IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **20.10.2017**

CORAM

THE HON'BLE MR.JUSTICE **P.KALAIYARASAN**

C.S.No.763 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.35,22,478/- together with interest at 18% p.a., on the principal amount of Rs.11,50,890.23/- 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 has been filed for recovery of a sum of Rs.35,22,478/- together with interest on the principal amount of Rs.11,50,890.23/- from the defendant for the claim made by the plaintiff pursuant to the

Insurance Policy.

2. The plaint averments are as follows :

(i) The plaintiff was awarded the work of construction of Ash ponds for Fly Ash disposal for the Farakka Super Thermal Power plant, National Thermal Power Corporation at Farakka in February 1988. For the said work, the plaintiff had to establish a camp at the work site for their men and machinery required for the work. In respect of the work site, the plaintiff had taken out a fire policy bearing No.010101/11/11/1100672/89 with the defendant for the period from 31.05.1989 to 30.05.1990 covering inter alia the risks of fire, lightning, explosion, riot, strike and malicious damages in respect of camps erected in the work site at Farakka for Rs.6,00,000/- and on sheds therein for Rs.4,00,000/-. A sum of Rs.3,460/- was paid as premium to the defendant by the plaintiff. During the policy period on 26.03.1990, a mob consisting of 150 to 200 miscreants entered the construction site of the plaintiff at Malancha camp armed with lethal weapons and damaged 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 duly informed the defendant by their letter, dated 22.01.1991 of the damage.

(ii) The plaintiff had also intimated the defendant's Regional Office by letter, dated 24.01.1991. The defendant appointed one Mr.S.K.Bhadra as Surveyor to survey the loss and to submit his report thereon to the defendant. Meeting was also held on 10th and 12th February 1991 between the representatives of the plaintiff and the defendant at which the Surveyor was also present. As requested by the Surveyor at 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.11,50,890.23/- being the loss sustained by them by virtue of the incident. As nothing was heard from the defendant or their Surveyor, the plaintiff addressed a further letter to the defendant on 07.12.1991.

(iii) The defendant on 30.03.1992 wanted the plaintiff to submit the requisite claim forms. The plaintiff on 23.04.1992 pointed out that the claim form with supporting papers had been submitted even in November 1991 and sent a further copy of the claim form. The Surveyor by letter, dated 11.09.1992 informed the plaintiff that he had made ready the assessment of loss to the property and sought for certain details. The plaintiff provided the details sought for by him.

Based on such details, the Surveyor submitted his survey report to the defendant as early as 05.03.1993. There has been no response from the defendant. The plaintiff therefore addressed a letter to the defendant on 27.05.2000. This letter failed to evoke any response and therefore the plaintiff was constrained to cause a legal notice on the defendant on 14.08.2002. As there was no response a further reminder was sent on 02.01.2003. Thereafter, the plaintiff caused a further legal notice to be issued to the defendant on 14.06.2004. Therefore, the present suit has been filed claiming Rs.11,50,890.23/- with interest at 18% p.a., from 05.03.1993.

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. The incident of loss occurred on 26.03.1990 and the suit was filed only in the year 2004 after the period of nearly 14 years and thus the suit is barred by law of limitation.

(ii) It is true that the defendant issued a fire policy of Insurance to the plaintiff for the period from 31.05.1989 to 30.05.1990 for a sum insured of Rs.10,00,000/- subject to the terms and conditions. The policy being a Fire C policy No. 010101/11/11/1100672/89 covered only loss on account of fire, lightening and explosion and included only malicious damage.

(iii) The plaintiff is put to strict proof of the extent of loss and damage alleged to have been suffered by them. The Licensed Surveyors appointed by the defendant to assess the loss issued their report, dated 05.03.1993 in which they clearly stated that the materials alleged to have been lost / destroyed / stolen were used materials and brought from other sites and that the purchase vouchers for such materials were not available. Even as per the First Information Report pertaining to the said incident, 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. There was no delay on the part of the surveyor or on the part of the defendant. Even according to the Surveyor, the delay in submitting the report was only due to non-availability of the required information from the plaintiff and since there was no communication from the plaintiff, the claim was closed as no claim. The Surveyor's Report 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 Arbitration clause is not applicable as there was no admission of liability on the part of the defendant. The defendant is not liable to pay any amount. Interest cannot be claimed as there was no contract. 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 is barred by limitation ?
>
> 2. Whether there was abandonment of the claim by the plaintiff as per condition No.10 (3) of the policy ?
> 3. Whether the suit is not maintainable for want of compliance with the requirement found under Section 69 (2) of the Partnership Act ?

4. Whether the reported loss occurred on account of a peril is covered by the policy or whether the reported loss is excluded under clause 1 (ii) of the policy ?

5. Whether there was want of compliance under 64 VB of the Insurance Act and the same has made the policy unenforceable ?

6. Whether the plaintiff is entitled to claim Rs.35,22,478/- with interest and cost ?

7. 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.16 were marked on his side. The Deputy Manager at the Regional office of the defendant insurance company was examined as D.W.1. Ex.D.1 was marked on its side.

5. **Issue Nos.1 and 2** :

The defendant mainly contends that the suit is barred by law of limitation. The learned counsel appearing for the defendant argued that the incident of loss occurred on 26.03.1990 and the suit was filed only in the year 2004 after a period of nearly 14 years and therefore, the suit is barred by limitation.

6. The learned Senior counsel appearing for the plaintiff

contends that clause 10(3) of the Insurance policy is hit by Section 28 of the Contract Act and therefore, the suit is well within time. The cause of action paragraph in the plaint is extracted as below :

> "The cause of action for the above suit arose at Chennai within the jurisdiction of this Hon'ble Court, where the defendant carries on business and where the Insurance policy was issued; on 31.07.1989, when the insurance policy was issued; on 26.03.1990 when the incident occurred; on various dates when letters were addressed by the plaintiff to the defendant; on 14.08.2002 when a legal notice was issued to the defendant on behalf of the plaintiff; on 16.08.2002 when the defendant received the notice and on 02.01.2003 when a reminder notice was issued to the defendant and on 14.06.2004 when a further legal notice was issued to the defendant and subsequently."

7. It is not the case of the plaintiff that any repudiation was made by the defendant in this case. P.W.1 during cross-examination has deposed as follows :

> "The happening of event occurred on 26.03.1990. The suit was presented on 11.08.2004. It is correct to say that the suit has been instituted almost 14 years after the

happening of event. The defendant had not repudiated the claim of the plaintiff in writing."

8. Article 44 (b) of the Limitation Act, 1963 is as follows :

Description of Suit	***Period of Limitation***	***Time from which period beings to run***
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.

9. As per the above Article period of limitation for the claim under insurance policy is three years and the time will begin to run (i) either from the date of occurrence causing loss or (ii) from the date of denial of the claim on the policy. Here the question of denial does not arise as there is no repudiation of the claim by the defendant. Therefore, the date of occurrence causing loss is to be taken into account to calculate the period of limitation. Admittedly occurrence took place on 26.03.1990 and the suit was presented on 11.08.2004. Thus the suit was filed after about 14 years. Therefore, the suit is barred by limitation.

10. Clause 10 (3) of the Insurance policy need not be gone into, as it stipulates 12 months for filing the suit from the date of repudiation. No doubt the above clause is hit by Section 28 of the Contract Act. Since there is no repudiation in this case, the above aspect need not be dwelt upon. Accordingly, both the issues are answered.

11. **Issue No.3** :

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 constitutionality and the status of Radhakrishnan as a partner has never been disputed by the defendant in their correspondence and legal notice. Therefore, the above belated contention of the defendant is not sustainable and this issue is answered in favour of the plaintiff.

12. **Issue No.4** :

It is the case of the plaintiff that due to the riots caused by the local villagers, whole camp of the plaintiff was ransacked and demolished. The incident was informed to the defendant and the defendant also appointed the Surveyor. The defendant contends that policy being Fire C policy covered only the loss on account of fire, lightning and explosion and included only malicious damage. The policy has been extended to include terrorism cover. It also includes riot, strike and malicious damage. The relevant clause in the policy is extracted below :

> "Riot, Strike and Malicious Damage clause :
> This policy is extended to cover Riot, Strike

and Malicious Damage as under :
Loss of or visible physical damage by external violent means to the property insured directly caused by :
(i) The act of any person taking part together with others in any disturbance of the public peace (whether in connection with a strike or lock-out or not) not being an occurrence mentioned in Exclusions h (iii), (iv) and (v).
(ii) The action of any lawfully constituted authority in suppressing or attempting to suppress any such disturbance or in minimising the consequences of any such disturbance.
(iii) The wilful act of any striker or locked-out worker done in furtherance of strike or in resistance to be lockout resulting in visible physical damage by external violent means."

Therefore, it is not only the fire policy but also covers the riot, strike and malicious damage. Therefore, the claim made by the plaintiff under the policy is maintainable. This issue is answered accordingly.

13. **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 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."

14. 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.

15. Here in this case, the insurer was guaranteed to be paid through bank guarantee. 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.

16. **Issue No. 6** :

In view of the decision for Issue Nos. 1 and 2, the plaintiff is not entitled to the claim and this issue is answered accordingly.

In fine, this Civil Suit is dismissed. No costs.

20.10.2017

Speaking order

Index : Yes / No

tsvn

P.KALAIYARASAN, J

tsvn

Judgment in
C.S.No.763 of 2004

20-10-2017