* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **CS(OS) No.922/2004**

% **16th February, 2018**

METRO EXPORTERS PRIVATE LIMITED ..... Plaintiff

Through: Mr. Mohan M. Jayakar, Advocate with Mr. Ashwin Shete, Advocate, Mr. Javaid Muzaffar, Advocate, Mr. Harsh Moorjani, Advocate and Mr. Bharat Bagla, Advocate.

versus

UNITED INDIA INSURANCE COMPANY LIMITED ..... Defendant

Through: Ms. Sunita Dutta, Advocate.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not? **YES**

VALMIKI J. MEHTA, J (ORAL)

1. This suit being CS(OS) No.922/2004 is filed by the plaintiff Metro Exporters Pvt. Ltd. The sole defendant in the suit is United India Insurance Co. Ltd. By the suit plaintiff seeks a money decree for a total amount of Rs.79,38,613.02/-, i.e principal amount of Rs.76,70,056/- with interest at 18%. The present suit was originally filed in the Mumbai High Court but was thereafter transferred to this Court in terms of the order of the Supreme Court dated 23.1.2004 in

Transfer Petition (Civil) Nos. 6 and 7 of 2001. This suit was transferred to this Court because the issues in this suit were connected with respect to various other suits which were pending in this Court. All the suits pertain to shipping of goods Ex-Singapore to different ports in India by two Ships OH DAI and MV AVERILLA. Both these ships allegedly sank, resulting in as per the plaintiffs in each of the suits, loss of the cargo. Therefore, various suits were filed by various owners/consignees of the goods which were shipped under the aforesaid two ships. The suits which are before this Court and which have come up for decisions are 8 in number, and details of the same are as under:-

Sl. No.	Case no.	Title
1.	CS(OS) No. 1408/1979	Elephanta Oil Vanaspati Industries Ltd. Vs. The New India Assurance Co. Ltd. & Anr.
2.	CS(OS) No. 1409/1979	Elephanta Oil & Vanaspati Industries Ltd. Vs. The New India Assurance Co. Ltd. & Anr.
3.	CS(OS) No.1417/1979	M/s. Jain Export P. Ltd. Vs. New India Assurance Co. Ltd.
4.	CS(OS) No.672/1980	Indo Foreign Commercial Agency Vs. National Insurance Co. & Ors.
5.	CS(OS) No.738/1980	Canara Bank & Anr. Vs. Oriental Insurance Co. Ltd.
6.	CS(OS) No.739/1980	Canara Bank & Anr. Vs. Oriental Fire & General Ins. Co. Ltd.
7.	CS(OS) No.1/1982	M/s. Sawhney Bros. Vs. Hong Kong Shanghai Banking Corpn. & Ors.
8.	CS(OS) No.922/2004	Metro Exporters P. Ltd. Vs. United India Insurance Co. Ltd.

2. The two suits being CS(OS) No.1417/1979 titled as ***M/s. Jain Export P. Ltd. Vs. New India Assurance Co. Ltd.*** and CS(OS) No.672/1980 titled as ***Indo Foreign Commercial Agency Vs. National Insurance Co. & Ors***., have been disposed of by this Court. CS(OS) No.672/1980, after arguments was withdrawn by the plaintiff and this Court passed a detailed order on 12.2.2018 giving liberty in accordance with law to the plaintiff in the said suit to seek adjustment against its bankers who had debited the plaintiff in that suit with respect to payment under the letter of credit issued by the plaintiff's banker in favour of the foreign seller. Suit being CS(OS) No.1417/1979 titled ***M/s. Jain Export P. Ltd. Vs. New India Assurance Co. Ltd.*** was dismissed in terms of the judgment dated 6.2.2018 noting that the basic document which was required to be filed by the plaintiff in the suit to seek the insurance claim against the insurance company was the insurance policy but the insurance policy containing the terms was not filed and only the cover note was filed, and consequently it could not be known as to what was the loss which was covered under the insurance policy in the said CS(OS) No. 1417/1979 and therefore once it is not known as to what was the loss which was covered under the insurance policy, the suit claiming loss

under the insurance policy could not succeed and hence was dismissed.

3. The present suit is the third suit out of the 8 suits which is being decided. I may note that in all the 8 suits there are a total of 4 Insurance Companies who have issued the insurance policies being United India Insurance Co. Ltd. (defendant in the present suit), New India Assurance Co. Ltd., Oriental Insurance Co. Ltd. and National Insurance Co. Ltd. All these four Insurance Companies had insured the goods which were shipped through the two ships OH DAI and MV AVERILLA. Out of the eight suits, the plaintiffs in the suits CS(OS) Nos. 1408/1979, 1409/1979 and 1417/1979 are all companies belonging to the Jain Shudh Vanaspati Group. Plaintiff in the present suit being Metro Exporters Pvt. Ltd. is the company which is not a part of the Jain Shudh Vanaspati Group and which companies of the Jain Shudh Vanaspati Group are owned by the Jain brothers Sh. Vinod Kumar Jain and Sh. Raj Kumar Jain. One another aspect which has to be noted is that an order was passed in all the suits on 23.1.2014 whereby evidence which was led on behalf of the insurance companies was to be treated as common evidence for all the eight suits. Suit CS(OS) No. 1417/1979 was treated as a lead case in terms of the order

dated 23.1.2014. As already stated above this suit CS(OS) No.1417/1979 already stands dismissed in terms of the judgment dated 6.2.2018. With the aforesaid preliminary statements let us turn to the facts of the present suit.

4. As already stated above, plaintiff by the suit seeks recovery of Rs.76,70,056/- along with interest at 18% totaling to Rs.79,38,613.02 from the sole defendant being the United India Insurance Co. Ltd. In sum and substance, the cause of action in the suit is that the goods owned by the plaintiff company were subject matter of the insurance policies issued by the defendant/insurance company and since the goods have been lost on account of sinking of the ship OH DAI and the loss is covered under the insurance policies, hence the defendant/insurance company is liable to pay the plaintiff the value of the goods along with the profit margin of the goods. I may note that there were two policies issued by the defendant/insurance company in favour of the plaintiff with one policy being for the value of the goods and the second policy was with respect to profit margin of the goods.

5. The facts of the case are that plaintiff entered into a contract with one M/s. Palmex Enterprises of Singapore whereby M/s. Palmex Enterprises, Singapore had agreed to sell and the plaintiff had agreed to buy 800 M.T. of PVC Resin Suspension Grade. The contract entered into between the plaintiff and the M/s. Palmex Enterprises, Singapore is dated 11.6.1979 (Ex.PW1/1). In terms of the contract plaintiff opened a letter of credit upon the seller M/s. Palmex Enterprises, Singapore through the banker of the plaintiff State Bank of India, Overseas Branch, Mumbai. The value of the letter of credit was USD 624000 being roughly equivalent to Rs.50,690,49.50/-. Defendant/insurance company firstly issued its cover-note dated 20.6.1979 in the sum of Rs.56,22,041/- (Ex.PW1/2). Another cover-note dated 16.8.1979 (Ex.PW1/23) was also issued by the defendant/insurance company in favour of the plaintiff for the sum of Rs.25,96,500/- being the profit insurance with respect to subject goods. With respect to both these cover-notes subsequently insurance policies dated 5.9.1979 were also issued by the defendant/insurance company in favour of the plaintiff and which have been proved and exhibited as Ex.PW1/60 and Ex.PW1/59. Plaintiff pleads that on or about 2.9.1979 plaintiff received a telex message from the supplier of

shipping of goods on the vessel OH DAI under the Bill of Lading No. SB-15 dated 1.9.1979, Ex.PW1/31. Plaintiff by its letter dated 3.9.1979 informed the defendant/insurance company the details with respect to shipment. On or about 13.9.1979, the plaintiff pleads, that it appeared in the newspaper that the vessel OH DAI had sunk in the Bay of Bengal and therefore plaintiff by its letter dated 15.9.1979 sent the newspaper cutting to the defendant/insurance company. The defendant/insurance company by its letter dated 15.9.1979 is stated to have advised the plaintiff to act as a prudent person and to take steps which are necessary to prevent retiring of the shipping documents. Plaintiff is pleaded to thereafter sent notices to the shipping company Tata Financial Limited and Wellway Lines who was the shipping agent of the ship OH DAI. The plaint thereafter refers to correspondence between the parties and since defendant/insurance company failed to pay the amount hence the subject suit was filed under Order XXXVII CPC in the Bombay High Court where unconditional leave to defend was granted. As already stated above the suit was thereafter transferred to this Court as per order of the Supreme Court on a transfer petition.

6. The defendant/insurance company has contested the suit and its defence is that a fraud is sought to be perpetrated upon the defendant/insurance company because no goods were ever shipped by the seller from Singapore to the plaintiff/buyer through the ship OH DAI. The defendant/insurance company pleaded that Bill of Lading and connected documents with respect to shipping of the goods are fake documents because in fact goods which were the subject matter of the contract between the plaintiff and M/s. Palmex Enterprises were never shipped by M/s. Palmex Enterprises, Singapore to Mumbai, India.

7. The following issues were framed by the Mumbai High Court on 24.12.1999 in this suit:-

> "1. Whether the Plaintiffs prove that on or about 11th June 1979 they entered into a contract in writing with one Palmex Enterprises for the purchase of 800 metric tons of PVC Resins Suspension grade (hereinafter referred to as the "said goods") as more particularly alleged in paragraph 3 of the plaint?
>
> 2. Whether the Plaintiffs prove that the said goods had been shipped on board the vessel "OH-DAI" as more particularly set out in paragraphs 7, 8 & 9 of the plaint?
>
> 3. Whether the Plaintiffs are entitled to recover from the defendants the sum of Rs.76,70,056/- together with interest thereon being the amounts payable by the Defendant under the policies of insurance dated 5th September 1979 issued by the Defendants, on account of loss of the said goods as alleged in paragraph 19 and the prayer clause of the plaint?
>
> 4. Whether the Defendants prove that the Plaintiffs have not fulfilled the condition precedents before their claim could be entertained and accepted by the Defendants as alleged in paragraph 1 of the written statement?

5. Whether it was obligatory upon the Plaintiffs to prove by independent evidence that the goods in question were in fact loaded on the vessel "OH-DAI" as alleged in paragraphs 1 and 10 of the written statement?

6. Whether the Defendants prove that under the insurance policy issued by them, it was incumbent upon the Plaintiffs to take all reasonable steps for ensuring all the rights against the carriers, bailees or third parties are carefully preserved and exercised as alleged in paragraph 2 of the written statement.?

7. Whether on the Plaintiffs failing to file a suit or take any action against the shipping company and/or the consignor, the Plaintiffs are disentitled for maintaining the claim under the insurance policies as alleged in paragraph 2 of the written statement?

8. Whether the Defendants prove that the Plaintiffs have no insurable interest and hence are not entitled to make any claim under the insurance policies as alleged in paragraph 5 of the written statement?

9. Whether the insurance contracts entered into between the Plaintiffs and the Defendants are vitiated by failure to disclose all material facts as alleged in paragraph 6 of the written statement?

10. Whether the Defendants prove that the Bill of Lading issued and evidencing shipping of the said goods on board "OH-DAI" was issued by a company which has issued a false Bill of Lading as alleged in paragraph 9 of the written statement?

11. Whether it was incumbent upon the Plaintiffs to prove that their goods were lost as a result of the perils of the sea insured against as alleged in paragraph 11 of the written statement?

12. What order.

13. Generally. "

<u>Issue Nos. 2,5,8,10 and 11</u>

8. Issue nos. 2, 5, 8, 10 and 11 can be decided together inasmuch as all these issues pertain to whether insurance policies did not come into existence in the sense that no claim under the insurance policies can be filed because goods which were subject matter of the insurance policies never existed and were never shipped by the foreign seller M/s. Palmex Enterprises to the plaintiff.

9. On behalf of the plaintiff, it is argued that plaintiff has proved the *factum* of shipment of goods because the Bill of Lading dated 1.9.1979 bearing no. SB-15 has been proved and exhibited as Ex.PW1/31. It is argued that once plaintiff proves the Bill of Lading, plaintiff is said to have discharged its burden of proof of goods having been shipped by the seller M/s. Palmex Enterprises to the plaintiff/buyer. This argument is sought to be buttressed by the plaintiff by pleading that plaintiff has proved the Mate's Receipt of the shipping company of the ship OH DAI as Ex.PW1/14 and which shows that the said goods were received on board, the ship OH DAI for transportation to Mumbai. Reference by plaintiff is also invited to the Tally Sheets Ex.PW1/28 issued by the same agents of the shipping company Union Ocean Shipping (PTE) Limited so as to show that goods were shipped. It is argued that once these documents i.e Bill of Lading, Mate’s Receipt and Tally Sheets are taken together, the plaintiff has to be held to have discharged the burden of proof of shipping of the goods. It is also argued on behalf of the plaintiff that the fact that the insurance policies refer to the fact that insurance policies cover the goods which have been shipped, therefore for this additional reason this Court must hold that the goods which are

subject matter of contract between the plaintiff and M/s. Palmex Enterprises were shipped Ex-Singapore to Mumbai *via* the ship OH DAI. Plaintiff also draws the attention of this Court to the oral depositions made in the examination-in-chief of the plaintiff's witnesses with respect to shipping of the goods Ex-Singapore to Mumbai by the ship OH DAI under the subject Bill of Lading. It is also argued on behalf of the plaintiff that the defendant/insurance company has led no substantive evidence to show that goods were in fact not shipped or that the goods which were the subject matter of the policies did not come into existence and were not shipped, and it is argued that the onus had shifted upon the defendant/insurance company to prove that goods were not shipped by M/s. Palmex Enterprises to plaintiff once plaintiff had proved Bill of Lading, Mate's Receipt and Tally Sheets.

10. On behalf of the plaintiff, in support of its case, reliance is placed upon the following judgments:-

(i) ***Peacock Plywood (P) Ltd. Vs. Oriental Insurance Co. Ltd. (2006) 12 SCC 673***

(ii) ***Shaw Wallace and Company Limited Vs. Nepal Food Corporation and Others (2011) 15 SCC 56.***

(iii) ***Ellerman and Bucknall Steamship Company Ltd. Vs. Sha Misrimal Bherajee AIR 1966 SC 1892***.

Plaintiff has also placed reliance upon the provisions of the Indian Bills of Lading Act, 1856.

11. On behalf of the defendant/insurance company, it is argued that the entire arguments urged on behalf of the plaintiff are misconceived because existence of a Bill of Lading or a Mate's Receipt or Tally Sheets is not sufficient evidence to discharge the burden of proof upon the plaintiff of the shipment of goods because of the provisions of the Commercial Documents Evidence Act, 1939 (hereinafter referred to as 'the Act') and that the facts of the present case show that grave fraud is sought to be perpetrated upon the defendant/insurance company. It is argued that the defendant/insurance company has led evidence of Captain Jose Varghese Paloccaran who was working at Palco Surveyors and Adjustors Limited and who has deposed with respect to Criminal Investigation Department Division of Singapore conducting investigations leading to the owners of the ship OH DAI and MV AVERILLA being convicted. Captain Jose Varghese Paloccaran has deposed with respect to making inquiries from the sellers M/s. Bentrex

and Company and M/s. Palmex Enterprises and as to how he was stonewalled by the employees of these companies thereby arousing suspicion. Captain Jose Varghese Paloccaran also deposed that there was doubt with respect to sinking of the ships as all the employees of the ship were found to be residing in their houses. Captain Jose Varghese Paloccaran has also deposed with respect to the *factum* of non-receipt of the goods because of non-existence of the lorry/truck passes with respect to lorries/trucks containing goods entering the custom/port/dock area authority of Singapore. Captain Jose Varghese Paloccaran has also deposed of remaining in touch with the police personnel including Sh. Abu Bakar Moosa who has deposed as CW-2 on behalf of the defendant/insurance company. Captain Jose Varghese Paloccaran has deposed with respect to the lengthy trial taking place in the Singapore Court which heard the details of how the plan had been chalked out to play a massive fraud upon the insurance companies and banks thereby defrauding them of huge amounts running into crores of rupees and how the Singapore Court concluded with the accusations leveled against all the accused persons who were duly proved to be faking Bills of Lading, shipping documents without actual cargo, and so on showing that no goods were ever loaded on ships OH DAI and

MV AVERILLA. Captain Jose Varghese Paloccaran also deposed with respect to yellow water being shipped instead of palm oil and rice bags being shipped as bags containing cloves of Zanzibar origin and that water drums and tins were passed off as brass scrap or copper scrap etc.

12. I may note that in the present suit the goods are not of brass scrap or copper scrap or palm oil or cloves because the goods in question which are subject matter of the present suit and insurance policy is 800 M.T. of PVC Resin Suspension Grade, however Captain Jose Varghese Paloccaran deposed with respect to palm oil, cloves, copper scrap, brass scrap which are subject matter of the other suits, and that Para 11 of the affidavit of Captain Jose Varghese Paloccaran specifically uses the expression 'etc' after the words palm oil, copper scrap. On behalf of the defendant/insurance company it is argued that the deposition of Captain Jose Varghese Paloccaran is also with respect to the subject goods and which becomes clear from the question put by plaintiff itself in the cross-examination of Captain Jose Varghese Paloccaran on 25.7.2014 and which question when put by the plaintiff was replied by Captain Jose Varghese Paloccaran by specifically referring to 800 pallets of PVC resin and Captain Jose

Varghese Paloccaran deposed that he had made enquiries with the port authorities itself with respect to 800 pallets of PVC Resin which is subject matter of the present suit.

13. On behalf of the defendant/insurance company, reliance is also placed upon the evidence led of Sh. Abu Bakar Moosa as CW-2. Sh. Abu Bakar Moosa was working in the capacity of the Deputy Head and later on Head of the Crime Division in the Criminal Investigation Department of Singapore during the years 1979 to 1983. Sh. Abu Bakar Moosa has deposed with respect to conspiracy hatched between Sh. Bhagwan Singh Aujla, Sh. Manmohan Singh Aujla of M/s. B.S. Aujla & Co. Pte. Ltd., M/s. Bentrex & Co. and M/s. Palmex Enterprises with respect to scuttling and sinking of the ships and preparing false documentation showing shipment of the goods which were in fact never shipped. Sh. Abu Bakar Moosa has referred to the investigations conducted by various persons including himself and thereafter submitting their investigation reports to the Public Prosecutor office in Singapore giving the entire details of the conspiracy, conspirators and co-conspirators. Sh. Abu Bakar Moosa has also deposed with respect to the proceedings in the Court at Singapore and as to how Sh. Bhagwan Singh Aujla, Sh. Manmohan

Singh Aujla, Sh. Isaac Paul Retnam and Sh. Rethinasamy were handed over different sentences for their part of the conspiracy in terms of the judgment dated 31.3.1983. It is accordingly argued on behalf of the defendant/insurance company that merely because insurance policies were issued by it would not mean in the facts of the present case that plaintiff has been successful in proving that goods which are subject matter of the insurance policies were in fact shipped and once the goods which were subject matter of the insurance policies never existed and were never shipped, hence the insurance policies did not come into operation for plaintiff to be compensated for the alleged loss of goods which were subject matter of the insurance policies.

14. The crucial issue to be decided in the present case is as to whether the goods which are subject matter of the insurance policies ever came into existence and ever commenced their journey of shipment Ex-Singapore from M/s. Palmex Enterprises to Mumbai on the ship OH DAI. I may note that there is a statute called as the Commercial Documents Evidence Act. This Act has in its Schedule two parts. As per Section 3 of this Act with respect to documents which are subject matter of Part I of the Schedule, a Court 'shall presume' that the documents stated in Part I of the Schedule were so

made and the statements contained therein are accurate. With respect to documents which are stated in Part II of the Schedule instead of 'shall presume' so far as Part I of the Schedule is concerned, it is only 'may presume' so far as documents which are stated in Part II of the Schedule of the Act. The Bill of Lading, Mate's Receipt and Tally Sheets which are proved by the plaintiff will fall under Entries 15 and 18 of Part II of the Schedule of the Act i.e court 'may presume' with respect to the validity of these documents. Therefore once Court has to only 'may presume' the *factum* of the Bill of Lading, Mate's Receipt and the Tally Sheets having been issued by the appropriate authority and the Court may only presume accuracy of the contents of these three documents, in the facts of the present case this Court refuses to hold that the Bill of Lading, Mate's Receipt and the Tally Sheets should be taken as accurate with respect to statements contained therein. In fact if the plaintiff wanted some benefit of the Part II of the Schedule of the Act, then, the plaintiff should have filed documents which are subject matters of Entries 1, 3, 4, 5, 7, 14 and 16 of Part II of the Schedule because it is these documents stated in these entries which will show that goods in fact came within the dock area or port area or the customs area and coming of the goods in such areas is a pre-condition and *sine qua non* before loading the goods on to the ships and with respect to which loading a Bill of Lading is issued. In fact, the plaintiff was duty bound to file documents under Entry 19 in the Part I of the Schedule of the Act which talks of a receipt of payment of custom duty issued by the custom authorities and which would have shown that goods which are subject matter of the insurance policies and the shipment did come into existence because it is when custom duty is paid to the custom authorities would the goods have been shown to be entered the custom area in the concerned port at Singapore.

15. At this stage, it will be necessary to draw cross-reference to the deposition of Captain Jose Varghese Paloccaran who specifically deposed that as per the process in the port at Singapore, lorries/trucks which bring the goods from outside the custom/port/dock area to the said custom/port/dock area, then in such cases passes are issued with respect to the lorries/trucks showing entry into the custom/port/dock area and admittedly there are no documents before this Court in the form of those lorry/truck receipts to show that the goods which are subject matter of the insurance policies ever had reached the custom/port/dock area in the port at Singapore.

16. There are also various very curious aspects and which this Court is forced to note. It is surprising as to why the plaintiff/buyer has only sued the insurance company but has not sued the foreign seller M/s. Palmex Enterprises or the shipping company which owned the ship OH DAI. Counsel for the plaintiff argued that when the suit was filed no payment was made under the letter of credit to the foreign seller and therefore the foreign seller was not sued as a defendant in the suit but it is conceded that the foreign seller was in fact paid during the pendency of the suit but even thereafter the plaintiff did not amend the suit to add the foreign seller M/s. Palmex Enterprises as a defendant in this suit for seeking of the money decree against M/s. Palmex Enterprises on the ground that M/s. Palmex Enterprises has received the value of the goods but plaintiff has not received the goods. No other independent suit has also been filed by plaintiff against M/s. Palmex Enterprises. In fact besides the plaintiff ought to have sued the seller M/s. Palmex Enterprises, the plaintiff should also have sued the shipping company because now it is clear from the record that shipping company was also part of the fraud and conspiracy because the subject goods never came to be loaded on the ship OH DAI. Therefore it is indeed very curious, strange and

suspicious as to why the plaintiff has chosen to file a suit only against the insurance company and the plaintiff has not sued the seller M/s. Palmex Enterprises who has received the price of the goods without delivering the goods and the plaintiff has also not sued the shipping company who has issued the Bill of Lading and which never shipped the goods.

17. Reliance placed on behalf of the plaintiff on the judgments of the Supreme Court is misconceived because in none of these judgments, the facts existed that with respect to the goods which were subject matter of the Bill of Lading never came into existence and that the Bills of Lading were fake/forged. In all the cases cited before this Court on behalf of the plaintiff the facts show that there was no quarrel with respect to genuineness of the Bills of Lading and shipping of the goods under the Bills of Lading in those cases. Therefore, any observations made by the Supreme Court in the facts of those cases would not assist the plaintiff because in the facts of the present case it is seen that the Bill of Lading is fake and false or putting it in other words in fact no goods were ever loaded on the ship OH DAI with respect to which the subject Bill of Lading was issued and which is proved as Ex.PW1/31.

18. Even the provision of Section 3 of the Indian Bills of Lading Act read with Preamble of the said Act does not in any manner assist the plaintiff because the Preamble and the provision of Section 3 of the Indian Bills of Lading Act with respect to bindingness of the contents of the Bill of Lading as to shipment of the goods is to be taken as final only between the shipping company and the consignees/endorsees and which is also held in the judgments of the Supreme Court referred to by the plaintiff, and it is noted that there is no provision in the Indian Bills of Lading Act nor any observations in any judgments of the Supreme Court cited on behalf of the plaintiff that merely because a Bill of Lading exists, then only for such reason the Court has to necessarily hold that goods which are subject matter of the Bill of Lading were in fact loaded on the ship and it must be held that the journey of shipment of goods commenced and thereby making such goods as being covered under the insurance policies with respect to those goods.

19. I would also like to note that in fact reliance placed by the plaintiff upon the Bill of Lading Ex.PW1/31 does not prove that in fact goods which were sold by the M/s. Palmex Enterprises being 800 pallets of PVC Resin were in fact loaded on the ship OH DAI because

the Bill of Lading begins with the expression "said to contain goods". Obviously such statements are normally found generally in the Bills of Lading because a shipping company does not physically inspect complete details of all the goods which are loaded on the ships which are written in the Bills of Lading. In fact, it is for this reason that normally there is bound to exist a survey report of the goods showing that an approved surveyor has inspected the goods which are subject matter of the consignment contained in the Bill of Lading and it is seen that the plaintiff in the present case has not filed and proved any survey report with respect to the 800 metric pallets of PVC Resin. Therefore in my opinion mere proving of the Bill of Lading etc, besides the fact that a Court only has to 'may presume' the accuracy of the same, that therefore even if 'may presume' presumption has to be drawn in favour of the plaintiff, yet in the absence of a surveyor's report with respect to the contents of the goods loaded on the ship which are subject matter of the Bill of Lading, it cannot be held that the 800 metric pallets of PVC Resin which were subject matter of the insurance policies were loaded on to the ship, were shipped or the journey/shipment of the goods which were subject matter of the insurance policies commenced at Singapore from the warehouse of the

M/s. Palmex Enterprises firstly to the port then to the ship and thereafter in terms of the ship's voyage to the Mumbai port.

20. For all the aforesaid reasons, this Court rejects the case of the plaintiff that goods which are subject matter of the insurance policies were ever shipped by the seller M/s. Palmex Enterprises or that the goods ever at all came into existence which were owned by M/s. Palmex Enterprises and commenced their journey from the warehouse of the M/s. Palmex Enterprises firstly to the port, then to the ship and then *via* the OH DAI ship to Mumbai port.

21. The aforesaid conclusion with respect to the goods which are subject matter of the insurance policies not coming into existence and not being shipped also has to be held against the plaintiff because it is very curious that plaintiff has made no efforts to summon or seek from the seller M/s. Palmex Enterprises documents with respect to existence of the subject goods in the warehouse of M/s. Palmex Enterprises, then as to how those goods were transported to the port/dock and by which lorries/trucks to the port in Singapore, and as to where are those documents which are subject matter of Entry 19 of Part I of the Schedule of the Act or where are those documents which

are covered in Part II of the Schedule of the Act in the Entries 1,3,4,5,7,14 and 16. This Court therefore has no doubt whatsoever that a fraud is sought to be played upon the defendant/insurance company by claiming amounts from the defendant/insurance company under the subject insurance policies although the goods which are subject matter of the insurance policies never came into existence and were never brought into a port in Singapore and were never shipped much less through the Bill of Lading Ex.PW1/31.

22. Issue nos.2,5,8,10 and 11 are therefore decided in favour of the defendant/insurance company and against the plaintiff.

Issue no.1

23. This issue is with respect to whether plaintiff entered into a contract with M/s. Palmex Enterprises and this issue is proved in favour of the plaintiff because of the contract Ex.PW1/1, but in any case mere fact that a contract was entered into between the plaintiff and M/s. Palmex Enterprises would not mean that plaintiff will succeed in this suit against the defendant/insurance company.

Issue No.3

24. In view of the discussion on the aforesaid issue nos.2,5,8,10 & 11, it is held that plaintiff is not entitled to succeed in the suit and the plaintiff is not entitled to a money decree as against the defendant/insurance company.

This issue no.3 is therefore decided against the plaintiff.

Issue Nos.4, 6 and 9

25. These issues are not pressed on behalf of the defendant/insurance company.

Issue No.7

26. In the facts of the present case, it is held that plaintiff cannot fail because plaintiff has not sued the shipping company or the seller/consignor inasmuch as liability of the insurance company is independent of the liability of the seller/consignor and the shipping company, however as already discussed above the fact that plaintiff has not sued the shipping company or the seller M/s. Palmex Enterprises is an aspect to be held against the plaintiff with respect to the lack of genuineness of the claim of the plaintiff and the fact that goods which are subject matter of the insurance policies never came

into existence or never commenced their journey Ex-Singapore to Mumbai port. Issue no.7 is decided accordingly.

<u>Issue Nos. 12 and 13</u>

27. Accordingly, the suit of the plaintiff stands dismissed, leaving the parties to bear their own costs.

FEBRUARY 16, 2018 **VALMIKI J. MEHTA, J**
Ne/godara/AK

\+ **<u>CS (OS) No. 738/1980</u>**

% **19th February, 2018**

CANARA BANK & ANR. ..... Plaintiffs
Through: Mr. Anil Airi, Sr. Advocate with Mr. Ravi Krishan Chandna, Ms. Bindiya Logawney, Ms. Sadhana Sharma, Ms. Sukanya Lal and Mr. Satyam, Advocates.

Versus

ORIENTAL INSURANCE CO. LTD. ..... Defendant
Through: Ms. Sunita Dutta, Advocate.

\+ **<u>CS (OS) No. 739/1980</u>**

CANARA BANK & ANR. ..... Plaintiffs
Through: Mr. Anil Airi, Sr. Advocate with Mr. Ravi Krishan Chandna, Ms. Bindiya

Logawney, Ms. Sadhana Sharma, Ms. Sukanya Lal and Mr. Satyam, Advocates.

Versus

ORIENTAL FIRE & GENERAL INS. CO. LTD. ..... Defendant

Through: Ms. Sunita Dutta, Advocate.

VALMIKI J. MEHTA, J (ORAL)

1. These suits will also stand dismissed as per the discussion, reasoning and conclusions given while dismissing CS (OS) No. 922/2004, and which discussion, reasoning and conclusions will apply *mutatis mutandis* to the facts of the present cases where the cover-note has been proved as Ex.P-1 and the Bill of Lading has been proved as Ex.PW1/3.

2. Goods which were to be supplied in CS (OS) No. 738/1980 were Brass Scrap Honey Grade and goods to be supplied in CS (OS) No. 739/1990 were Cloves of Zanzibar quality.

3. The amount claimed in CS (OS) No. 738/1980 is Rs.27,50,000/- and the amount claimed in CS (OS) No. 739/1980 is Rs.22,00,000/-.

4. One another aspect to be noted is that plaintiffs in these suit is the banker of the buyer and since the insurance policies have been assigned to the plaintiff bank, therefore, it is the plaintiff bank which is suing for recovery of amounts under the insurance policies/cover notes.

5. The issues framed in CS (OS) No. 738/1980 and CS (OS) No. 739/1980 on 31.7.1989 are reproduced as under:-

> "**<u>Issues in CS (OS) No. 738/1980</u>**
>
> 1. Whether Shri S.S. Bedi, who has signed the plaint was not aware of the facts of the case? OPP
> 2. Whether the plaintiff No.2 is a registered company? OPP
> 3. Whether plaintiff No.2 is carrying on business of export and import? OPP
> 4. Whether the plaintiff No.2 entered into a contract with M/s Palmex Enterprises for the import of Brass Scrap "Honey Grade" as set out in para 4 of the plaint? OPP
> 5. Whether the plaintiff No.1 established a letter of credit in favour of the plaintiff No.2 for the sum of US Dollars 3,05,500 equivalent to Rs.25 lakhs as set out in para 6 of the plaint? OPP
> 6. Whether the goods in question were loaded on board the vessel Ohdai for carriage to Bombay as pleaded in para 9 of the plaint? OPP
> 7. Whether the goods were lost on account of sinking of ship Ohdai? OPP
> 8. Whether the policy of insurance was not in full force and effect when the goods allegedly became total loss on account of the sinking of the vessel Ohdai? OPD
> 9. Whether insurance policy is not valid for the reasons set out in the preliminary objection No.1? OPD
> 10. Whether the plaintiff's claim is not maintainable because of the alleged fact that the plaintiffs knew or ought to have known that Shri Bhagwan Singh Ahjula was a person of doubtful integrity and President of the company owning the vessel Ohdai and since the contract of insurance is a contract of good faith, the insurance policy would be deemed to have been frustrated? OPD

11. Whether the ship Ohdai was sunk in pursuance to conspiracy, fraud or crime as stated in para 11 of the written statement, if so what are its effect? OPD
12. Whether the acceptance by the defendant of additional premium to cover shipment of an old ship was not sufficient compliance with the terms of the cover note issued by defendant No.1? OPP
13. To what amount, if any, is the plaintiff entitled? OPP
14. Whether the plaintiff is entitled to interest and if so, at what rate? OPP
15. Relief.

Issues in CS (OS) No. 739/1980

1. Whether Shri S.S. Bedi, who has signed the plaint was not aware of the facts of the case? OPP
2. Whether the plaintiff No.2 is a registered company? OPP
3. Whether plaintiff No.2 is carrying on business of export and import? OPP
4. Whether the plaintiff No.2 entered into a contract with M/s Bentrex & Co. for the import of cloves as set out in para 4 of the plaint? OPP
5. Whether the plaintiff No.1 established a letter of credit in favour of the plaintiff No.2 for the sum of Rs.20 lacs as set out in para 6 of the plaint? OPP
6. Whether the goods in question were loaded on board the vessel Ohdai for carriage to Bombay as pleaded in para 9 of the plaint? OPP
7. Whether the goods were lost on account of sinking of ship Ohdai? OPP
8. Whether the policy of insurance was not in full force and effect when the goods allegedly became total loss on account of the sinking of the vessel Ohdai? OPD
9. Whether insurance policy is not valid for the reasons set out in the preliminary objection No.1? OPD
10. Whether the plaintiff's claim is not maintainable because of the alleged fact that the plaintiffs knew or ought to have known that Shri Bhagwan Singh Ahjula was a person of doubtful integrity and President of the company owning the vessel Ohdai and since the contract of insurance is a contract of good faith, the insurance policy would be deemed to have been frustrated? OPD
11. Whether the ship Ohdai was sunk in pursuance to conspiracy, fraud or crime as stated in para 11 of the written statement, if so what are its effect? OPD
12. Whether the acceptance by the defendant of additional premium to cover shipment of an old ship was not sufficient compliance with the terms of the cover note issued by defendant No.1? OPP
13. To what amount, if any, is the plaintiff entitled? OPP

14. Whether the plaintiff is entitled to interest and if so, at what rate? OPP
15. Relief."

Issue Nos. 1 to 5, 8 to 10 and 12

6. These issues are not opposed on behalf of the defendant/insurance company and therefore these issues are decided in favour of the plaintiffs subject to the clarification *qua* issue no.8 that decision of this issue in favour of the plaintiffs does not mean that the defendant/insurance company is agreeing to its liability under the insurance policy and issue no.8 being decided in favour of plaintiffs is that the loss if it would have occurred was within the duration of validity of the insurance policy. These issues are conceded for being decided in favour of the plaintiffs as defendant/insurance company has succeeded as regards issue nos. 6 and 7 and thus suit has to be dismissed.

Issue Nos. 6 and 7

7. These issues would stand decided against the plaintiffs by adopting the reasoning contained in the judgment in the case of CS (OS) No. 922/2004, inasmuch as, identical issues are involved and same arguments were urged on behalf of the plaintiffs in these suits

also. It is therefore held that subject goods were not loaded on to the ships and were not lost on account of sinking of the ships.

Issue No. 11

8. There is no finding required to be returned so far as this issue no. 11 is concerned, inasmuch as, while deciding issue nos. 6 and 7 it has already been held that the goods which are subject matter of the policies never came into existence and the journey of shipment of the goods did not commence i.e once no goods which were subject matter of the policies came into existence or commenced their journey on shipment, the insurance policies did not come into existence and hence sinking of the ships did not result in loss of goods for the defendant/insurance company to be liable under the subject insurance policies/cover notes.

Issue Nos. 13 to 15

9. Adopting the discussions and reasoning as contained in the judgment in CS (OS) No. 922/2004, and therefore having decided issue nos. 6 and 7 in favour of the defendant/insurance company these issue nos. 13 to 15 are decided against the plaintiffs and the plaintiffs are held not entitled to succeed by getting the money decrees as

prayed for in the suits. The suits are therefore dismissed, leaving the parties to bear their own costs.

FEBRUARY 19, 2018 **VALMIKI J. MEHTA, J**
godara/AK/Ne

\+ **CS (OS) No. 1408/1979**

% **19th February, 2018**

ELEPHANTA OIL VANASPATI INDUSTRIES LTD. …. Plaintiff
Through: Ms. Sangeeta Chandra, Advocate.
Versus
THE NEW INDIA ASSURANCE CO. LTD. & ANR. …. Defendants
Through: Ms. Sunita Dutta, Advocate.

VALMIKI J. MEHTA, J (ORAL)

1. This suit is also dismissed by adopting the discussion, reasoning and conclusions given while dismissing CS (OS) No. 922/2004 and which discussion, reasoning and conclusions will apply *mutatis mutandis* to the facts of the present case where the Bill of Lading has been proved as Ex.PW1/5, Mate's Receipt has been proved as Ex.PW1/4 and Weighment Certificate has been proved as Ex.PW1/3.

2. In this suit the goods which were to be supplied by the foreign seller were Cloves of Zanzibar quality. The amount claimed in the suit is Rs.2,77,44,026.68/-.

3. One another aspect to be noted is that plaintiff/company has gone into liquidation and now is being represented through the Official Liquidator attached to the High Court of Delhi.

4. The issues framed in the present suit are as under:-

> "1. Has defendant no.2 been joined as a defendant within time, if not, to what effect?
> 2. Whether the plaintiff agreed to purchase and the said Bentrex & Co agreed to sell to the plaintiff 300 metric Tons of Cloves (Zanzibar Quality) as alleged in paragraph 3 of the plaint?
> 3. Whether the plaintiff opened an irrevocable letter of credit in favour of the sellers through the Punjab & Sind Bank, the predecessor in interest of the 2nd Defendant for US $ 22,500 as alleged in paragraph 4 of the plaint?
> 4. Whether any goods were unconditionally appropriated to the contract in favour of the plaintiff by the sellers as alleged in paragraph 5 of the plaint?
> 5. Whether the Uni Q marine Services of Singapore issued a weight certificate dated 6th August 1979 containing the statements alleged in paragraph 5 of the plaint?
> 6. Whether cloves packed in 6000 bags bearing No.Victor Bombay 16000 were duly loaded and shipped on board the SS Averilla at Singapore as alleged in paragraph 6 and 7 of the plaint?
> 7. Whether there was a contract of a-ffreighment contained in a bill of lading bearing No.AB-21 dated 7th August 1979 issued by the Wellway Lines as alleged in paragraph 7 of the plaint?
> 8. Whether the plaintiff was the buyer of any goods or was the owner of the Cloves of the value of Rs.2,74,19,500 or any other value as alleged in paragraph 8 of the plaint?
> 9. Are the pleas embodied in the Issues No.4 to 10 available and open to the defendants?

10. Whether the Insurance Policy is void ab initio and unenforceable for the reasons alleged in para 4 of the written statement of the defendant?
11. Whether the plaintiff was a privy or a party to a fraud intended and calculated to fraudulently obtain an insurance policy and/or to obtain fraudulently a claim thereunder as alleged in paragraph 4(a) of the written statement of defendant no.1?
12. Whether the policy of Insurance is liable to be avoided by the 1st defendant as alleged in paragraphs 4(b) and 4(c) of the written statement of defendant No.1?
13. Whether the transactions in suit were calculated to cause injury to the Ist Defendant and/or make unlawful gains for the plaintiff and are therefore uneforceable, null and void as alleged in paragraph 4(d) of the written statement of defendant No.1?
14. Whether the policy of Insurance is void on the ground of mistake as alleged in paragraph 4(e) of the written statement of defendant No.1?
15. Whether the suit transactions are a result of a conspiracy between the plaintiff and one Mr. C.S. Aujla or are founded in illegalities as alleged in paragraph 7 and 11 of the written statement of defendant no.1?
16. Whether the plaintiffs have forfeited their rights to recover any money or any liquidated sum under the Insurance Policy by reasons of the allegations made in paragraph 7 of the written statement of defendant No.1?
17. Whether the Insurance Policy is void for the reasons alleged in paragraph 7 of the written statement of defendant No.1?
18. Whether the plaintiff had interest in the goods or have insurable interest as alleged in paragraphs 9 and 18 of the plaint?
19. Whether the said goods became a total loss by reason of the perils insured against as alleged in paragraph 9 of the plaint?
20. Whether the replacement import licences for the consignment of cloves alleged to be lost were available or could have been obtained by the plaintiff as alleged in paragraph 10 of the written statement?
21. Whether the plaintiff did not behave as a prudent person as alleged in paragraph 16 of the written statement of defendant No.1?
22. Whether the documents relied upon by the plaintiff have discrepancies and/or are vitiated as alleged in paragraph 16 of the written statement of defendant No.1?
23. Whether the plaintiffs are entitled to recover a sum of Rs.2,74,19,500/- or any other sum under the Insurance Policy as alleged in paragraphs 15 and 16 of the plaint?
24. What is the effect of the claim made by the second defendant in its written statement on its behalf?

25. Whether the plaintiff has not paid any consideration in respect of the purported goods and has refused to make payment under the letter of credit as alleged in paragraph 22 of the written statement of defendant No.1. If, so, to what effect?
26. Whether the plaintiff is entitled to receive any amount from defendant No.1?
27. Can now defendant No.1 raise the pleas embodied in the Issues No.11 to 18 in view of the objections raised by the plaintiff in preliminary objection No.1 in the replication?
28. Is the plaint vague and indefinite as alleged by the defendants in preliminary objections No.3 in the written statement, if so, to what effect?
29. Relief."

Issue Nos. 1, 11 to 13, 15 to 17, 20, 21, 22, 25, 27 and 28

5. These issues are not pressed on behalf of defendant no. 1/insurance company as it has otherwise been held under the relevant issues that the goods which were the subject matter of the policy/cover note were never supplied and hence there is no liability of the defendant no.1/insurance company under the subject insurance policy/cover note.

Issue No. 2

6. On behalf of defendant no. 2 it is not disputed that there was a contract entered into by the plaintiff company with M/s. Bentrex and Company. This issue is decided accordingly.

Issue No. 3.

7. Counsel for defendant no. 1/insurance company does not dispute that plaintiff's bank had opened a letter of credit in favour of the sellers, and this issue is therefore decided accordingly.

Issue Nos. 4, to 10, 14, 17, 18 and 19

8. These issues are decided in favour of the defendant no. 1/insurance company by holding that the goods which were subject matter of the cover note/insurance policies did not come into existence inasmuch as mere existence of the Bill of Lading or Mate's Receipt is held to be no proof of *factum* of actual loading/shipment of goods and as already discussed in detail while deciding CS (OS) No. 922/2004. I may note that counsel for the plaintiff had relied upon the Weighment Certificate proved as Ex.PW1/3 to argue that loading on the ship did take place, however it is seen that this Weighment Certificate is not a Weighment Certificate after the goods entered into port/dock area and that this Weighment Certificate is a certificate only of the goods in warehouse of the seller M/s. Bentrex and Company. Therefore this Weighment Certificate will not help the plaintiff to prove that the goods which are subject matter of the insurance policies entered into the port/dock area or commenced their shipment/journey in terms of the Bill of Lading.

9. Accordingly, these issues are decided in favour of the defendant no. 1/insurance company holding that though there was a cover note/insurance policy, however since the goods which are subject matter of the cover note/insurance policies were never loaded on to the ship MV AVERILLA and the goods never entered into the port/dock area at Singapore so as to be loaded on to the ship MV AVERILLA and that therefore the insurance policies do not come into operation because the goods which are subject matter of the policies never commenced their shipment on the ship MV AVERILLA.

Issue No. 24

10. Since the second defendant has not contested the suit and in fact no relief is prayed against the defendant no.2. This issue is not called for decision.

Issue Nos. 23, 26 and 29

11. In view of the detailed discussion given in CS (OS) No. 922/2004 and which will *mutatis mutandis* apply in this case, and the according decision on aforesaid issues, the plaintiff is not entitled to any relief of grant of money decree in its favour and against the defendant no. 1/insurance company.

12. The suit is therefore dismissed, leaving the parties to bear their own costs.

FEBRUARY 19, 2018 **VALMIKI J. MEHTA, J**
godara/AK/Ne

\+ **CS (OS) No. 1409/1979**

% **19th February, 2018**

ELEPHANTA OIL VANASPATI INDUSTRIES LTD. …. Plaintiff
Through: Ms. Sangeeta Chandra, Advocate.

Versus

THE NEW INDIA ASSURANCE CO. LTD. & ANR. …. Defendants
Through: Ms. Sunita Dutta, Advocate.

VALMIKI J. MEHTA, J (ORAL)

1. I am informed by the counsel for the plaintiff that exhibit numbers to the documents in this suit are the same exhibit numbers as given in CS (OS) No. 1408/1979 and therefore exhibit numbers are not being stated herein.

2. Goods which were to be supplied by the foreign seller in this suit were Cloves of Zanzibar quality. The amount claimed in the suit is Rs.2,11,72,660.27.

3. The issues framed in the present suit are reproduced as under:-

"1. Has defendant no.2 been joined as a defendant within time, if not, to what effect?
2. Whether the plaintiff agreed to purchase and the said Bentrex & Co agreed to sell to the plaintiff 300 metric Tons of Cloves (Zanzibar Quality) as alleged in paragraph 3 of the plaint?
3. Whether any goods were unconditionally appropriated to the contract in favour of the plaintiff by the sellers as alleged in paragraph 5 of the plaint?
4. Whether the Uni Q marine Services of Singapore issued a weight certificate dated 6th August 1979 containing the statements alleged in paragraph 5 of the plaint?
5. Whether cloves packed in 6000 bags bearing No.Victor Bombay 16000 were duly loaded and shipped on board the SS Averilla at Singapore as alleged in paragraph 6 and 7 of the plaint?
6. Whether there was a contract of affreightment contained in a bill of lading bearing No.AB-21 dated 7th August 1979 issued by the Wellway Lines as alleged in paragraph 7 of the plaint?
7. Whether the plaintiff was the buyer of any goods or was the owner of the Cloves of the value of Rs.2,74,19,500 or any other value as alleged in paragraph 8 of the plaint?
8. Are the pleas embodied in the Issues No.4 to 10 available and open to the defendants?
9. Whether the Insurance Policy is void ab initio and unenforceable for the reasons alleged in para 4 of the written statement of the defendant?
10. Whether the plaintiff was a privy or a party to a fraud intended and calculated to fraudulently obtain an insurance policy and/or to obtain fraudulently a claim thereunder as alleged in paragraph 4(a) of the written statement of defendant no.1?
11. Whether the policy of Insurance is liable to be avoided by the 1st defendant as alleged in paragraphs 4(b) and 4(c) of the written statement of defendant No.1?
12. Whether the transactions in suit were calculated to cause injury to the Ist Defendant and/or make unlawful gains for the plaintiff and are therefore uneforceable, null and void as alleged in paragraph 4(d) of the written statement of defendant No.1?
13. Whether the policy of Insurance is void on the ground of mistake as alleged in paragraph 49e) of the written statement of defendant No.1?
14. Whether the suit transactions are a result of a conspiracy between the plaintiff and one Mr. C.S. Aujla or are founded in illegalities as

alleged in paragraph 7 and 11 of the written statement of defendant no.1?

15. Whether the plaintiffs have forfeited their rights to recover any money or any liquidated sum under the Insurance Policy by reasons of the allegations made in paragraph 7 of the written statement of defendant No.1?

16. Whether the Insurance Policy is void for the reasons alleged in paragraph 7 of the written statement of defendant No.1?

17. Whether the plaintiff had interest in the goods or have insurable interest as alleged in paragraphs 9 and 18 of the plaint?

18. Whether the said goods became a total loss by reason of the perils insured against as alleged in paragraph 9 of the plaint?

19. Whether the replacement import licences for the consignment of cloves alleged to be lost were available or could have been obtained by the plaintiff as alleged in paragraph 10 of the written statement?

20. Whether the plaintiff did not behave as a prudent person as alleged in paragraph 16 of the written statement of defendant No.1?

21. Whether the documents relied upon by the plaintiff have discrepancies and/or are vitiated as alleged in paragraph 16 of the written statement of defendant No.1?

22. Whether the plaintiffs are entitled to recover a sum of Rs.2,09,25,000/- or any other sum under the Insurance Policy as alleged in paragraphs 15 and 16 of the plaint?

23. What is the effect of the claim made by the second defendant in its written statement on its behalf?

24. Whether the plaintiff has not paid any consideration in respect of the purported goods and has refused to make payment under the letter of credit as alleged in paragraph 22 of the written statement of defendant No.1. If, so, to what effect?

25. Whether the plaintiff is entitled to receive any amount from defendant No.1?

26. Can now defendant No.1 raise the pleas embodied in the Issues No.11 to 18 in view of the objections raised by the plaintiff in preliminary objection No.1 in the replication?

27. Is the plaint vague and indefinite as alleged by the defendants in preliminary objections No.3 in the written statement, if so, to what effect?

28. Relief."

4. Since issues framed in this suit are identical to the issues in CS (OS) No. 1408/1979 (except that the issues framed in this suit

are one number less because of an additional issue no.3 framed in CS (OS) No. 1408/1979) therefore the discussion of issues in CS (OS) No. 1408/1979 are adopted in this suit. This suit is also therefore dismissed, leaving the parties to bear their own costs.

FEBRUARY 19, 2018 **VALMIKI J. MEHTA, J**
godara/AK/Ne