

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**NOTICE OF MOTION NO. 169 OF 2011
IN
SUIT NO. 3059 OF 2010**

SBI Global Factors Ltd.
(formerly known as
M/s. Global Trade Finance Ltd.)

.. Plaintiff

Vs.

ICICI Lombard General Insurance Co. Ltd.

.. Defendant

Mr.Dhaval A. Patil i/b K. Ashar & Co. for plaintiff.

Mr.Zal Andhyarujina a/w. Mr.Naval K. Sharma, Mr.Saket Satapathy i/b Tuli
& Co. for defendant.

**CORAM : K.R.SHRIRAM, J.
DATED : 8TH JANUARY, 2015**

P.C.

1 The notice of motion is taken out on behalf of the plaintiff for two reliefs namely (a) to direct the defendant to re-examine the claim lodged by the plaintiff in accordance with the provisions of the policy and (b) for directing the defendant to deposit the amounts claimed in the suit in this Court.

2 The suit is regarding the claim made by the plaintiff under an insurance policy which claim was rejected by the defendant. Going in the reverse order of the reliefs claimed, the plaintiff has not made out any case

under Order XXXVIII, Rule 5 of Code of Civil Procedure, 1908 warranting the Court to direct the defendant to secure the claim of the plaintiff.

3 It is the case of the defendant that under the policy, the defendant was bound to indemnify the plaintiff only when the plaintiff proves that there was a loss. The plaintiff has not proved the loss is the case of the defendant. Therefore, the question of directing the defendant to secure the claim of the plaintiff also does not arise. As regards the first relief, i.e., directing the defendant to re-examine the claim lodged by the plaintiff in accordance with the provisions of the policy, the counsel for the defendant states that if the plaintiff makes a representation, the defendant will consider the same.

4 The notice of motion is accordingly disposed with no order as to costs.

5 The counsel for the defendant states that the written statement has already been filed. Therefore, the suit to be listed on 5th February 2015 for framing of issues. In the meanwhile, the parties to file their respective affidavit of documents and also complete discovery and inspection.

(K.R. SHRIRAM, J.)