IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 02.11.2016

PRONOUNCED ON: 14.11.2016

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

CS.No.135 of 2010

M/s.Raj Petro Specialities P Limited
by Managing Director B.J.Nanavati
Chennai-10 Plaintiff

Vs

1. M/s.Universal Logistics by its Partner Chandrasekar
   Chennai 600103

2. M/s.Cholamandalam MS General Insurance Company
   by its Authorised Signatory, Chennai-1 Defendants

Prayer:- This Civil Suit is filed under Order IV Rule 1 of Original Side Rules read with Order VII Rule 1 of CPC.

For Plaintiff : Mr.S.Suresh Kumar

For Defendants : D1-Set Exparte
D2-No Appearance

JUDGEMENT

This civil suit has been filed to pass a judgement and decree, against the Defendants:-

a) directing the Defendants to pay a sum of Rs.84,74,390/- with interest @ 18% p.a. from the date of the plaint till the date of realisation.

b) directing the Defendants to pay the costs of the suit to the Plaintiff.

2. The case of the Plaintiff, in a nutshell, as set out in the plaint, is as

follows:-

a. The Plaintiff is the registered Company under the Indian Companies Act, 1956 and has been carrying on the business of manufacturing and supplying various industrial oils and had it manufacturing unit at Manali, Chennai. During the course of its business, the Plaintiff had imported micro crystalline wax, weighing 99,535.48 kgs, in 5 containers from M/s.Sonneborn Inc. USA, vide Invoice Nos.88078103 to 880781106 and 88078132, dated 3.5.2008 and under the Bill of Lading, vide B/L.No.KKLUUS0224243, dated 3.5.2008. The said consignments were bonded in customs bond and kept in the warehouse of the 1st Defendant Company, by name, Universal Logistics, Manali, vide, warehouse bill of entry No.763442, dated 10.6.2008. The total value of the consignment, including the customs duty was Rs.1,22,42,283. The Defendant had also issued 'no objection' to receive the stocks and reserved the area of 150 sq.m for warehousing the consignment and received payment for storage charges @ Rs.60/- per sq.m and charged Rs.36,000/- and also claimed insurance charge of Rs.7,320/-. Consequently, the Plaintiff had paid a sum of Rs.43,320/- as storage and insurance charges and a further sum of Rs.5,354.35, as service tax, vide bill dated 18.6.208 in Bill No. Bond 0253/08-09.

b. The Plaintiff had cleared two containers, weighing 39,621.78 kgs vide Ex-Bond bill of entry No.810469, dated 5.8.2008 and the remaining consignment was in possession of the 1st Defendant. Suddenly, by a fire accident that took place on 9.10.2008 in the warehouse of the 1st Defendant, the remaining consignment weighing 59,913.70 kgs bearing the value of Rs.73,69,035/- was completely destroyed. Immediately, on 9.10.2008 itself, the Plaintiff had sent letters, along with the necessary documents, claiming damges, to the 1st Defendant for the loss of the materials in the fire accident and to the 2nd Defendant Insurance Company as well. On 29.10.2008, the 1st Defendant had sent a reply to the Plaintiff, stating that they were pursuing the matter with the 2nd Defendant Insurance Company and asking the Plaintiff to wait for some time for settlement. Again on 18.11.2008, the 1st Defendant had sent a letter to the Customs House Agent of the Plaintiff, confirming that the goods bonded in the warehouse were destroyed due to the said fire accident. The 1st Defendant Insurance Company had, by letter dated 21.11.2008, requested the Plaintiff to contact the 1st Defendant/Policy Holder for further communication, since the papers were not sufficient.

c. The Plaintiff had, again, sent a letter, dated 17.1.2009 to the 1st Defendant, to settle the claim, as per the survey report filed by the Insurance Company and also sent a letter dated 3.3.2009 to the 2nd Defendant Insurance Company, demanding insurance claim. Since there was no response, the Plaintiff again had sent letters to the Defendants on 24.3.2007 and 17.4.2009, to settle the claim. By letter dated 22.5.2009, the 1st Defendant had informed the Customs House Agent of the Plaintiff, viz. M/s.Sherif and Sons that the Insurance Company had declined to settle the claim for the reason that the warehouse was containing hazarduous goods, whereas the Insurance Company had issued a fire policy for storage of non-hazarduous goods only.

Due to the negligence of the 1st Defendant, the goods were destroyed and hence, the Plaintiff is also entitled to profit on the goods lost as per Section 6(3) of the Warehousing (Development and Regulation) Act, 2007. In spite of repeated demands made by the Plaintiff, the 1st Defendant did not come forward to settle the claim.

d. The goods destroyed in the fire accident were insured with the 2nd Defendant Insurance Company under Fire and Special Perils Policy Number PSP 00046227-000-00 for a sum of Rs.20,00,00,000/- (Rupees twenty crores only) for the period from 10.3.2008 to 9.3.2009. As per the terms and conditions of the said policy, the non-hazardous goods are covered for the events of fire and special perils and earthquake. The goods of the Plaintiff, which were bonded in the warehouse of the 1st Defendant and destroyed in the fire, are non-hazardous goods. The 2nd Defendant had stated that the claims would be settled only through the 1st Defendant. As per the terms of the insurance policy, the 2nd Defendant is liable to pay the value of the goods damaged in the fire and loss of profit on behalf of the 1st Defendant.

e. Since the 1st Defendant was in possession of the goods at the time of the accident and having received storage and insurance charges and service tax from the Plaintiff, the 1st Defendant is liable to settle the claim of the Plaintiff and can recover the same from the 2nd Defendant Insurance Company. As per the Warehousing (Development and Regulation) Act 2007, the Plaintiff is also entitled for profits from the warehouseman, where the goods were destroyed due to the negligence of the warehouseman. Hence, both the

Defendants are severally and jointly liable to pay the claim. In spite of several demands, they did not come forward to settle the claim. Hence, this civil suit has been filed for the reliefs as stated above.

3. Though the 1st Defendant was served as early as on 07.06.2010, no written statement had been filed by the 1st Defendant and hence, the matter was ordered to be listed under the caption of "Undefended Board". For non filing of the Written Statement, the 1st Defendant was set exparte and Exparte Evidence was ordered by the order of this court, dated 29.1.2014.

4. One G.Manokaran, the Deputy Manager of the Plaintiff Company, had filed the proof affidavit for his chief examination and receipt of 19 documents as documentary evidence to prove the suit claim. In the Evidence, the said G.Manokaran examined himself as PW.1 and marked Exs.P1 to P19 as documentary evidence in order to prove the suit claim.

5. Originally, this civil suit had been filed only against the 1st Defendant herein and subsequently, the Insurance Company, by name M/s.Chola Mandalam MS General Insurance Company had been impleaded as the 2nd Defendant, by the order of this Court, dated 11.2.2015 made in A.No.2178 of 2014 since even after service of notice, there was no representation for the 2nd Defendant Insurance Company and consequently, the plaint had also been amended by the order of this court dated 30.03.2016, incorporating averments relating to the 2nd Defendant Insurance Company. Even thereafter, there has been no representation for the 2nd Defendant Insurance Company and no written statement has been filed by them. Even

today, there is no representation for the 2nd Defendant Insurance Company.

6. Considering the oral and documentary evidence, viz. Ex.P1 to Ex.P19 adduced by PW.1, this Court is of the view that the plaintiff has proved the suit claim and hence, the Plaintiff is entitled for the reliefs, as asked for. Accordingly, this civil suit is decreed as prayed for against the 2nd Defendant Insurance Company with costs. Time for payment is three months. It is made also clear that the 2nd Defendant Insurance Company is at liberty, after settling the decreetal amount to the Plaintiff within the said period, to recover the same from the 1st Defendant, in a manner known to law.

14.11.2016

Index:Yes/No
Web:Yes/No
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1. List of Witnesses Examined on the side of the Plaintiff:-

    1. P.W.1 – G.Manokaran

2. List of Exhibits Marked on the side of the Plaintiff:-

S.No	Exhibit	Description	Date
1	Ex.P. 1	Board Resolution	20072016
2	Ex.P. 2	Commercial Invoice from USA concern	03052008
3	Ex.P. 3	Bill of lading	03052008
4	Ex.P. 4	Bill of Entry for exbond	10062008
5	Ex.P. 5	Application for issue of space availability with the 1st defendant	--
6	Ex.P. 6	Bill issued by the first defendant	18062008
7	Ex.P. 7	Letter addressed to the first defendant	09102008
8	Ex.P. 8	Letter addressed to the Insurance Company	14102008
9	Ex.P. 9	Letter from the first defendant	28102008
10	Ex.P. 10	Letter from the first defendant	21112008
11	Ex.P. 11	Letter to the Insurance Company	18112008
12	Ex.P. 12	Letter from plaintiff's clearing agent to the first defendant	30102008
13	Ex.P. 13	Letter addressed to the first defendant	17012009
14	Ex.P. 14	Letter addressed to the Insurance Company	03032009
15	Ex.P. 15	Letter addressed to the first defendant	24032009
16	Ex.P. 16	Letter addressed to the first defendant	17042009
17	Ex.P. 17	Letter from the first defendant to the plaintiff's clearing agent	2205209
18	Ex.P. 18	Legal notice issued by the plaintiff	28072009
19	Ex.P. 19	Postal acknowledgment card	--

3. List of Witnesses Examined on the side of the defendant:-

Nil

4. List of Exhibits Marked on the side of the defendant:-

Nil

14.11.2016

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C.V.KARTHIKEYAN, J.

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Pre-Delivery Judgement in
CS.No.135 of 2010

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