

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgement reserved on 30.08.2019	Orders pronounced on 22.11.2019
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CORAM:

The Hon'ble Mr.Justice Krishnan Ramasamy

C.S.No.606 of 2007

M.Moosa
Proprietor,
M/s.Riswan International,
No.45, 5th Avenue,
Harrington Road, Chetpet,
Chennai – 600 031.

.. Plaintiff

Vs.

1. The United India Insurance Company Ltd.,
rep. By its Chairman,
No.24, Whites Road,
Royapettah, Chennai – 600 014.
 2. The Branch Manager,
The United India Insurance Company Ltd.,
No.64, Armenian Street,
Chennai – 600 001.
 3. The Assistant General Manager,
United India Insurance Company Limited.,
Regional Office, Silingi Building,
40-42, Greames Road, Chennai – 600 006.
- .. Defendants

Prayer :-

Plaint filed under Order VII, Rule 1 C.P.C., and Order IV Rule 1 of O.S.Rules, praying for the following relief :-

(a) To direct the defendants to jointly and severally pay to the plaintiff a sum of Rs.1,36,10,878/-, with further interest on the claim amount of Rs.70,00,400/- at the rate of 12% per annum from the date of plaint till date of realization;-

(b) Directing the defendants to jointly and severally pay to the plaintiff a sum of Rs.5,00,000/- as compensation or damage with further interest at the rate of 12% per annum from the date of plaint till the date of realization.

For Plaintiff : Mr.Om Prakash, Senior Counsel for
M/s. G.Veerapathiran

For Defendants : M/r. N.Venkatraman for
M/s.Nageswaran and Narichania

J U D G M E N T

This Civil Suit is instituted by the plaintiff for the relief, as mentioned below:-

(a) To direct the defendants to jointly and severally pay to the plaintiff a sum of Rs.1,36,10,878/-, with further interest on the claim amount of Rs.70,00,400/- at the rate of 12% per annum from the date of plaint till date of realization;-

(b) Directing the defendants to jointly and severally pay to the plaintiff a sum of Rs.5,00,000/- as compensation or damage with further interest at the rate of 12% per annum from the date of plaint till the date of realization.

2. The case of the plaintiff is as follows:-

i) The plaintiff is running a business of Exporting musical instrument parts made of Red Sanders. The products made out of Red Sanders wood is traded with Government control and the plaintiff was holding and exporting the stock covered by Licenses and permits issued by the Tamilnadu Forest Department and by the Departments of Government of India. During the course of its business, the plaintiff entered into a purchase contract with three Japanese buyers for export of MUSICAL INSTRUMENT PARTS for a total value of 148000 US Dollars.

ii) After obtaining all the licenses and transport permits from the concerned Departments for the above goods, the plaintiff engaged Customs clearing agents M/s. Freight Master, Chennai-1 to process the export and accordingly, shipping bills were filed with the Chennai customs and necessary fees were paid. The plaintiff took following Marine insurance Policies:

S . N O	Date	Invoice No/ Date	Quantity/ Package/ destination	Value USS	Insurance Policy Number	Premium Paid
1	7.4.1999	13/RIZ/99 5.4.99	950 sets Koto parts in 95 Pkgs.Shimizu	47500	10503/21/6/11/20555/99	Rs.9475/-
2	7.4.1999	14/RIZ/99 5.4.1999	750 sets Koto parts 75 Pkgs.Osaka	37500	10503/21/6/11/20555/99	Rs.12,000/-
3	7.4.1999	16/RIZ/99 5.4.1999	300 sets of M.I arts 30 Pkgs. Y'hama.	63000	10503/21/6/11/20553/99	Rs.15,918/-

iii) The cargo consisting of 2000 sets of Musical Instruments was loaded on to Customs authorized Lorry No TNR 6116 valued US\$ 148000 and sent to Chennai Harbor with sufficient security measures on 10.4.1999. Enroute the lorry carrying the above cargo was hijacked by some unknown culprits and the entire insured cargo was stolen. The very next day, i.e, on 11.04.1999, the plaintiff filed a theft complaint with B-6 Kondungaiyur Police Station, and an FIR, in crime No 347 of 1999 u/s 379 IPC was registered on 11.04.1999 and the case was taken up for investigation. The Police also took all the measures to trace the stolen goods, by which, only the lorry was able to be traced out and recovered but not the goods. The plaintiff also informed the District Forest Officer, Chengelpet Division, Kanchipuram, regarding the said theft on 11.04.1999 and on 12.04.1999, the plaintiff informed the 2nd defendant

about the theft and submitted the copy of FIR to the second defendant and requested to appoint Surveyors to assess the loss vide Ex.P16. The plaintiff submitted claim forms as per the directions of the 2nd defendant on 15.4.1999. The Police, after investigation, issued an undetectable (UN) Certificate in ref No 4/P6/2000 dated 3.3.2000, stating that the stolen goods could not be traced and the same was submitted to the defendants.

iv) After a lapse of one year, the defendants appointed one M/s. Mehta and Padamsey Surveyors Private Limited to assess the loss, and after thorough assessment, the Surveyors submitted three survey reports on 16.6.2000 assessing the loss as follows:-

1.MR/1305 (MS 6204-A) Dt. 16.06.2000 as the entire consignment was stolen enroute, the percentage of loss is 100%;

2.MR/1306 (MS 6204-B) Dt.16.06.2000 : as the entire consignment was stolen enroute, the percentage of loss is 100%;

3.MR/1307 (MS 6204-C) Dt.16.06.2000: as the entire consignment was stolen enroute, the percentage of loss is 100%.

v) After getting the survey reports, the defendants simultaneously appointed Mr.S.Swaminathan, Insurance Investigator and another

Investigator Mr.Chandramouli of M/s.Mehta & Padamsey, without any reason for second and third opinion.

a) The said Mr.Swaminathan filed his report on 31.8.2001 stating that the occurrence of theft is genuine and the loss was 100% and the findings are as follows:-

"Conclusion and opinion:

From the foregoing details collected by me during investigations and the observations made above, I have to opine that the Musical instrument parts and Koto Musical Instrument parts manufactured by M/s.Rizwan International Chennai and transported to Chennai harbor for onward shipment covered under policy Nos.10503/20553, 20554, 20555/99 dated 08.04.1999 were stolen during transit on GNT road at Kodungaiyur on 10.04.1999 after consigned by a lorry from the insured's factory at Madhavaram and I conclude that the incident of theft is true and the percentage of loss to the insured is 100%."

b) Mr.Chandramouli filed his report on 23.3.2001, stating that the stocks were very much available with the plaintiff on the date of theft and

the conclusion part of the investigation is as follows:-

"20 J: the documents cited in 'h' and 'i' above would irrefutably establish that the goods as identified in the stock books and endorsed in the license issued by the forest department were available with the claimants in their premises for export at the relevant time.

21. Hence, the dispatches as stated in the three invoices (contents of which were stolen on 10th April 1999) which is the subject matter of this report were true to the best of our knowledge, examination and understanding of the claim and related documents."

vi) The above report of Mr.Chandra Mouli and Mr.Swaminathan squarely negates the only allegation in the letter sent by the counsel for the defendants, dated 11/4/2001 that the plaintiff would not have had the stock as of the movement. The above reports were submitted directly to the defendants, as they were appointed by them to assess and investigate the loss. All the said reports were filed and marked as Exs.P-100 to P-104. The plaintiff followed up the claims vigorously and sent over 35

representations to the defendants to settle the claims but in vain.

vii) Despite having clear Survey and Investigation Reports, the defendants delayed the disbursal of the settlement, and therefore, the plaintiff issued legal notices to the defendants. But the plaintiff received a letter from the counsels for the defendants, dated 11.4.2001 repudiating the plaintiff's claim. Plaintiff filed an appeal to review the repudiation to the first defendant. Since there was no response forthcoming from the first defendant, the plaintiff filed complaint in O.P.No.288 of 2001, before the National Disputes Redressal Commission, New Delhi.

viii) The above said complaint was rejected by the National Disputes Redressal Commission on the ground that the said matters requires evidence from both sides, and therefore, directed the plaintiff to seek relief from the civil court or any other Forums. The said order is marked as Ex.P.86. Against the said order, the plaintiff filed a civil appeal namely C.A.No.D6633 of 2003 before the Hon'ble Supreme Court of India and the same was also dismissed in limine

ix) The plaintiff approached the Insurance Regulatory and Development Authority to look into the said claim. Since there was no reply from the said authority, the plaintiff filed a writ petition in

W.P.No.25223 of 2003 and by an order dated 10.09.2003, this Hon'ble Court directed the said authority to dispose of the representations made by the plaintiff. However, the said Authority rejected the plaintiff's complaint on 15.04.2004, stating that they did not have any jurisdiction, and therefore, directed the plaintiff to approach the Civil Court. Challenging the said order, the plaintiff filed Writ Petition in W.P.No.19779 of 2004. However, the said Writ Petition was dismissed as withdrawn granting liberty to the petitioner/plaintiff to file the suit. Hence, the present suit.

3. All the three defendants have jointly filed a written statement, denying all the averments made in the plaint, inter alia, stating that the suit is barred by limitation. Further, according to the first defendant, the suit against the second and third defendants in their capacity as Branch Manager and Assistant General Manager, is redundant, superfluous, unnecessary and contrary to law and practice inasmuch as, it is the Corporate entity. M/s.United India Insurance Company Ltd., the first defendant has issued the policy of insurance, evidencing a contract of insurance and the suit laid as against the Company, viz., the first defendant is alone necessary and proper for the purpose of adjudicating the alleged dispute. Notwithstanding such act of impleading the second and third defendants, in their official capacity, being irregular, unnecessary, contrary to law and practice, this written statement is being

filed for and on behalf of the first defendant as well as the Officers, who are impleaded as second and third defendants. The averments set out thereunder in gist are as follows:-

(i) The plaintiff is obliged to obtain permission in Form 6 as prescribed under Forest Department Rules. This permission was for a limited period of 24 hours. If, in the event of non removal of the goods within the said period of one day, the plaintiff should obtain cancellation of the permit from the Forest Department. A perusal of the relevant documents in the custody of the plaintiff reveals that the plaintiff did not obtain cancellation but also maintained that the said quantity, for which Form 6 was issued, were not removed.

(ii) The insured/plaintiff deals in export of controlled forest timber. But as per the records, the plaintiff did not submit himself to the inspection of stocks on various occasions, i.e., he removed the stocks without the permission of the Forest Department, thereby, availing the possibility of selling the same locally contrary to law. The fact of not maintaining the proper stock book is a clear pointer that all transactions carried out by the plaintiff were not recorded properly, thus, rendering the stock verification as reflected in his book untrustworthy.

(iii) A close scrutiny and investigation of the books maintained by the plaintiff revealed that there were number of removals without the mandatory Form 6, which would prove that the plaintiff was perpetually committing breach of the statutory requirement, viz., obtaining permission from the Forest Department, particularly, when such removals are for the purpose of export/local sales.

(iv) It is evident from the records that some of the removals, which allegedly did not take place were not backed up with cancellation of Form 6, which would mean, in reality, such goods were removed and sold locally but not reflected appropriately in the books.

(v) The aspect that the plaintiff did not maintain proper stock book would only establish the fact that there is no proof beyond doubt regarding removal or non-removal of material, whereby, the stock position as reflected and asserted by the plaintiff on various dates cannot be relied.

(vi) It is further established that the plaintiff was habitually removing the prohibited goods, without permission and in the absence of cancellation certificate for several removals and in the absence of stock books, the stock shown by the plaintiff as on 7.4.1999 is not reliable and

the alleged existence of the stock or its removal as pleaded by the plaintiff has not been proved beyond doubt.

(vii) In respect of subject matter of insurance, according to plaintiff, the plaintiff obtained Form 6 (Permit for removal of stock) on 07.04.1999 but had removed the goods only on 10.4.1999 which clearly indicates that either stock had been removed on 7.4.1999 or in other words, there is no possibility of the stock being removed on 10.4.1999, thus, rendering the entire version of the plaintiff unreliable apart from being illegal.

(viii) The FIR relied upon by the plaintiff is nothing but a concocted version apart from the contents being improbable and unbelievable. The defendants stated that the said FIR may be read as part of this pleading. A clear reading of the said FIR would reveal that the plaintiff was grossly negligent for the following reasons:

(a) He did not care to send a responsible persons/representative along with the relevant documents permitting removal of the cargo, in question, along with the vehicle, which allegedly transported the cargo. If such representative had accompanied the cargo during transit assuming that unknown persons intercepted the transit, the

representative could have satisfied such persons with documents in possession and not run after the plaintiff for his physical presence to explain to such individuals, who intercepted the transit with Criminal intention.

(b) The fact that the clearing agent's representative, driver and the cleaner, left the vehicle unattended at the road side after handing over the key to those unidentified individuals is also proof of gross negligence in caring for the cargo. Nothing prevented the representative to make a phone call to the plaintiff or persons responsible from the near vicinity of the place of interception when it is well known that public phone booths are made available at regular intervals in the Highways, not to mention, in the distance between Madhavaram to Chennai harbour.

(c) The distance between Madhavaram and Chennai harbour during day time viz., around 1.15 PM is full of traffic and nothing prevented the Driver, cleaner or the representative of the clearing agent in informing the plaintiff immediately after the interception, whereas, nearly after two hours only, the plaintiff was notified by his employee Mr. Nazir about the interception of the lorry enroute as averred in para 10 of the plaint. The absence of immediate notification and the delay in registering FIR, which took place nearly after 12 hours is a clear proof of negligence on the part of the plaintiff, which practically facilitated the loss of the cargo, even assuming without admitting,

that the loss took place as averred in the plaint and reported in the FIR.

(ix) The defendants further stated that, in all marine insurance policies, the insured is bound to act reasonably under the reasonable despatch clause. The conduct of the insured/plaintiff, his employee/representative as admitted by the plaintiff is proof of sheer negligence and want of proper care on the part of the plaintiff for safe passage of the consignment between Madhavaram and Chennai Harbour. Hence, the plaintiff is guilty of breach of reasonable dispatch clause of the policy.

(x) The defendants further stated that neither the Investigator nor the Surveyor had gone into the question of fact that the plaintiff was under an obligation to take the permit as prescribed by the relevant rules in Form 6 and that this permission was for a limited period of one day and that in the event of non-removal on the date of issues, it should be cancelled and a fresh permit should be obtained from the Forest Department. The finding of the Surveyor and the Investigator assessing the loss based on the fictitious unreliable documents not properly maintained during the ordinary course of business transaction cannot be acted upon by this defendant, and therefore, this defendant has rightly

disclaimed liability for the aforesaid reasons.

(xi) It is well known principle of insurance that the contract of insurance is based on good faith ubarrimae fidei. At all times during the contract, the contracting parties are to conduct themselves in consonance with the principle of utmost good faith. As per Section 19 of the Marine Insurance Act, a contract of marine insurance is a contract based upon the utmost good faith and if the utmost good faith is not observed by either party, the contract may be avoided by the other party. The plaintiff did not adhere to this cardinal principle of utmost good faith, and consequently, the defendants are entitled to avoid the very contract. It is, therefore, submitted that the plaintiff is not entitled for any relief, much less that, relief prayed for in the plaint. In this context, it is relevant to take cognizance of the following facts:-

(a) The report of the Surveyors M/s. Mehta and Padamse shows that the insured/plaintiff paid fine in April 1999 prior to the alleged transit in April 1999, which is the subject matter of claim for removal of 7108 kilos of MI parts and 835 of Koto parts without prior permit from the Forest Department. The insured/plaintiff had obtained permit for removal of 2400 kiols of MI parts 3200 kiols of Koto parts. Hence, the total quantity of removal from the godown during the period May 1998 to March 1999 is

9508 kilos of MI parts of 4035 of Kilos of Kota parts. While so, the records of insured/plaintiff verified and reported by the Surveyor did not reveal this quantity. There is also no record to show that permit for 2400 kilos was not used either partly or fully. During 1997-98, there was no transaction by the insured. Therefore, the quantity of 7943 kilos, for which, penalty was paid, ought to relate for the transaction in 1998-99. However, as per the records, the total quantity removed by the insured/plaintiff during this period is 5600 kilos, and if the removal of quantity is correctly entered, then the stock position will be different and lower.

(xii) It is for those reasons, it is submitted that the plaintiff/insured had no stock capable of being removed as alleged, and therefore, the policy of insurance obtained and the subsequent claim reported therein are all based on misrepresentation and suppression of material facts rendering the contract of insurance totally vitiated under Sections 20 and 21 of the Marine Insurance Act. It is this improbable transit of goods insured as alleged by the plaintiff resulted in disclaiming liability. Further, it is the burden of the plaintiff to prove beyond doubt the existence of stock on the date of removal, permit for such removal on the date of removal, loss during transit on account of peril insured against that there was no negligence on the part of the insured, the plaintiff

exercised reasonable care and caution to avoid the loss and conducted himself in averting or minimizing the alleged loss. It is further submitted that none of the aforesaid per-requisites are duly complied with, and hence, defendants are justified in disclaiming the liability.

(xiii) As per the terms and conditions of the insurance policy, it is the obligation of the plaintiff/insured to protect the right of recovery from the carrier. If the loss was while the consignment was in the custody of the carrier as alleged by the plaintiff, he should have taken proper action against the carrier. The plaintiff is supposed to act as though uninsured and take all such measures as against the 3rd party, which obligation under the Bailee Clause was not performed by the plaintiff/insured. For this reason also, the plaintiff is not entitled for the relief prayed for.

(xiv) The allegation in para Nos. 22, 23 and 24 of the plaint are contrary to law, governing the contract of marine insurance, and hence, the plaintiff is not entitled for the sum of Rs.70,00,400/- or interest thereon and compensation for alleged damages quantified at Rs.5,00,000/-. It is respectfully submitted that the amount claimed in para 24 of the plaint is denied and the plaintiff is put to strict proof of the averment therein as regards the value of the cargo as well as the alleged entitlement.

(xv) Further, the defendants contended that the present suit is barred by limitation, because, the claim was repudiated on 11.04.2001. Therefore, the period of limitation commence on 11.04.2001 and expires on 11.04.2004, viz., three years. A complaint was filed before the National Consumer Disputes Redressal Commission on 19.02.2002 and the same was dismissed on 17.01.2003 with liberty to file the Civil Suit. Therefore, the present suit ought to have been filed on or before 14.04.2006. In the present case, the suit was filed only on 27.02.2007. Hence, the learned counsel contended that the suit is also liable to be dismissed as barred by limitation.

xvi The learned counsel further contended that though in terms of Section 14 of Limitation Act, exclusion of time is permitted, if a party prosecuted a case in a bona fide manner. In this case, the plaintiff did not prosecute the case properly to claim exclusion under Section 14 of the Limitation Act. Hence, the learned counsel prayed for dismissal of the suit on the ground of limitation also.

4. After filing the written statements by the defendants, this Court framed the following issues vide order dated 16.02.2008 :-

i. Whether the plaintiff is entitled to a decree for a sum of Rs.1,36,10,878/- with interest at 12% p.a on the principal amount of Rs.70,00,400/- as prayed for?

ii. Whether the plaintiff is entitled to a sum of Rs.5,00,000/- towards compensation with future interest at the rate of 12% p.a as prayed for?

iii. Whether the suit is barred by limitation?

iv. Whether the plaint is liable to be rejected under Order 7 Rule 11(d) of CPC for the reasons stated in the written statement?

v. Whether the interest claimed by the plaintiff is usurious and exorbitant in nature.

vi. To what relief, the plaintiff is entitled to?

4.1 Apart from the above said six issues, this Court also framed additional issue vide order dated 04.09.2014 which is as follows:-

Whether the reported loss is on account of a peril covered under the policy?

5. After framing the aforesaid issues, on the side of the plaintiff, the plaintiff' was examined as P.W.1 and the Surveyor, Mr. Chandramouli of M/s.Metha and Padamsy was examined as P.W.2 and 111 documents

were marked as Exs.P.1 to P.111. On the side of the defendants, one Mr.Kothandaraman, who is the Divisional Manager of the defendants Company was examined as D.W.1 and 28 documents were marked as Exs.D1 to D.28, out of which, Exs.D1 to D3 were marked during the cross-examination of P.W.1.

Issue Nos.(iii) and (iv):

6. The learned Senior counsel Mr.Om Prakash contended that the suit is not barred by limitation, as the plaintiff informed the 2nd defendant about the theft, the very next day after lodging the Police complaint, i.e. on 12.04.1999 and submitted the copy of FIR to the second defendant. Thereafter, the plaintiff submitted claim forms as per the directions of the 2nd defendant on 15.4.1999. But the plaintiff received a letter from the counsels for the defendants., dated 11.4.2001 repudiating the plaintiff's claim. Hence, the plaintiff filed an appeal to review the repudiation to the first defendant. Since there was no response forthcoming from the first defendant, the plaintiff filed complaint in O.P.No.288 of 2001, before the National Consumer Disputes Redressal Commission, New Delhi. However, the same was dismissed on the ground that the said matters requires evidence from both sides, and the Commission directed the plaintiff to seek relief from the civil court or any other Forums. Against the said order, the plaintiff filed a civil appeal namely C.A.No.D6633 of 2003

before the Hon'ble Supreme Court of India but the same was also dismissed in limine. Thereafter, the plaintiff approached the Insurance Regulatory and Development Authority to look into the said claim. Since there was no reply from the said authority, the plaintiff filed a writ petition in W.P.No.25223 of 2003 and by an order sated 10.09.2003, this Hon'ble Court directed the said authority to dispose the representations made by the plaintiff and the said Authority rejected the plaintiff's complaint on 15.04.2004, stating that they did not have any jurisdiction, and directed the plaintiff to approach the Civil Court. Challenging the said order, the plaintiff filed Writ Petition in W.P.No.1979 of 2003. However, the said Writ Petition was dismissed granting liberty to the petitioner/plaintiff to file the suit and thereafter, the plaintiff has filed the present suit.

6.1 Further, the learned Senior Counsel relied upon the decisions of the Hon'ble Supreme Court, wherein, Section 14 of Limitation Act interpreted in the following manner:-

i) **P.Sarathy Vs. State Bank of India**
reported in (2000) 5 S.C.C. 355 : 2000 S.C.C. (L&S) 699
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" Sub-section (1) of [Section 14, Limitation Act](#), provides as under:- "(1) In computing the period of limitation for any suit the time during which the

plaintiff has been prosecuting with due diligence another civil proceeding, whether in a Court of first instance or of appeal or revision, against the defendant shall be excluded, where the proceeding relates to the same matter in issue and is prosecuted in good faith in a Court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it." It will be noticed that [Section 14](#) of the Limitation Act does not speak of a "civil court" but speaks only of a "court". It is not necessary that the court spoken of in [Section 14](#) should be a "civil court". Any Authority or Tribunal having the trappings of a court would be a "court" within the meaning of this Article."

ii) In M.P.Steel Corpn Vs. CCE (2015) 7 S.C.C. 58 : (2015) 3 S.C.C.(CIV) 510,

"The language of [Section 14](#), construed in the light of the object for which the provision has been made, lends itself to such an interpretation. The object of [Section 14](#) is that if its conditions are otherwise met, the plaintiff/applicant should be put in the same position as he was when he started an abortive proceeding. What is necessary is the absence of negligence or inaction. So long as the plaintiff or applicant is bonafide pursuing a legal remedy which turns out to be abortive, the time beginning from the date of the cause of action of

an appellate proceeding is to be excluded if such appellate proceeding is from an order in an original proceeding instituted without jurisdiction or which has not resulted in an order on the merits of the case. If this were not so, anomalous results would follow. Take the case of a plaintiff or applicant who has succeeded at the first stage of what turns out to be an abortive proceeding. Assume that, on a given state of facts, a defendant – appellant or other appellant takes six months more than the prescribed period for filing an appeal. The delay in filing the appeal is condoned. Under explanation (b) of [Section 14](#), the plaintiff or the applicant resisting such an appeal shall be deemed to be prosecuting a proceeding. If the six month period together with the original period for filing the appeal is not to be excluded under [Section 14](#), the plaintiff/applicant would not get a hearing on merits for no fault of his, as he in the example given is not the appellant. Clearly therefore, in such a case, the entire period of nine months ought to be excluded. If this is so for an appellate proceeding, it ought to be so for an original proceeding as well with this difference that the time already taken to file the original proceeding, i.e. the time prior to institution of the original proceeding cannot be excluded. Take a case where the limitation period for the original proceeding is six months. The plaintiff/applicant files such a proceeding on the ninetieth day i.e.

after three months are over. The said proceeding turns out to be abortive after it has gone through a chequered career in the appeal courts. The same plaintiff/applicant now files a fresh proceeding before a court of first instance having the necessary jurisdiction. So long as the said proceeding is filed within the remaining three month period, **Section 14** will apply to exclude the entire time taken starting from the ninety first day till the final appeal is ultimately dismissed. This example also goes to show that the expression "the time during which the plaintiff has been prosecuting with due diligence another civil proceeding" needs to be construed in a manner which advances the object sought to be achieved, thereby advancing the cause of justice."

6.2 Therefore, the learned Senior Counsel contended that, the suit is not barred by limitation, as the plaintiff, in order to get the compensation for the loss occurred, has been made to move from one forum to another forum, and ultimately, filed the present suit on 27.02.2007. Therefore, he pleads that the period bona fidely spent in all the above litigations has to be excluded under Section 14 of the Limitation Act, 1963.

6.3 The learned counsel for the defendant contended that the suit is barred by limitation. The complaint was filed by the plaintiff before the National Consumer Disputes Redressal Commission on 19.02.2002 and the same was dismissed on 17.01.2003 with liberty to file the Civil Suit. Therefore, the present suit ought to have been filed on or before 14.04.2006, whereas, the plaintiff filed the present suit only on 27.02.2007. Therefore, the defendants contended that the suit is also liable to be dismissed on the ground of limitation.

6.4 The plaintiff initially had approached the Insurance Regulatory and Development Authority to look into his claim. Since there was no reply forthcoming from the said authority, the plaintiff filed a writ petition in W.P.No.25223 of 2003 and by an order dated 10.09.2003, this Hon'ble Court directed the said authority to dispose of the representations made by the plaintiff. However, the said Authority rejected the plaintiff's claim on 15.04.2004, stating that they did not have any jurisdiction, and therefore, directed the plaintiff to approach the Civil Court. Challenging the said order, the plaintiff filed Writ Petition in W.P.No.19779 of 2004. However, the said Writ Petition was dismissed as withdrawn granting liberty to the petitioner/plaintiff to file the suit. When such liberty was granted, the first defendants herein was a party to such proceeding, viz., the second respondent and the learned counsel who represented them

was also present in the Court and made no objection for granting such liberty to file this Suit. When such be the case, having not chosen to make any objection by the defendants, this Court is not in a position to come to the conclusion that the suit is barred by limitation as claimed by the defendants. The W.P.No.19779 of 2004, challenging the order of Insurance Regulatory and Development Authority, dated 15.04.2004 was withdrawn on 19.02.2007 and immediately, the plaintiff filed the present suit on 27.02.2007, within a week's time. Therefore, this Court holds that the suit filed by the plaintiff is well within the period of limitation. Hence, Issue Nos.(iii) and (iv) are answered in favour of the plaintiff.

7.Additional Issue No.1

Whether the reported loss is on account of a Peril covered under the Policy?

7.1 The learned counsel for the plaintiff would contend that in the present case, the policy will cover from the warehouse of the consignor to the warehouse of the consignee. In this regard, he referred Clause 5.1 of the Institute Strikes Clauses (Cargo) of the United India Insurance Company Limited issued along with the Insurance policy cover, wherein it is stated as follows:-

"Duration 5.1. This insurance attaches from the time the goods leave the warehouse of place of storage at the place named herein for the

commencement of the transit, continues during the ordinary course of transit and terminates either;

Duration 5.1.1. On delivery to the Consignees' or other final warehouse or place of storage at the destination named herein;

Duration 5.1.2. On deliver to any other warehouse or place of storage, whether prior to or at the destination named herein, which the assured elect to use either;

Duration 5.1.2.1. for storage other than in the ordinary course of transit or;

Duration 5.1.2.2. for allocation or distribution.

.....”

7.2 By referring the above provision, the learned counsel would contend that the Insurance cover is extended to warehouse to warehouse and at this stage, the defendant Insurance Company cannot take a stand claiming that the Insurance coverage is only an Ocean Insurance covered for the Ocean since it is a voyage policy.

7.3 On the other hand, the defendant would contend that the policy of Insurance is a Marine transit voyage policy from Chennai Port to Yokohama Port, Japan. The policy of Insurance contains terms and conditions which is marked as Exs.D1 and D2. In the policy it is clearly

mentioned that the mode of transport / conveyance is by Ocean and the voyage was from Chennai Port to Yokohama, Osaka, Japan. Therefore, the learned counsel for the defendant would contend that the mode of transportation covered under the policy is Ocean only and in the present case, the claim is based on the loss during transit by road that is from the alleged warehouse to the port at Chennai and therefore, road transit is not covered by the policy. Hence, he would contend that the plaintiff is not entitled for the suit claim.

7.4 The learned counsel for defendants in support of his contention that present policy will not cover the voyage by road and in this regard, the learned counsel referred to the deposition of the Surveyor, Mr.Guruswaminathan's, during his cross-examination and the relevant portions are extracted hereinbelow:-

“ I state that adjustment of the policy is prerogative of the insurer. The voyage under the Policy is from Chennai to Yokohama.

It is correct to state that I issued my report subject to the terms and conditions of the policy of the insurance. I have not mentioned any reference in our report as warehouse to warehouse. The mode of transport mentioned as ocean in Ex.P.12 does not specify about warehouse to warehouse. The

reported loss, according to me took place between Madhavaram and Chennai Port. The loss was not during Ocean Transit.

The loss took place before consignment reached Chennai Port.

Q. Do you agree that the reported loss certified by you is not covered under the Policies.

Ans. It is not correct for me to pass remarks about liabilities under marine policy as the decision regarding liability is the matter to be decided by the insurer. I have not stated in my report that loss occurred during the transit covered under the Policy."

7.5 The learned counsel further referred to the decision of the Hon'ble Supreme Court, in the case of **New India Assurance Co. Ltd. Vs. Hira Lal Ramesh Chand** reported in **2008 10 SCC 626**, wherein, it is held that insurance policy issued on warehouse basis will cover all the risks from warehouse of the consignor to the warehouse of the consignee. In the present, the policy taken by the plaintiff is voyage policy and the voyage under the Policy is from Chennai (Port) to Yokohama, Japan. Therefore, the learned counsel contended that present policy will not cover the voyage by road but Ocean. The learned counsel for the defendant also placed reliance on the following judgments in support of his contention:-

i) **A.I.R (1974) Madras 261**, in the case of **Electrical Manufacturing Company Vs. M/s. United India Insurance Co. Ltd., Chennai.**

ii) **2018 3. L.W. 241**, in the case of **A.Ramanathan and others Vs. Sukumaran Baskaran.**

iii) **2019 1 L.W. 914**, in the case of **Indian Bank rep. By its Deputy General Manager, Chennai Vs. Oriental Insurance Company Ltd.**

7.6 On the perusal of the Insurance Policy issued by the defendants, along with the terms and conditions as stated in the Institute Cargo Clause (A), Institute Strikes Clause (Cargo) and Institute War Clauses (Cargo), it appears that the clause (8), duration clause of Institute Cargo Clauses (A) states as follows:-

"8.1.This Insurance attaches from the time the goods leave the warehouse of place of storage at the place named herein for the commencement of the transit, continues during the ordinary course of transit and terminates either. ..."

The clause 5 of the institute cargo clause (cargo) states about the duration and clause 5.1 states as follows:-

"5.1. This insurance attaches from the time the goods leave the warehouse of place of storage at the place named

herein for the commencement of the transit, continues during the ordinary course of transit and terminates either. ...”

7.6.1 On the perusal of the above duration clause Institute Cargo Clauses (A), and Institute Strikes Clauses (Cargo), it appears that the policy of Insurance will cover from the time the goods leave the warehouse or place of storage at the place named herein (in the policy) for the commencement of transit.

7.6.2 When such being the case, here the issue to be decided is in the absence of mentioning anything about the place of warehouse or the place of storage of the goods, as stated in the above duration clauses in the policy issued by the plaintiff, whether the risk is covered from warehouse to warehouse?

7.6.3 As per the terms and conditions of Institute Cargo Clauses (A), 8.1 and Institute Strikes Clauses (Cargo) Clauses, 5.1., of the Policy, it is just and necessary to mention the place of warehouse or the place of storage in the policy since clauses 8.1 and 5.1 states that as this insurance attaches from the time the goods leave the warehouse of place of storage at the place named herein for the commencement of the transit, continues during the ordinary course of transit and terminates

either. The mode of transport is mentioned as Ocean from Chennai to Yokohama, Japan. As per Clauses 8.1 and 5.1. it is mandatory to mention the details of the warehouse or the place of storage for the commencement of transit in the policy. Without mentioning about the details of the warehouse or the place of storage in the policy, one cannot presume that the policy is covered from warehouse to warehouse.

7.6.4 Nowhere it is mentioned about the details of the warehouse or the storage place in the policy. Only the address of the insured is mentioned. As the policy clearly stated that the mode of transport by Ocean from Chennai to Yokohama, Osaka, Japan, the intention for issuing the policy is only to cover anything occurred in the Ocean transit. Apart from the above, no other interpretation can be made for the Clauses 8.1 and 5.1, since it is clearly mentioned about the warehouse or the place of storage at the place named herein for commencement of transit and the place named in the policy. In the policy nothing has been provided about the details of the warehouse or the place of storage. On the other hand it has been provided as the mode of transportation is Ocean from Chennai to Yokohama, Osaka, Japan.

7.6.5 In the present case, intentionally the place of warehouse and the place of storage of the goods have not mentioned in the policy, since the policy only cover from Port of Chennai to the Port of Yokohama, Osaka, Japan. Without mentioning about the details of the warehouse or the place of storage in the Policy, this Court is not in a position to presume that the Policy covered from warehouse to warehouse as stated by the plaintiff.

7.7 Even for the argument sake, if this Court accepts the contention that the policy was issued on warehouse of plaintiff to the warehouse of defendants, the mode of transportation is mentioned in the policy as Ocean from Chennai to Yokohama, Osaka, Japan. As rightly pointed out by the learned counsel for the defendants, the Policy of Insurance is a Marine Transit Voyage Policy from Chennai Port to Osaka, Japan. The policy of insurance with its schedule, terms and conditions are marked as Exs.D1 and D2. It is clearly mentioned in the Policy, that the mode of transport/conveyance is by Ocean, and the voyage was from Chennai Port to Yokohama, Osaka, Japan. Therefore, it is clear that the mode of transportation covered under the Policy is Ocean only and in the present case, the claim is based on the loss occurred during transit by road, and therefore, road transit is not covered under the Policy. Hence, the defendants are not liable to pay the suit claim as the peril is not

covered/insured under the Policy.

7.8 In such being the case, there is no hesitation for this Court to hold that the present policy will not cover for anything during the transit from the place said to have been transported by the plaintiff to the port at Chennai. Accordingly, this issue is answered that the present policy is not covered the claim of the plaintiff.

8.Issue Nos.i and ii.

i. Whether the plaintiff is entitled to a decree for a sum of Rs.1,36,10,878/- with interest at 12% p.a on the principal amount of Rs.70,00,400/- as prayed for?

ii. Whether the plaintiff is entitled to a sum of Rs.5,00,000/- towards compensation with future interest at the rate of 12% p.a as prayed for ?

8.1 Mr.Omprakash, the learned Senior Counsel appearing for the plaintiff submitted that, the plaintiff filed the above suit against the defendant/Insurance Company on the ground that the defendants have wrongly rejected his claim without any legal reasons and application of mind. The claim of the plaintiff was repudiated by the defendants vide

notice dated 11.04.2001, on account of the reason that the records maintained by the plaintiff are incapable of reflecting, proving their claim and the stock position as on the date of removal.

8.2 The learned Senior Counsel further submitted that the goods, in question, unlike other commodities are held by the plaintiff under the strength of Governmental documents of the State and the Central and the defendants failed to verify the fact evident from the documents filed by themselves in Exs.D.19 to D.21, which states that the defendants did not make any queries with the authorities concerned. The reports submitted by the Surveyor and the Investigator thrice appointed by the defendants would clearly establish the fact that the stocks were very much available with the plaintiff on the date of the incident, and therefore, the plaintiff is entitled to 100% claim. Further, it is submitted that since both the Surveyor and the Investigator assessed the loss as 100%, the defendants should go by the report of the Surveyor and Investigator, and accordingly, the claim of the plaintiff should have been accepted and paid. The learned Senior Counsel submitted that the surveyor's report is an important piece of evidence and the insured can be awarded compensation only on the basis of the surveyor's report. In support of such contention, the learned Senior Counsel referred to the following judgements of the Hon'ble Supreme Court:-

a) **Sri Venkateswara Syndicate Vs. Oriental Insurance Company Limited, dated 24.08.2009;**

b) **United India Insurance Vs. Roshanlal Oil Mills,** reported in **Indian Kanoon.**

8.3 The learned Senior Counsel further submitted that the plaintiff's claim was arbitrarily rejected by the defendants even after so many reports filed by the surveyors, appointed by them. The defendants have the history of repudiating genuine claims, wherein, they have been penalized by the Insurance Regulatory Development Authority (IRDA) and the same is admitted by D.W.1 during cross-examination in serial No.54, dated 14.06.2016, and the relevant portion is extracted hereinbelow:-

"... in one case IRDA has imposed fine against the Company for violating norms and not settling claims in due time."

8.4 By referring to the above, the learned counsel submits that, it is crystal clear that the repudiation after receiving the surveyor's report and investigation reports admitting the total loss and the genuinity of the theft, that too, delegating the power of repudiation, which is vested with the Insurer to the Advocate themselves would show the arbitrary nature of the repudiation.

8.5 The learned Senior Counsel submitted that the defendant/Insurance Company has not produced any independent evidence to prove the repudiation issued by their counsel. No shred of evidence has been let by the defendant/Insurance Company to establish the allegation contained in the repudiation, dated 11.04.2001 that the plaintiff did not have the cargo at the time of loss. The surveyor's reports, marked as Exs.P.100, P.101 and P.102 and Investigation Reports marked as Exs.P.103 and Ex.D.28, which would irrefutably establish the existence of the cargo at the time of loss.

8.6 The learned Senior Counsel also referred to the document marked as Ex.P.9, whereby, possession licence was issued in the name of the plaintiff for transportation of red sanders.

8.7 Further, the learned Senior Counsel referred to Ex.P.10, i.e. Form 6 issued by the District Forest Officer, dated 07.04.1999, for the purpose of removal of the goods, wherein, it is stated that the licence is for transportation of red sanders musical instrument. By referring to Ex.P.10, learned Senior Counsel contended that the plaintiff has obtained prior permission for possessing the red sanders and also they have obtained permission in Form VI for removal of the goods. It is submitted that the plaintiff is entitled to use the permit only one day when they are

using the said form. In the present case, though the Form was issued on 07.04.1999, the same was put to use only on 10.04.1999, by which, the goods were removed from the godown to the Port at Chennai on 10.04.1999. Further, he contended that the stocks of the plaintiff were also identified in the stocks documents and endorsed in the licence issued by the Forest Department and by referring to para Nos.20 (i) and (h) of the Insurance Investigator's report Mr.S.Swaminathan, it is contended that, para No. 20 (i) is with regard to the identification as inspected prior to the occurrence of the theft. Investigation was done by Authorized Officer on 3.04.1999, which is also stated in the Investigation Report at para No.20 (g).

8.8 By referring to the report of Mr.S.Swaminathan, Investigator, the learned Senior Counsel contended that the Investigator categorically held that the plaintiff lost the stock by way of theft, as it was verified by the Forest Officers and they also certified that as on 03.04.2009, the stock was in the custody of the plaintiff and was removed on 10.04.1999. In this regard, the plaintiff has also filed a complaint before the Police, as narrated above in the facts of the case and the Police also subsequently found that the goods was not traceable but lorry alone was traced out and the same was handed over to the concerned owner. Hence the Senior Counsel contended that the plaintiff is entitled the relief as prayed for.

8.9 Per contra, the learned counsel appearing for the defendants submitted that it is the case of the plaintiff that the export of red sanders wood, which is a rare variety of timber is a protected goods and the same is governed by Tamil Nadu Forest Act and the rules framed thereunder. It is the case of the plaintiff that on 10.04.1999, the consignment of red sanders was loaded in a Lorry, and started to proceed from the plaintiff's Godown at Madhavaram to Chennai Port, for onward carriage by sea. Enroute, the consignment was stolen and the lorry was abandoned. Hence, the plaintiff made a claim and the said alleged claim was repudiated by the defendants through the Lawyer's notice, dated 11.04.2001, and the relevant portion of such repudiation is as follows:-

“ After thorough investigation of your client's claim, it is established that our client is not liable to meet the claim for the following reasons:-

Your clients were unable to produce the original stock book as it was not available with your client. It is represented that the original stock book is with the Central Bureau of Investigation. The stock, as per the reconstructed stock record on 11.07.1998 is at variance with the physical verification done by Wild Life Department on

11.07.1998. Your client did not obtain regular permits for removal of MI parts/kota parts/chips/billets/powder either for local sales or for exports. Removal, even if any, was without the knowledge of the Forest Department, whose permission is essential for such removal. Some of the removals were not reflected in the stock book and hence, not disclosed to the authorities concerned, viz., Forest Department. There were no recordings of local sales and the surveyor could not verify this aspect for want of records.

Your clients are aware that the Contract of Marine Insurance is a Contract of good faith/uberrimae fidei. A contract of marine insurance is a contract based on utmost good faith and if the utmost good faith be not observed by either party, the contract may be avoided by the other party. There is sufficient evidence on record to the effect that there were irregularities and breach of statutory obligation with regard to acquisition, storage, and distribution of stocks of subject matter of insurance as prescribed under law.

This conduct on the part of the your client is a breach of implied warranty of legality which is an essential warranty governing a contract of Marine. As you know, every material representation made by the assured or his agent to the insurer during the

negotiations for the contract and before the contract is concluded must be true, if it be untrue, the insurer could avoid the contract. It is abundantly clear that your client made representations which are contrary to truth particularly, with reference to compliance of statutory requirements in respect of storage, removal, and distribution of the subject matter of insurance amounting to fraudulent misrepresentation and suppression of material facts resulting in breach of warranty of legality. The records maintained by the your client/insured are incapable of reflecting, proving their claim and the stock position as on the date of removal of the subject matter of Insurance. The gross violation of the statutory provisions coupled with inadequate documentary evidence to establish sufficient stock on the date of removal of the cargo, in question, amounts to suppression of material information/misrepresentation with an intention to cause detriment to our client coupled with breach of warranty of legality. Hence, our clients hereby repudiate your client's claim as it is illegal and untenable."

8.10 The learned counsel for the defendant further referred to the proceedings of the District Forest Officer, Chengleput Division, Kanchipuram, issued under Rule 9 of the Tamil Nadu Timber-Transit Rules, 1968 dated 07.04.1999, marked as Ex.P.9. By virtue of Ex.P.9,

the District Forest Officer granted license to the plaintiff to keep the red sanders. However, it is made clear in the said proceedings that the licence issued for possessing of red-sanders is valid subject to the following conditions:-

i) Red sanders item shall not be exported without permission of the Principal Chief Conservator of Forests, Tamil Nadu/Andhra Pradesh.

ii) The above red sanders items are subject to inspection of the forest officials.

iii) The licensee has to maintain the proper stock accounts.

iv) The property covered under the licence permission is here by accorded for the issue of seven (Seven) No. of Form VI permits No.13 to 109 for the transport of (1) red sanders musical instrument parts 337 sets = 1374. 000 kgs and 2) red sanders koto parts 1999 sets = 7944.000 kgs = total 2318.000 kgs koto with a voida of 1 day on the date of use of permits."

Sl. No	Description	Sets	Net Weight in kgs	From	To	Form VI No. & Date
1	R.S.Koto Parts	200	1098.000	No. Rizwan Road Madavaram	Chennai Harbo	103/07.04.199

Sl. No	Description	Sets	Net Weight in kgs	From	To	Form VI No. & Date
				Chennai	ur	
2	R.S.MI Parts	30	126.000	Do	Do	104/07.04.199
3	R.S.Koto Parts	950	3780.000	Do	Do	105/07.04.199
4	R.S.Koto Parts	750	2990.000	Do	Do	106/07.04.199
5	R.S.MI Parts	200	020.000	Do	Do	107/07.04.199
6	a)R.S.MI Parts b)R.S.Koto Parts	2719	108.000 76.000	Do	Do	108/07.04.199
7	R.S.MI Parts	80	320.000	Do	Do	109/07.04.199

All the red sanders musical instruments, parts and koto parts 9318.000 kgs should be packed in and the Hammer Mark of the ranger as well as the property mark of the Company should be affixed on the gunny bags."

8.11 By referring to the above proceedings of the District Forest Officer, the learned counsel submitted that, in terms of the aforesaid proceedings, the licensee has to maintain the proper stock accounts and all the red sanders, both Musical Instruments and Koto parts, weighing 9318.000 kgs should be packed in and the Hammer Mark of the Ranger

as well as the property mark of the Company should be affixed on the gunny bags and transportation should take place within one day from the date of issue of the permits. Further, he submits that the property covered under the licence permission was accorded for the issue of seven (Seven) No. Of Form VI permits No.13 to 109 for the transport of (1) red sanders musical instrument parts 337 sets = 1374. 000 kgs and 2) red sanders koto parts 1999 sets = 7944.000 kgs = total 9318.000 kgs koto.

8.12 The learned counsel contended that, it is mandatory on the part of the plaintiff/licensee to follow the conditions stipulated in the Possession Licence issued by the District Forest Officer, Chengalpattu Division, Kanchipuram, scrupulously. But none of the conditions mentioned supra has been followed by the plaintiff/insured and the same is evident from the deposition made by P.W.1 himself in his cross examination dated 22.11.2012, 03.01.2013 and 08.02.2013. For better appreciation, the relevant portions from the depositions made by P.W.1 on the aforesaid dates respectively are extracted hereinbelow under the caption 'A', 'B' and 'C':-

'A'

"Exs.P.9 and D.10 was issued on 07.04.1999. In Ex.P.9, possession license, there is a condition to maintain proper stocks and

accounts. I have not filed the stock registers and stock accounts, commencing from 1992-1993 till 1996-1997, as referred to in Ex.P.1. It is correct to state that only on perusal of stock register and accounts, the correct stock on hand will be reckoned. I have not said before the investigator and surveyors, that I have submitted original stock register and accounts to the CBI. On 10.03.1999, a month prior to the theft of the stock on 10.04.1999, I lodged a complaint with CBI as against Deputy Director, Wild Life for demanding bribe. I have not produced the stock register and accounts before this Court. I am aware of the condition that the permission to transport is valid for one day i.e., on the date of use. Once, the validity period expires, I have to get a fresh Form-6 or regularize the same by payment of compounding fee."

'B'

" I was personally present at the time of loading of consignment on 10.04.1999. I am

not aware what was the laden and unladen weight of the lorry. It was a normal truck and can carry weight of 10 tonnes. I do not know the total weight of the consignment covered by the permit. Approximately, the total weight of the consignment was about 9,300 kilos as per Form VI permit.

There is no such procedure that all the properties covered by those permits shall be separately packed and hammer marks of the Ranger and also the property marks are to be affixed on the bags. There was no such condition imposed under the permits and licence granted to me.

...

I do not remember, who was the Forest Ranger as on 09.04.1999. I have marked the counterfoil of timber transit licence (Form VI) to the Ranger Headquarters. I have not received any certification from the said Ranger, regarding compliance of affixture of seal before loading. I have not mentioned either in the plaint or in my proof affidavit about the presence of the Ranger at the time of loading of the consignment. I deny the suggestion that I have violated the conditions prescribed under the licence. "

'C'

"In the possession licence, Ex.P.9, for 1999-2000, issued by the District Forest Officer, on 7.04.1999, it is stated that all the red sanders musical instrument parts and koto parts, weighing 9318.000 kgs should be packed in and the Hammer mark of the Ranger as well as the property mark of the Company should be affixed on the gunny bags.

....

At the time of loading the consignment, the Ranger was not present. I was present at the time of loading.

I have not obtained acknowledgment from the Ranger that he had inspected the consignment at the time of loading. I have not obtained any acknowledgment from the Ranger to the effect that on ground reality he witnessed the consignment property sealed and loaded."

8.13 By referring to the deposition of P.W.1 dated 22.11.2012 03.01.2013 and 08.02.2013, the learned counsel submitted that the statement made by the plaintiff is totally contradictory to the averments set out in the plaint. In terms of possession licence/Form VI, it is mandatory on the part of the licensee, firstly to maintain proper stock. But the plaintiff himself has admitted in his cross-examination that he has

not produced the stock register either before the Surveyor, Investigator or before this Court. Secondly, in terms of the Possession Licence, the consignment ought to have been removed within 24 hours from the date of use of the permits. Even in the evidence, the plaintiff deposed that he is aware of the condition that the permit is valid for one day i.e., on the date of issue and once, the validity period expires, he has to get a fresh Form-6 or can be regularized on payment of compounding fee. However, in the present case, though permit was issued on 07.04.1999, the consignments said to have been removed only on 10.04.1999, Thirdly, the goods should be packed in and the Hammer Mark of the ranger as well as the property mark of the Company should have been affixed on the gunny bags. But the plaintiff has stated in his deposition that "there is no such procedure that all the properties covered by those permits shall be separately packed and hammer marks of the Ranger and also the property marks are to be affixed on the bags. There was no such condition imposed under the permits and licence granted to me." Therefore, the counsel contended that the goods have been removed by violating the possession licence conditions.

8.14 The learned counsel further submitted that, the plaintiff also referred to Ex.D.8, the letter of the Tamil Nadu Forest Department, dated 07.04.1999, pertaining to the renewal order for the property mark of the

red sanders, at Page No.380 of the typed set of documents, wherein, the District Forest Officer affirmed that a sum of Rs.5,000/- was collected from the plaintiff towards penalty for transport of the red sanders parts to the Harbour, without Form-6, which reads as follows:-

" A sum of Rs.5,000/- has been collected from the M/s.Rizwan International, Chennai towards penalty for transport of the red sanders parts to the Harbour, without Form-6 in the District Forest Officer's Receipt No.2197, dated 07.04.1999.

M.I. Parts	- 1838 sets	- 7108.000 kgs
Koto Parts	- 228 sets	- 835.000 kgs"

8.15 By referring to Ex.D8, the learned counsel argued that the plaintiff had paid fine for arrival of the restricted goods without Form- VI and the plaintiff also admitted in the evidence he has not filed stock register for the relevant period to prove the availability of the goods. Therefore, the learned counsel submitted that the act of the plaintiff is clear breach of policy condition and the plaintiff has acted with a mala fide manner in not disclosing the availability of the stocks. Further, the learned counsel contended that the act of the plaintiff in not moving the cargo within the stipulated period under form VI, and in not packing the consignment of red sanders separately and hammer marks affixed in the

bags in the presence of the Ranger is a clear breach of the timber transit rules. The act of the plaintiff is also clear breach of Section 43 of the Marine Insurance Act, Warranty of Legality. Therefore, he contended that the Policy issued by the insurer/defendant is void ab initio due to the act of the plaintiff in not following the terms and conditions contained thereunder.

8.16 The plaintiff is an exporter of red sanders, which is a rare variety of timber. The movement of red sanders is governed by Tamil Nadu Forest Act and the rules framed thereunder. In these circumstances, the plaintiff approached the defendant for issuance of Policy, and accordingly, the defendant issued a policy to cover Koto Parts and Musical instruments as per the Invoice No.13/RIZ99 5.4.99, ii) 14/RIZ/99, 5.4.1999 and iii) 16/RIZ/99 5.4.1999. The plaintiff also obtained possession licence under Rule 9 of the Tamil Nadu Timber-Transit Rules, 1968 dated 07.04.1999, from the District Forest Officer, Kanchipuram, Chengalpattu Division, to keep the red sanders, marked as Ex.P.9/D.10 for the transport of (1) red sanders musical instrument parts 337 sets = 1374. 000 kgs and 2) red sanders koto parts 1999 sets = 7944.000 kgs = total 9318.000 kgs koto. Possession licence was also issued subject to the following conditions:-

"i) Red sanders item shall not be exported without permission of the Principal Chief Conservator of Forests, Tamil Nadu/Andhra Pradesh.

ii) The above red sanders items are subject to inspection of the forest officials.

iii) The licensee has to maintain the proper stock accounts.

iv) The property covered under the licence permission is hereby accorded for the issue of seven (Seven) No. Of Form VI permits No.13 to 109 for the transport of (1) red sanders musical instrument parts 337 sets = 1374. 000 kgs and 2) red sanders koto parts 1999 sets = 7944.000 kgs = total 2318.000 kgs koto with a voida of 1 day on the date of use of permits."

सत्यमेव जयते

Sl. No	Description	Sets	Net Weight in kgs	From	To	Form VI No. & Date
1	R.S.Koto Parts	200	1098.000	No. Rizwan Road Madavaram Chennai	Chennai Harbour	103/07.04.199
2	R.S.MI Parts	30	126.000	Do	Do	104/07.04.199
3	R.S.Koto	95	3780.000	Do	Do	105/07.04.

Sl. No	Description	Sets	Net Weight in kgs	From	To	Form VI No. & Date
	Parts	0				199
4	R.S.Koto Parts	750	2990.000	Do	Do	106/07.04.199
5	R.S.MI Parts	200	020.000	Do	Do	107/07.04.199
6	a)R.S.MI Parts b)R.S.Koto Parts	2719	108.000 76.000	Do	Do	108/07.04.199
7	R.S.MI Parts	80	320.000	Do	Do	109/07.04.199

Kgs No.& Date

All the red sanders musical instruments, parts and koto parts 9318.000 kgs should be packed in and the Hammer Mark of the ranger as well as the property mark of the Company should be affixed on the gunny bags."

8.17 As per the above terms and conditions of the licence issued by the District Forest Officer, dated 07.04.1999, **a)** the licensee has to maintain proper stock accounts; **b)** property covered under the licence permission was accorded for the issue of seven (Seven) No. Of Form VI permits for the transport of (1) red sanders musical instrument parts 337 sets = 1374. 000 kgs and 2) red sanders koto parts 1999 sets = 7944.000 kgs = total 9318.000 kgs koto; and **c)** all the red sanders, both Musical Instruments and Koto parts, measuring 9318.000 kgs should be

packed in and the Hammer Mark of the Ranger as well as the property mark of the Company should be affixed on the gunny bags and **d)** transportation of the consignment should take place within one days from the date of use of the permits.

8.18 Since the plaintiff's claim solely rest on the possession licence/Form VI issued in his favour, it has to be decided whether the plaintiff has complied with the terms and conditions mentioned thereunder scrupulously to be entitled to the claim.

8.19 As far as the first condition is concerned, the plaintiff has categorically admitted that he has not produced any documents relating to the maintenance of stock accounts, in terms of possession licence before this Court at the time of examination or along with the plaint. Though the plaintiff has marked 111 documents as Exs.P.1 to P.111, not even a single document has been produced by the plaintiff to substantiate his claim that the stock register was available at the time of loss. Thus, in the absence of the document pertaining to the maintenance of the stock register, as per the terms and conditions of the Possession licence, dated 07.04.1999, the claim made by the plaintiff cannot be said to be a genuine one. Even at the time of argument, when this Court posed a question to the learned Senior Counsel Mr.Om.Prakash, who appeared for

the plaintiff about the non-production of the stock register, the learned counsel Senior Counsel Mr.Om.Prakash for the plaintiff replied that all the stock registers have been handed over to the CBI for investigation. Further, CBI vide letter, dated 1.6.2001, marked as Ex.D.20, had categorically stated that no document was handed over to them.

8.20 Further, the plaintiff himself admitted in his evidence that he has not produced the Stock register either before the Surveyor/Investigator. Therefore, the statement made by P.W.1 during his cross-examination, extracted in para Nos.8.10 of this judgment, under the caption 'A' and from perusal of C.B.I.'s letter, dated 01.06.2001, Ex.D.20, it is clear that the stock accounts, which was required to be maintained as per condition No.4 of the possession licence was not maintained by the plaintiff.

8.21 When the stock register was not available, it has to be seen as to how come the Surveyor or Investigator arrived at the conclusion that the loss was by way of theft 100% and the plaintiff is entitled 100% claim.

8.22 This Court also perused the reports filed by the Surveyor and Investigator, dated 31.08.2001 and 28.03.2001 respectively. It is seen that they have filed reports based on the letter, dated 28.03.1999 of the

Ranger Head Quarters, who confirmed that the stocks were verified by the Assistant Conservator of Forests, Chengalpattu on 03.04.1999, (prior to the alleged occurrence dated 10.03.1999). Therefore, both the Surveyor and Investigator came to the conclusion that the consignments were available for dispatch on 10.04.1999, based under surmises and conjectures.

8.23 This Court is of the view that it is the foremost duty of the Surveyor and Investigator to verify the stock register, which, the plaintiff is supposed to have maintained as per the terms and conditions of the possession licence issued by the District Forest Officer, dated 07.04.1999. However, there is no iota of evidence in the reports filed by the Surveyor and Investigator to show that they taken any efforts to get the stock accounts from the plaintiff nor any sign of insistence on their part for production of stock accounts by the plaintiff. This Court really wonders as to how, both the Surveyor and the Investigator assessed the loss in the absence of stock register and arrived at the conclusion that the 100% loss of goods is by way of theft during transit.

8.24 Further, the document, dated 28.03.1999 relied upon by the Surveyor and Investigator is a proof to show the existence of the goods prior to 03.04.1999. In between 03.04.1999 and 10.04.1999, the

plaintiff has not at all filed any document relating to the arrival of the goods, such as local sales and the plaintiff also admitted in the evidence he has not filed stock register for the relevant period to prove the availability of the goods. It is also not known, as to why, the plaintiff was reluctant to produce the documents relating to the maintenance of original of stock register either before this Court or before the Surveyor or Investigator.

8.25 Further, in terms of the Possession Licence issued by the District Forest Officer vide Form VI, all the red sanders musical instrument parts weigh about 9318.00 kgs, should have been packed in and the Hammer Mark of the ranger as well as the property mark of the Company should have been affixed on the gunny bags and the violation of this condition by the plaintiff is clearly evident from his evidence stating that there is no need for the Hammer Mark to be marked by the Forest Ranger and no need for the name of the Company affixed on the gunny bags and the presence of the Ranger is also not necessary. Further, from a perusal of Ex.D.8, it is seen that the plaintiff had paid the fine for transportation of red sanders musical instruments and koto parts without Form -VI, for about 7,943 kgs on 07.04.1999, which would show the act of breach committed by the plaintiff.

8.26 Finally, as per the terms of the licence, the consignment ought to have been removed and transported within 24 hours from the date of issue of the permits. Admittedly, the plaintiff was given licence on 07.04.1999, therefore, within 24 hours, the consignments ought to have been transported. This means the plaintiff should have initiated the use within one day of issue of Licence. The Licence was issued to use it on 07.04.1999. Therefore, the plaintiff should have used the Licence within one day from the date of issue of Licence. But, the consignments were stated to be removed only on 10.04.1999 from the godown to the Chennai Port. Therefore, it is clear that the plaintiff has not complied with any of the conditions mentioned in the possession licence. Thus, it is clear that none of the terms and conditions contained in the Ex.P.9/D.10 were followed by the plaintiff and that, there is clear violation of the licence condition issued by the District Forest Officer, dated 07.04.1999.

8.27 When the Policy is issued to the plaintiff with utmost good faith, and if there is any breach of the terms and conditions in the Policy, the Policy would become void ab initio and resulting in the plaintiff to become disentitled to the claim based on such policy. Therefore, this Court is of the view that licence conditions were breached. Had the plaintiff followed the terms and conditions of the Policy, then, it would have been of avail to him to be entitled to the claim.

8.28 As discussed above, the plaintiff has not fulfilled the terms and conditions of the licence for possession of red sanders licence. Therefore, the plaintiff cannot claim any compensation by virtue of the Policy, when the Policy itself has become void ab initio. This Court also really wonders as to how, both the Surveyor and Investigator appointed by the defendants thrice without taking note of the vital factor of non maintenance of stock register by the plaintiff, and without insisting for production of the stock register, came to the conclusion that the plaintiff lost goods 100% by theft and is entitled to the 100% claim. Therefore, there is blatant error on the part of the Surveyor and Investigator in arriving at such conclusion and despite there had been a need to rely upon their reports for disbursal of the claims, the Insurance Company/defendant rightly refused the claim by referring to the non-availability of the stock register by the plaintiff and also non-compliance of the terms of the possession licence issued by the District Forest Officer, dated 07.04.1999.

8.29 Therefore, this Court holds that reports of the Surveyor/Investigator are totally vitiated and can be brushed aside. In such view of the matter, repudiation of the claim by the defendants by not considering the Surveyor's/Investigator's report is proper and

justifiable. In view of the same, the judgments, viz., i) **Sri Venkateswara Syndicate Vs. Oriental Insurance Company Limited (supra)** and ii) **United India Insurance Vs. Roshanlal Oil Mills (supra)** relied upon by the learned counsel for the plaintiff in support of his contention that the surveyor's report is an important piece of evidence and the insured can be awarded compensation only on the basis of the surveyor's report are not applicable to the facts of the present case.

8.30 Further, this Court would like to point that the liability was denied by the defendants not on flimsy reasons, willfully and wantonly. On the other hand, liability was disowned by the defendants after due application of mind, thorough investigation of the claim and the circumstances surrounding the claim after taking into account the breach of warranty with reference to the obligation of the plaintiff to comply with the statutory requirement under the Tamil Nadu Forest Act as well as the permission to be obtained from the competent authority as per rules framed thereunder.

8.31 The plaintiff's reference to the appointment of the Surveyor and Investigator are not in any way capable of fastening liability on the part of the defendants. By appointing surveyor and the investigator, the defendants only have complied with the statutory pre-requisite under

Section 64 UM of the Insurance Act, more particularly, set out in Sub Section (2). Further, in the absence of any direction from any competent authority as set out in the said Section 64 UM of the Act, the defendants are not under an obligation to be bound by the said reports, in as much as, such reports are obtained without prejudice to the terms and conditions of the policy and without admission of any liability on the part of the insurer, i.e. the defendants herein.

8.32 Accordingly, this Court has no hesitation to hold that the plaintiff is neither entitled to decree prayed for nor to the compensation. Hence, the **issue No.i and ii** are answered against the plaintiff and in favour of the defendant.

9. Issue Nos.v and vi

Whether the interest claimed by the plaintiff is usurious and exorbitant in nature

and

To what relief, the plaintiff is entitled to?

9.1 Since it has already been held by this Court in the preceding para of this judgment that the plaintiff is not entitled to the decree/interest, where, comes the question of deciding as to whether the

interest claimed by him is usurious. Hence, issue No.(v) is answered against the plaintiff. In view of the findings of this Court with regard to Issue Nos.(i), (ii), and (v), certainly, Issue (vi) should have to be negatived. Accordingly, Issue No.(vi) is answered against the plaintiff and it is held that the plaintiff is not entitled to any relief.

10. In the result, this Civil Suit stands dismissed. No costs. Consequently, connected Applications are closed.

22.11.2019

sd

Index : Yes/No



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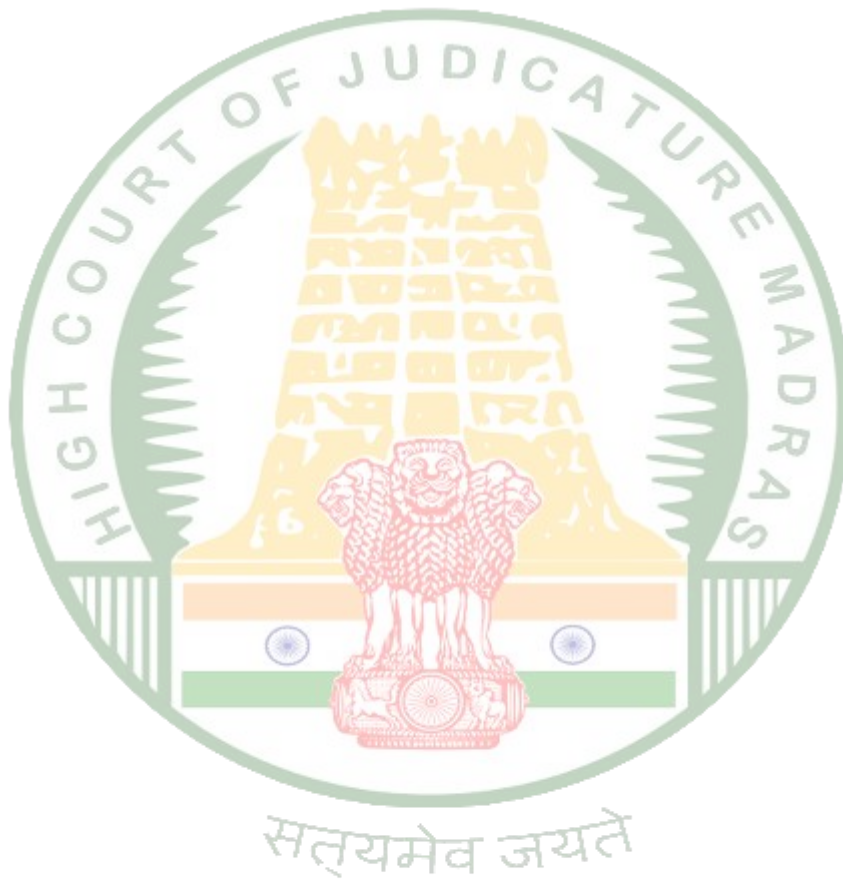
Krishnan Ramasamy,J.,
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