortgage by depositing with the Plaintiffs the title deeds as alleged in para 10 of the Plaint?*
 8. *Whether the Company did not carry out the work of reinstatement and replacement of the value of Rs.1,77,50,000/-?*
 9. *Whether the Plaintiffs are entitled to claim Rs.78,48,000/- from the Defendants?*
 10. *Whether the Plaintiffs are entitled to claim interest @ 12% per annum on the said sum?*
 11. *What reliefs, if any, Plaintiffs are entitled.”*

Issues 5, 6, 9 & 10

3. Though the existence of the policy is not denied, neither a copy is annexed with the Plaint nor compilation of documents. It is claimed that the policy contains a reinstatement clause, which is disputed by the Defendants in the Written Statements of Defendant Nos. 1 & 4 and Defendant Nos. 2 & 3. No evidence by way of Examination-in-Chief of any person, even claiming to have seen the policy and about its terms is led by the Plaintiffs. In view of the same the basic terms of the policy as pleaded in the Plaint have not been proved by the Plaintiff.
4. The evidence in chief by way of an Affidavit of Mr. Yogesh Meshram dated 20th November is filed on behalf of the Plaintiff. In his cross examination he admits that, he joined the Plaintiff in 1995 and that he has absolutely no personal knowledge about any aspect and particularly representations or agreements he allegedly deposed to. His cross examination is reproduced hereafter. The same would establish the Plaintiffs case remains unproved:

“Cross-examination of P.W. No.2 by Mr. Karl Shroff, learned counsel for the Defendants.

[By consent, and for convenience, the cross-examination is recorded in question and answer form, not in the narrative form ordinarily required by Rule 274 of the Bombay High Court (Original Side) Rules.]

1. Q. When did you join the Plaintiffs?

Ans. On 23rd May 1995.

2. Q. ***(Shown paragraph 1 of the witness’s evidence affidavit.)***

Is it correct that the entirety of your affidavit is based on records and not on any personal knowledge that you might have of the facts of the case?

Ans. Yes.

3. Q. *I put it to you that Defendant No.3 was not a Director of Western India Spinning & Weaving Mills Limited. Can you confirm or deny this to your personal knowledge?*

Ans. *I am unable to either confirm or deny this since I have no personal knowledge of it.*

4. **Q.** *Is it true that you have not yourself personally seen the Insurance Policy referred to in para 1(c) of your evidence affidavit?*

Ans. *That is correct.*

5. **Q.** *Is it correct that you have no personal knowledge of any fire as is referred to in para 1(e) of your evidence affidavit?*

Ans. *That is correct.*

6. **Q.** *Are you personally aware whether the agreements and representations that you have referred to in paragraph 1(e) are in writing?*

Ans. *I have no personal knowledge of this.*

7. **Q.** *Have you yourself seen the original guarantee referred to in paragraph 1(g) of your evidence affidavit?*

Ans. *No.*

8. **Q.** *Is it correct that the personal guarantee referred to in paragraph 1(g) of your evidence affidavit was never executed?*

Ans. *I am not aware.*

9. **Q.** *Why have you in the last sentence of this paragraph said that a copy of this letter of personal guarantee is annexed but yet not produced it?*

Ans. *I cannot explain. I believe that there was a confusion between the personal guarantee and the company's guarantee.*

10. **Q.** *I put it to you that no guarantee dated 3rd April 1975 was executed either by the company or by Defendants Nos. 1 to 3.*

Ans. *(Witness is directed to answer this question on the basis of his personal knowledge alone.)*

I have no personal knowledge of this. I have only produced what is available on record.

11. Q. *I put it to you that none of the representations or agreements mentioned in paragraphs 1(e) or 1(i) of your evidence affidavit were made, executed or agreed to at any time. Can you confirm or deny this on your personal knowledge?*

Ans. I have no personal knowledge of any of this.

12. Q. *I put it to you that there were no such representations, requests, agreements or letters as referred to in paragraphs 1(e) and 1(i) of your evidence affidavit. Can you confirm or deny this on your personal knowledge?*

Ans. No. I cannot. I have no personal knowledge of this.

13. Q. *Is it correct that there is no proof of delivery of the letter, Exhibit "P5", dated 18th August 1980?*

Ans. That is correct.

14. Q. *I put it to you that Defendants Nos. 1 to 3 were never guarantors. Is that correct?*

Ans. I do not know.

15. Q. *I put it to you that Defendants Nos. 1 to 3 were not liable to the Plaintiffs. Do you agree?*

Ans. I do not agree.

***Cross-examination of the Plaintiffs' witness is complete.
Stand over to 22nd December 2014 at 11.00 a.m. for directions."***

5. It is pleaded in the Plaint on the basis of oral understanding that a lumpsum of Rs.1,77,50,000/- was agreed as full and final settlement of the claim. There is a further oral understanding pleaded that the Company would replace the property destroyed by using this amount within 12 months of destruction and that the Company and Defendant Nos. 2 and 3 agreed to provide personal guarantees and create an equitable mortgage as security. Copy of the Deed of Guarantee dated 3rd April 1975 annexed to the Plaintiffs compilation was not exhibited in

evidence and no secondary evidence was also led. It is also merely pleaded that the amount payable had there not been a reinstatement clause was a lumpsum of Rs. 80,23,029/-. It is the Plaintiffs' case that there is a further oral understanding that should there be no reinstatement within 12 months, the Plaintiffs would be entitled to recover the difference between the total amount, i.e. Rs.1,77,50,000/- and the settled and agreed lumpsum figure of Rs.80,23,029/-. The above understandings are also not proved by the Plaintiffs witness.

6. It is therefore the Plaintiffs' case that the Plaintiff is entitled to recover from the Defendants Rs.70,48,000/- with interest from 3 April 1975.
7. Considering the overall facts and the lack of evidence on record on behalf of the Plaintiff issues 5, 6, 9 and 10 are required to be answered in the negative.

Issue :7

8. It is also alleged that there is an alleged deposit of title deeds on 3 April 1975 to secure repayment of above amounts. No document of Memorandum of Deposit is produced. In view of the same issue no. 7 will have to be answered in the negative.

Issues: 1 to 4, 8 and 11

9. In my view in light of the answers to issues 5 to 7 and 9 & 10 being answered in the negative the remaining issues are not required to be answered since the principal issues about the Plaintiffs' right to recover amounts claimed is already answered in the negative.
10. Suit accordingly dismissed with no order as to costs.

(S. J. Kathawalla, J.)