

IN THE HIGH COURT OF JUDICATURE AT MADRASDATED : **20.10.2017**

CORAM

THE HON'BLE MR.JUSTICE **P.KALAIYARASAN****C.S.Nos.762 of 2004**

M/s. Tarapore & Co.,
"Dhun Building"
No.827, Anna Salai,
Chennai - 600 002
and Rep. by its Partner
Mr.N.Radhakrishnan

.. Plaintiff

vs

M/s. United India Insurance Co., Ltd.,
P.B.No.202,
No.166, Thambu Chetty Street,
Chennai - 600 001.

.. Defendant

Civil Suit filed under Order VII Rule 1 of CPC read with Order IV Rule 1 of O.S.Rules, seeking for a judgment and decree, directing the defendant to pay the plaintiff a sum of Rs.16,86,306/- together with interest on the principal amount of Rs.9,08,144/- at 18% per annum from this date till date of payment and for costs.

For Plaintiff : Mr.R.Murari, Senior Counsel
for Mr.K.K.Muralitharan

For Defendant : Mr.N.Venkataraman
for M/s. Nageswaran & Narichania

JUDGMENT

The suit is for recovery of a sum of Rs.16,86,306/- together with interest on the principal amount of Rs.9,08,144/- at 18% p.a., towards the claim made by the plaintiff with the defendant pursuant

to the Insurance policy.

2. The plaint averments are as follows :

(i) The work of construction of Ash ponds for Fly Ash disposal for the Farakka Super Thermal Power plant, National Thermal Power Corporation at Farakka was awarded to the plaintiff in February 1988. For the said project, the plaintiff was required to establish a camp at the work site for their men and machinery required for the work. The plaintiff had taken out a Burglary and House Breaking Policy bearing No. 010101/46/01/11/0066/89 with the defendant for the period commencing from 31.05.1989 and ending with 30.05.1990 covering the contractor's machinery lying in the work spot at Farakka for value of Rs.10,00,000/-. The plaintiff had also paid a sum of Rs.5000/- as premium to the defendant for the said Insurance policy. It is specifically mentioned in the policy that the policy has been extended to include theft subject to an excess of Rs.5000/- on each and every claim. The list of machinery / materials so insured have been listed out in the schedule attached to the policy.

(ii) On 26.03.1990 during the policy period, a mob consisting of 150-200 miscreants entered the construction site of the plaintiff at

Malancha camp armed with lethal weapons, damaged and demolished the camps and sheds and looted several materials belonging to the plaintiff including the CG-I sheets, doors, windows, tables, cots, fans, electrical fittings etc., and removed parts from the plaintiff's vehicles, equipment and machineries. The plaintiff had informed the defendant by their letter, dated 22.01.1991 of the damage to their machinery, camps and sheds as well as theft of items. The plaintiff also by their letter, dated 24.01.1991 intimated the defendant's Regional Office. the defendant had appointed one Mr.S.K.Bhadra as Surveyor to survey the loss and to submit his report thereon to the plaintiff. For this purpose, a meeting was held on 10th and 12th of February 1991 between the representatives of the plaintiff and the defendant. As requested by the Surveyor in the meeting, the plaintiff had forwarded the claim form and other relevant documents to him, wherein a claim was made for a sum of Rs.9,08,144/-.

(iii) As nothing further was heard, the plaintiff addressed a further letter to the defendant on 07.12.1991. The defendant on 30.03.1992 wanted to the plaintiff to submit the requisite claim forms. The plaintiff on 23.04.1992, pointed out that the claim forms and supporting papers had already been submitted and sent a further copy of the claim form. The plaintiff has thereafter been regularly

following up the settlement of the claim with the defendant and the surveyor till 1999. The Surveyor by his letter, dated 19.07.1999 informed the plaintiff that he hoped to send the report to the defendant within a fortnight's time.

(iv) On 22.12.1999, the Surveyor submitted his final survey report to the defendant and marked a copy of the covering letter to the plaintiff. Even thereafter the defendant without any justification failed to settle the plaintiff's claim. Therefore, the plaintiff addressed a letter to the defendant on 18.01.2000. Further reminders were also sent on 26.02.2000, 17.03.2001 and 20.06.2001. Since there was no response, the plaintiff was constrained to cause a legal notice to the defendant on 14.08.2002. The defendant for the first time after 10 years addressed a letter dated 05.11.2002 repudiating the claims of the plaintiff on the ground that the premium was not paid within time; that the incidents / complaints were caused by the plaintiff's employees and the same is not covered in the policy and that the defendant closed the claim, as there was no communication from the plaintiff.

(v) The plaintiff replied to the said notice through their counsel on 26.12.2002 pointing out that bank guarantee had been given in respect of the premium; that the words riots and strikes appearing in the exception class stands deleted in the policy and that

the miscreants who caused the destruction were not the employees of the plaintiff. Further legal notice was also sent by the plaintiff on 14.06.2004 pointing out that the defendant had settled similar claims under Commercial Vehicle Motor Policy and also brought to the notice of the defendant the recent IRDA circular. The defendant sent reply on 12.07.2004 raising totally untenable conditions. Therefore, the plaintiff is entitled to recover the claim amount of Rs.9,08,144/- together with interest thereon at 18% p.a., from 22.12.1999 which is the date of Survey Report.

3. The contentions of the written statement filed by the defendant are as follows :

(i) The capacity of the person who signed and verified the plaint for and on behalf of the plaintiff as prescribed under Section 69(2) of the Partnership Act is to be proved by the plaintiff. The suit is barred by law of limitation, having been filed beyond the period prescribed under Article 44(b) of the Limitation Act, 1963. Further as per policy condition No.10 (3), the rights of the plaintiff to claim has been abandoned. The incident took place as early as 1990 and the claim form had been submitted in 1992. No action is taken by the plaintiff nearly two years. No suit was filed by the plaintiff within three years from the date of cause of action. The date of disclaimer is

05.11.2002 and the plaint has been verified only during August 2004 and as such no suit was filed within 12 calendar months from the date of disclaimer, as per Policy condition No.10 (3). By virtue of the enhancement in the pecuniary jurisdiction of this Court, the suit is also liable to be transferred to the file of the City Civil Court, Chennai.

(ii) The plaintiff is put to strict proof of the extent of loss and damage alleged to have been suffered by them. In the report dated 01.12.1999 filed by the Licensed Surveyors appointed by the defendant, it is clearly stated that the materials alleged to have been stolen were brought from other sides and that the purchase vouchers were not available.

(iii) Even as per the First Information Report, the alleged mob which caused the rampage, destruction of property and loss to the plaintiff were employees of the plaintiff and this will clearly attract policy exclusion clause No.1 (ii) of the policy.

(iv) There is also violation of Section 64 VB of the Insurance Act. The premium ought to have been paid by the plaintiff before the end of next succeeding month, i.e., by 31.08.1989. Whereas the premium was paid only on 08.12.1989. Due to non-cooperation by the plaintiff, the Surveyor could not finalise the report and the claim could not be processed and there was no delay on the part of the surveyor

or on the part of the defendant. The report of the Surveyor is only to assess the loss and is only a guidance to the insurer and is not binding as per the proviso contained in Section 64 UM (2) of the Insurance Act. The reference to the commercial vehicle motor policy and IRDA circular have no relevance. Therefore, the defendant is not liable to pay any amount. Therefore, the suit is to be dismissed.

4. On perusal of the pleadings of the parties, the following issues have been framed for trial :

"1. Whether the suit cannot be adjudicated upon by this Court in view of the fact that the claim of the plaintiff is only Rs.16,86,306/- ?

2. Whether the suit is barred by limitation ?

3. Whether there was abandonment of the claim by the plaintiff as per condition No.10 (3) of the policy ?

4. Whether the suit is not maintainable for want of compliance with the requirement found under Section 69 (2) of the Partnership Act ?

5. Whether the repudiation of the claim on the basis of alleged non-payment of premium when bank guarantee has been provided towards premium is justifiable ?

6. Whether defendants claim of exclusion of

coverage of the loss caused due to riots and strikes sustainable ?

7. Whether the plaintiff is entitled for recovery of Rs.16,86,306/- with interest and cost ?

8. To what other reliefs the parties are entitled ?"

One of the partners of the plaintiff company has been examined as P.W.1 and Exs.P.1 to P.21 were marked on his side. The Branch Manager at the Branch office of the defendant insurance company was examined as D.W.1. No document has been marked on the side of the defendant.

5. **Issue No.1 :**

The defendant contends that due to enhancement of pecuniary jurisdiction of this Court, this suit for recovery of Rs.16,83,306/- cannot be adjudicated by this Court and the same is to be transferred to the City Civil Court, Chennai. The plaintiff filed A.No.6980 of 2014, seeking to permit the suit to be adjudicated by this Court. This Court ordered in that application permitting to conduct the suit before this Court. In view of the above order in the application, the learned counsel for the defendant does not press the above contention. Therefore, this issue is answered in favour of the plaintiff.

6. Issue No.4 :

It is contended on the side of the defendant that the suit is not maintainable for want of compliance with the requirement found under Section 69 (2) of the Partnership Act, 1932. The specific argument of the defendant is that there is no document to show that the plaintiff is a partnership firm and the person who has signed and verified the plaint is a partner in the plaintiff firm. The learned Senior counsel appearing for the plaintiff per contra contends that the defendant having issued the policy and had correspondences with the plaintiff is estopped from disputing the existence of the firm. The Insurance policy, Ex.P.2 has been issued in the name of the plaintiff firm. Several correspondences addressed by the plaintiff to the defendant and to the Surveyor with a copy to the defendant, namely, Ex.P.7, Ex.P.8, Ex.P.10, Ex.P.11 and Ex.P.13 are found signed by Mr.Radhakrishnan as a partner for the plaintiff firm. It is also pertinent to note that the defendant has nowhere brought this issue during cross-examination of the plaintiff. Thus the defendant only after verification issued the policy in the name of the firm. For several correspondences made by Radhakrishnan as a partner of the plaintiff firm, the defendant never disputed in its correspondences and legal notice the constitutionality and the status of Radhakrishnan as a

partner. Therefore, the above belated contention of the defendant is not sustainable and this issue is answered in favour of the plaintiff.

7. Issue No.5 :

The learned counsel appearing for the defendant argued that there is violation of Section 64 VB of the Insurance Act, 1938 in payment of premium to the policy. Section 64 VB of the Insurance Act, 1938 reads thus :

"64 VB. No risk to be assumed unless premium is received in advance -

(1) No insurer shall assume any risk in India in respect of any insurance business on which premium is not ordinarily payable outside India unless and until the premium payable is received by him or is guaranteed to be paid by such person in such manner and within such time as may be prescribed or unless and until deposit of such amount as may be prescribed, is made in advance in the prescribed manner.

(2) For the purposes of this section, in the case of risks for which premium can be ascertained in advance, the risk may be assumed not earlier than the date on which the premium has been paid in cash or by cheque to the insurer.

Explanation - Where the premium is tendered

by postal money order or cheque sent by post, the risk may be assumed on the date on which the money order is booked or the cheque is posted, as the case may be.

(3) Any refund of premium which may become due to an insured on account of the cancellation of a policy or alteration in terms and conditions or otherwise shall be paid by the insurer directly to the insured by a crossed or order cheque or by postal money order and a proper receipt shall be obtained by the insurer from the insured, and such refund shall in no case be credited to the account of the agent.

(4) Where an insurance agent collects a premium on a policy of insurance on behalf of an insurer, he shall deposit with, or despatch by post to, the insurer, the premium so collected in full without deduction of his commission within twenty-four hours of the collection excluding bank and postal holidays.

(5) The Central Government may, by rules, relax the requirements of sub-section (1) in respect of particular categories in insurance policies.

(6) The Authority may, from time to time, specify, by the regulations made by it, the manner of receipt of premium by the insurer."

8. The fact remains that the plaintiff firm took several policies for the different work spots with the defendant and in order to pay the premium it gave the bank guarantee of Rs.1,50,000/-. According to the defendant, the premium ought to have been paid by the plaintiff before the end of next succeeding month, i.e., by 31.09.1989. But the premium was paid only on 08.12.1989. The policy has been issued for the period from 31.05.1989 to 30.05.1990 and the claim is for the damages caused on 26.03.1990. It is not the case of the defendant that policy was canceled for non-payment of the premium. Even as per Section 64 VB of the Insurance Act, insurer shall assume any risk unless and until the premium payable is received or is guaranteed to be paid.

9. Here in this case, the insurer was guaranteed to be paid through bank guarantees. The defendant is entitled to claim the premium amount if not paid within the specified time from the bank. In this case, the defendant insurer entertained the claim by appointing the Surveyor to assess the damages and got the report. Under the above circumstances, the defendant cannot repudiate the claim by saying that the premium was not paid within the specified

time and this issue is answered accordingly.

10. Issue Nos.2 and 3 :

The defendant contends that as per Clause 10 (3) of the policy, the suit was not filed within 12 months from the date of repudiating the claim and therefore, it is barred by limitation. Clause 10 (3) of the policy reads thus :

"It is also hereby further expressly agreed and declared that if the company shall disclaim liability to the insured for any claim hereunder and such claim shall not within 12 calendar months from the date of such disclaimer have been made the subject matter of a suit in a court of law, then the claim shall for all purposes be deemed to have been abandoned and shall not thereafter be recoverable hereunder."

The learned Senior counsel appearing for the plaintiff contends that the above clause 10 (3) of the policy is in complete contravention with Section 28 of the Contract Act and therefore, the suit is well within time as per the Limitation Act.

11. As per the Limitation Act, the plaintiff is entitled to file the suit within three years from the date of repudiation. Article 44 (b) of

the Limitation Act is as follows :

<i>Description of Suit</i>	<i>Period of Limitation</i>	<i>Time from which period beings to run</i>
44 (b) On a policy of insurance when the sum insured is payable after proof of the loss has been given to or received by the insurers.	Three years	The date of the occurrence causing the loss, or where the claim on the policy is denied, either partly or wholly, the date of such denial.

12. Section 28 of Indian Contract Act was amended on 08.01.1997, which is extracted as below :

"28. Agreements in restraint of legal proceedings, void - (Every agreement -
 (a) by which any party thereto is restricted absolutely from enforcing his rights under or in respect of any contract, by the usual legal proceedings in the ordinary tribunals, or which limited the time within which he may thus enforce his rights; or
 (b) which extinguishes the rights of any party thereto, or discharges any party thereto from any liability, under or in respect of any contract on the expiry of a specified period so as to restrict any party from enforcing his rights, is void to that extent.]"

13. The learned counsel appearing for the defendant cited the following two Supreme Court Judgments :

(i) H.P. State Forest Company Ltd., v. United India Assurance Co., Ltd., (2009) 2 SCC 252

(ii) Union of India and anr. v. IndusInd Bank Limited and Anris, 2017-1-LW 898.

In both the Judgments, question in those cases was examined in the light of unamended Section 28 of the Indian Contract Act. Prior to the amendment of Section 28 of the Indian Contract Act, the Hon'ble Supreme Court drew a distinction between the curtailment of the period of limitation and extinction of the right itself in an agreement in view of Section 28 of the Indian Contract Act, in National Insurance Co., Ltd., v. Sujir Ganesh Nayak & Co., reported in AIR 1997 SC 2049. It was held that curtailment of the period of limitation is not permissible in view of Section 28 but extinction of the right itself unless exercised within the specified time is permissible and can be enforced. The above view was reiterated in Wild Life Institute of India, Dehradun v. Vijay Kumar Garg reported in (1997) 10 SCC 528.

14. But after amendment to Section 28 of the Indian Contract Act, both the curtailment of the period of limitation and extinction of

the right are not permissible. In support of the same, the learned Senior counsel appearing for the plaintiff also cited the Division Bench Judgment of the Delhi High Court in Chander Kant and Co., v. The Vice Chairman, DDA and Ors., reported in MANU/DE/2221/2009. In this Judgment, it has been held as follows :

8. The 1997 Amendment to the Section now also prohibits clauses which seek to extinguish the rights of any party thereto, or discharge any party from any liability under or in respect of any contract on the expiry of a specified period so as to restrict any party from enforcing his rights. The amendment gave effect to the 97th report of Law Commission of India. The effect of the amended Section 28 was considered by the learned single Judges of this Court in Hindustan Construction Company v. DDA; Kalyan Chand Goyal v. Delhi Development Authority (supra); J.K.Anand v. DDA and Anr. MANU/DE/0555/2001 : 2001 (59) DRJ 380 and Union of India v. Simplex Concrete Piles India (P) Ltd., MANU/DE/1119/2003 : 2003 (3) Arb. LR 536 (Delhi) in which similar causes were held to be not valid in view of the amended provisions of Section 28 (b) of the Contract Act. In Explore Computers Pvt., Ltd., v. Cals Ltd., and Anr.

(supra), Sanjay Kishan Kaul, J considered the decision of Supreme Court in National Insurance Co., Ltd., v. Sujir Ganesh Nayak and Co., (supra) and other decisions and held as follows :

48. The effect of the amendment of Section 28 thus made it clear that any clause extinguishing the right of a party or discharging any party from the liability in respect of any contract on expiry of specific period so as to restrict the time period would be void.

53. On a conspectus of the aforesaid judgments, two aspects have to be noted. The first is that it is the terms of the bank guarantee which have to be given due weight and the second is the distinction which is sought to be Page 2931 carved out in National Insurance Company case (supra) between a clause curtailing the period of limitation being void under Section 28 of the Contract Act and a clause which provides for forfeiture or waiver of a right if no action is commenced within the period stipulated by the agreement. Insofar as the second aspect is concerned, it cannot be lost sight of that the judgment in National Insurance

Company Case (supra) was delivered on 23.03.1997 and thus related to the provisions of Section 28 as it stood prior to the amendment because that was the substantive law in force at the time when the cause of action had arisen. The amendment to Section 28 was made with effect from 08.01.1997 and it is not disputed that the cause of action in respect of the subject matter in the present suit arose after the amendment. Sub Clause (b) of the amended Section 28 deals with the clauses which extinguish the rights of any party thereto or discharge any party from any liability being void under the said Section. Thus the scope of Section 28 has been widened whereby Clause (a) deals with the position prior to the amendment alone and Clause (b) is in addition.

54. In view of the amended Section coming into force, the distinction sought to be carved out earlier by the legal pronouncements would not hold good.

55. In my considered view it is not open for defendant No. 2 to contend that if any suit or claim is not filed within one month of the expiry of the bank

guarantee, the right of the plaintiff to institute any legal proceedings itself is extinguished. Such a plea would fly in the face of the amended Section 28 as defendant No. 2 cannot be discharged from the liability nor can the rights of the plaintiff be extinguished by inclusion of the clause providing so. I am thus of the considered view that to the extent there is restriction on any suit or claim being filed by the plaintiff beyond a period of one month from the expiry of the bank guarantee, the said clause would not prohibit the plaintiff from instituting the suit as it would be barred by the provisions of the amended Section 28 of the Contract Act.

9. We are in respectful agreement with the view taken by the learned Judge. In our opinion, in view of the amendment, the distinction which was drawn earlier has been obliterated and the clauses providing for extinction or discharge of the rights of the parties on the expiry of the specified period are also covered by inserting Clause (b) in Section 28 of the Contract Act.

15. The learned Senior counsel appearing for the plaintiff also brought to the notice of this Court the Judgment of the Delhi High Court in Union of India v. Pt. Munshi Ram & Associates Pvt., Ltd., reported in MANU/DE/6111/2012 holding the law as explained by the Division Bench of the Delhi High Court in M/s. Chander Kant and Co., v. The Vice Chairman, DDA and Ors., is good as the decision in H.P.State Forest Company Ltd., v. United India Assurance Co., Ltd., reported in (2009) 2 SCC 252 by the Supreme Court appears to have proceeded on the basis that the amendment to Section 28 had been repealed. The operative portion of the above Judgment is ;

"11. In view of the above settled position in law, as far as the present case is concerned, although the date of start of the work was 22nd December 1995, the work was actually completed on 30th January 2001. The decision in P.Manohar Reddy & Bros. v. Maharashtra Krishna Valley Development Corporation (supra) was dealing with the case that arose under the Arbitration Act, 1940 and did not actually discuss tissue whether the amendment to Section 28 of CA brought about the change to the legal position existing prior to the amendment. The execution of the contract in that case also appears to have

been completed prior to the amendment. The decision in Himachal Pradesh State Forest Company Limited v. United India Insurance Company Limited (supra) appears to have proceeded on the basis that the amendment had been repealed. This is clear from para 11 of the said judgment which records that "During the resumed hearing, the learned counsel for the appellant candidly admitted that the amendment had been made but had thereafter been repealed and the matter would, thus, have to be examined under Section 28 of the Contract Act, as originally placed." In fact, there has been no repeal of the amendment. It was wrongly informed by learned counsel for the Appellant in that case that the amendment to Section 28 of the CA stood repealed. Consequently, the law as explained by the DBs of this Court in M/s. Chander Kant & Co., v. The Vice Chairman, DDA and D.D.A. v. Pandit Construction Company would hold good."

16. Thus it is clear that after amendment of Section 28 of the Contract Act both curtailment of the period of limitation for specific period and extinction of the right itself are not permissible and if there is any clause to that effect in an agreement it would be barred

by the provisions of the amended Section 28. In view of the above discussion, Clause 10 (3) of the insurance policy in this case is hit by the provisions of the amended Section 28 of the Contract Act.

17. The defendant in their letter, dated 05.11.2002 repudiated the claim of the plaintiff. The suit was filed by the plaintiff in August 2004. Under Article 44 (b) of the Limitation Act, the period of limitation is three years from the date of repudiation. Therefore, the suit has been filed well within time and therefore, both the issues are answered in favour of the plaintiff.

18. **Issue No.6 :**

The learned counsel appearing for the defendant contends that as per the exceptions to the terms and conditions, the Insurance company is not liable for loss or damage caused by any of the insurer-employees. The learned Senior counsel appearing for the plaintiff per contra contends that the policy coverage includes the riots and strikes and further, there is no evidence that the damages have been caused by the employees of the plaintiff company. Exceptions form part of the terms and conditions of the policy and (i) and (ii) of the exceptions given in Ex.P.2-Insurance policy is extracted below :

"1. The Company shall not be liable in respect

of :

(i) loss or damage, whether direct or indirect, occasioned by happening through or arising from any consequence of war, invasion act of foreign enemy, hostilities (whether war be declared or not) civil war, mutiny, rebellion, revolution, insurrection, military or usurped power or riot, strike or civil commotion or loot or pillage in connection therewith or confiscation or detention by the order of any Government or Public Authority, earthquake, volcanic eruption, flood, storm, tempest, typhoon, hurricane, tornado, cyclone or other similar convulsions of nature and atmospheric disturbance.

(ii) loss or damage due to burglary or housebreaking or any attempt threat by any of the Insured's family or employees or any person lawfully on the premises, or where such loss or damage has been expedited or in any way assisted or brought about by any inmate or member of such household or business staff as principal or accessory."

In the first page of the policy itself, it has been clearly mentioned as follows :

"The word Riot and Strike appearing on the overleaf under exceptions stands deleted."

Therefore, the word Riot and Strike in Exceptions (1) (i) has been

deleted.

19. D.W.1 says in his evidence that generally the strike may be done by the employees or by general public. No doubt P.W.1 during his cross-examination states that they have given a police complaint and as per the translated version of the said FIR, the persons who worked with the plaintiff company had removed the materials on account of the pending salary to the employees and the said complaint was given by the plaintiff's Manager. P.W.1 refers as above the complaint and the translated version marked in C.S.No.763 of 2004. The same cannot be construed to be related to the suit claim. It is pertinent to note that the above documents are not marked in this suit and the author of the complaint, namely the Manager has also not been examined. In the absence of any concrete evidence, it cannot be said that the damages were caused only by the employees of the plaintiff company. In the light of the deletion of Riot and Strike from the exception in the policy, the coverage under the policy extends to the strike or theft and therefore, the defendant's claim of exclusion and coverage of the loss caused due to riot and strike is not sustainable. This issue is answered accordingly.

20. **Issue No.7 :**

The plaintiff after informing the defendant about the damage forwarded the claim form and other relevant documents to the Surveyor appointed by the defendant Insurance Company as requested by the Surveyor in a meeting held on 10/12.02.1991. When the defendant asked the plaintiff to submit the requisite claim forms, the plaintiff on 23.04.1992 informed that the claim forms and supporting papers had already been submitted and sent a fresh copy of the claim form. The claim was made for a sum of Rs.9,08,144/-. Now the plaintiff claims in the suit the above amount together with interest thereon at 18% p.a., from 22.12.1999, which is the date of Survey Report.

21. The learned counsel appearing for the defendant contends that all documents filed by the plaintiff are only secondary evidence and are inadmissible as they have no probative value and there is absolutely no proof or account as to the claim. With respect to the claim, the plaintiff has categorically stated that he forwarded the claim form and other relevant documents to the Surveyor as requested by him in the meeting. The Surveyor appointed by the defendant also submitted his final survey report on 22.12.1999. The above facts have not been disputed with by the defendant. There is no quarrel with the report of the Surveyor that it is not binding on the parties but it can be taken as a guidance to decide the issue. When

the Surveyor filed his final report after obtaining the claim form and relevant documents from the plaintiff, the defendant without filing the same is not entitled to say that the plaintiff has not filed the original documents and proof for his claim. Withholding the material documents, namely the Surveyor's Final Report including the documents filed by the plaintiff will lead to adverse inference as against the defendant. As far as probative value of the secondary evidence is concerned, the documents filed on the side of the plaintiff though copies, are only the letter correspondences and notices between the plaintiff and the defendant. While marking those documents, the defendant has not raised any objection. Therefore, the above Exhibits are admissible and the contention of the defendant is liable to be rejected. Considering the above the plaintiff is entitled to the claim as prayed for and the issue is answered accordingly.

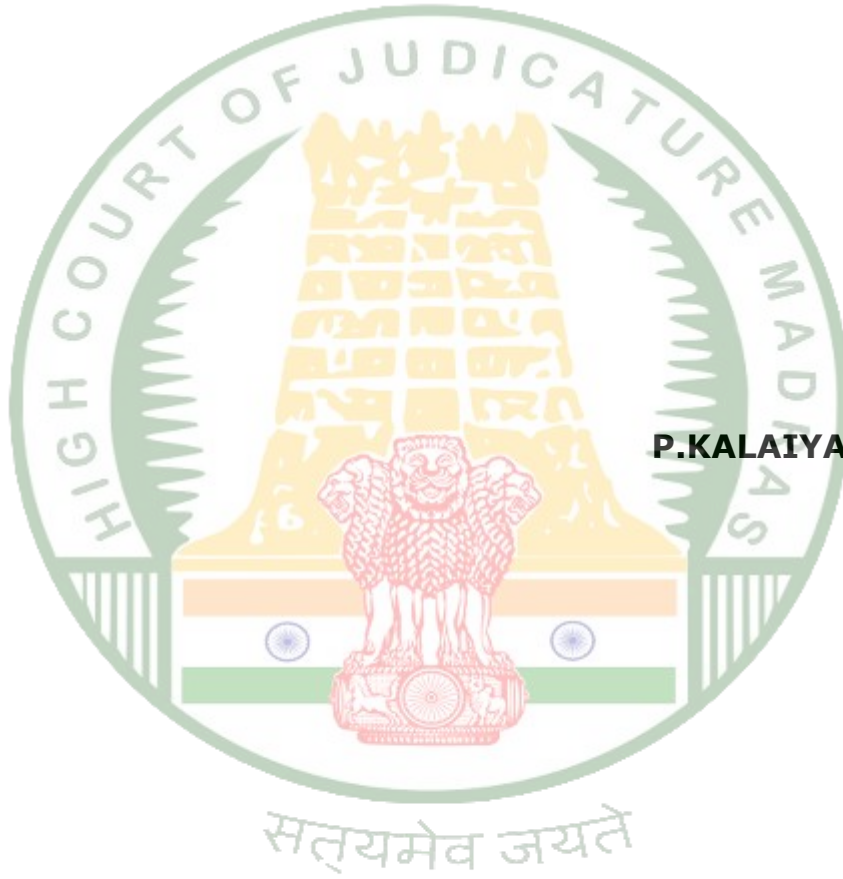
In fine this Civil Suit is decreed with costs, whereby the defendant is directed to pay the plaintiff a sum of Rs.16,86,306/- together with interest on the principal amount of Rs.9,08,144/- at 18% p.a., from the date of plaint till the date of realisation.

20.10.2017

Speaking order

Index : Yes / No

tsvn



P.KALAIYARASAN, J

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**Judgment in
C.S.No.762 of 2004**



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