

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

MONDAY, THE 29th DAY OF JULY 2019

THE HON'BLE MR. JUSTICE S.VAIDYANATHAN

A. No.8879 of 2018

in

A. No.2150 of 2018

in

C.S. No.412 of 2013

Solara Active Pharma Services Limited, (*)

201, Devavrata Sector, 17, Vashi,

Navi Mumbai-400 075, Maharashtra.

... Plaintiff

(*) Amended as per order dated 05.09.2018

in A. No.6648 of 2018

-Versus-

The New India Assurance Company Limited,

A Government of India Undertaking,

having its Chennai Regional Office

at 770A, Spencer Towers,

3rd Floor, Anna Salai,

Chennai-600 002

rep. by its General Manager

... Defendant

A. No.2150 of 2018:-

The New India Assurance Co. Ltd.,

Government of India Undertaking,

Chennai Regional Office

770A, Anna Salai,

Dewa Towers, Third Floor,

Chennai-600 002

... Applicant/Defendant

-Versus-

M/s.Strides Shasun Ltd.,

having its Corporate Office at

Strides House, Bannerghatta Road,

Bilekahalli, Bangalore-560 076.

... Respondent/Plaintiff

A. No.8879 of 2018:-

The New India Assurance Co. Ltd.,

Government of India Undertaking,

Chennai Regional Office

770A, Anna Salai,

Dewa Towers, Third Floor,

Chennai-600 002

... Applicant/Defendant

-Versus-

M/s.Solara Active Pharma Sciences Ltd.,
201, Devavrata, Sector 17, Vashi,
Navi Mumbai, Mumbai-400 075
Maharashtra
earlier known as
M/s.Strides Shasun Ltd.,
having its Corporate Office at
Strides House, Bannerghatta Road,
Bilekahalli, Bangalore-560 076. ... Respondent/Plaintiff

Application praying that this Hon'ble Court be pleased to modify the order dated 08.06.2018 by directing the District Fire Officer, office of the District Fire and Rescue Services, Cuddalore to produce the following documents by treating A. No.2150 of 2018 in C.S. No.412 of 2013 as per Order XVI Rule 6 of CPC:

i) Copy of the letter sent by M/s.Shasun Pharmaceutical Ltd., dated 04.05.2011;

ii) Reply given by the office of the District Fire Officer, Office of the District Fire and Rescue Services, Cuddalore, to M/s.Shasun Pharmaceuticals, letter dated 04.05.2011;

iii) Letter dated 14.03.2017 Naka No.1373/A-1/2017 issued under Right to Information Act;

iv) Letter dated 07.04.2017 in Naka No.1373/A-1/2017 issued by Fire Services Department to Investigator along with Annexures namely Form-40 and Copy of Report to cause of Incident dated 07.03.2011;

v) Copy of the relevant register on cause of Incident dated 07.03.2011;

vi) All documents generated on 07.03.2011 concerning incidence of leakage of bromine of Shasun Pharmaceuticals Ltd., Cuddalore.

This application coming on this day before this court for hearing, the court made the following order:-

The Applicant / Defendant has come forward with the Application, seeking for the following relief:

Application Number	Relief
A.No.8879 of 2018	To modify the order dated 08.06.2018 by directing the District Fire Officer, Office of the District Fire and Rescue Services, Cuddalore to produce the following documents, by treating Application No. 2150 of 2018 in C.S.No.412 of 2013 as per Order XVI Rule 6 of CPC.

2. For the sake of brevity, the Parties would be referred to as per their original nomenclature in the Suit.

3. In the plaint, the Plaintiff has sought for a sum of Rs.4,84,02,556/- with interest at the rate of 18% per annum from the date of plaint till the date of realisation and also for payment of costs of the suit.

4. It was the case of the Applicant / Defendant that since there was no fire, but only a emanation of fumes in the premises of the Plaintiff, on earlier occasion, the Defendant had sought for subpoena to the Office of the District Fire and Rescue Services, Cuddalore so as to enable the concerned Officer to produce all connected documents on the leakage of bromine on the alleged date of incident, viz., 07.03.2011, which would have been noted in Form No.40 under Order No.321(4), by filing necessary

5. It was the further case of the Defendant that though the said application was ordered by this Court on 08.06.2018, after receipt of the order of this Court, it was noticed that the Defendant had wrongly quoted the provision as Order XVI Rule 7 of CPC instead of Order XVI Rule 6 of CPC and Order XVI Rule 7 of CPC relates to appearance of persons to give evidence or produce documents, which is not at all applicable to the present case on hand, as the intention of the Defendant was not to examine the District Fire Officer, but to get necessary documents from him and there is no need for the Defendant to examine the concerned District Fire Officer as a witness. Hence, the Defendant has taken out the present application to modify the order dated 08.06.2018, seeking for a direction to the District Fire Officer, Cuddalore for production of the following documents:

- i. Copy of the letter sent by M/s.Shasun Pharmaceutical Limited dated 04.05.2011;
- ii. Reply given by the Office of the District Fire Officer, Office of the District Fire and Rescue Services, Cuddalore to M/s.Shasun Pharmaceuticals, Letter dated 04.05.2011;
- iii. Letter dated 14.03.2017 NaKa No.1373/A-1/2017 issued under Right to Information Act;
- iv. Letter dated 07.04.2017 in NaKa No.1373/A-1/2017 issued by Fire Services Department to Investigator along with Annexures namely Form-40 along with copy of Report to cause of Incident dated 07.03.2011;
- v. Copy of the relevant register on cause of Incident dated 07.03.2011;
- vi. All documents generated on 07.03.2011 concerning

incidence of leakage of bromine of Shasun Pharmaceuticals Ltd, Cuddalore.

6. The present Application was strongly objected to by the Plaintiff, stating that the Application has been filed by the Defendant as an afterthought, more particularly, after showing the District Fire Officer in the list of witnesses. It was contended by the Plaintiff that the Defendant ought to have filed the necessary application before the learned Master of this Court and if this Application is allowed, the very purpose of the Commercial Courts Act, 2015 will be defeated and it will also be detrimental to the rights of the Plaintiff.

7. In reply, the Defendant has stated that quoting a wrong provision of law will not take away the rights available to them and the Defendant has reiterated that the Defendant seeks only subpoena to produce documents and no prejudice is going to be caused to the Plaintiff, if the documents are directed to be produced. The Defendant also drew the attention of this Court to Section 139 of the Indian Evidence Act and pleaded that substantial justice has got to be done. Section 139 of the Indian Evidence Act reads as follows:

"139. Cross-examination of person called to produce a document - A person summoned to produce a document does not become a witness by the mere fact that he produces it, and cannot be cross-examined unless and until he is called as a witness."

8. The Plaintiff has contended that unlike the Writ

Petition, the procedural law needs to be followed strictly and as far as Civil Suit is concerned, the error committed by a party cannot be permitted to be rectified in the manner the party wants, as the same would be prejudicial to the other party. The Plaintiff has further contended that though the Defendant endeavours to cross-examine the District Fire Officer, the Plaintiff alone is entitled to cross examine him. The procedure contemplated under the Commercial Courts Act, 2015 in respect of case management is very clear that it needs to be adhered to in its entirety for the purpose of early disposal of the matter pending.

9. Heard the learned counsel on either side and perused the material documents available on record.

10. The Plaintiff had taken out a policy, covering stocks, raw materials, finished goods, intermediaries, etc for the period in question, namely, 31.03.2010 to 30.03.2011 for a sum of Rs.24,73,74,400/-. In addition to the above, the Plaintiff had also taken out a Consequential Loss (Fire) Policy for a sum of Rs.80 Crores. Subsequently, on account of an alleged incident happened on 07.03.2011, a detailed survey was conducted by a Category-B Surveyor and the said Surveyor, after a thorough investigation, had observed as follows:

- “(1) There was no mark in the cement plastering either in the wall or in the floor of Room No.3.

- (2) The electrical fittings in that room

were in good condition and there was no melting of electrical cables.

(3) 41 wooden boxes had been recovered from that room were shown at outside yard and I find that those boxes were in good condition and noted that each box contain liquid Bromine in six bottles (3kg x 6) and those six bottles were kept in a box surrounded by saw dust.

(4) In the scrap yard, the broken bottles and broken wooden boxes (mostly they had been taken to clear the leaking bottle) removed from the said damaged room were shown and I noticed that those pieces of wooden boxes were blackened/baked and not burnt/charred."

11. The Defendant also appointed a Category-A Surveyor, viz., M/s.Cunningham & Lindsey International Pvt. Ltd. on 23.03.2011 to inspect the premises and assess the loss, if any due to the perils covered under the Policy No.71200/11/09/07/00000904 and the said Surveyor, after a detailed investigation, had stated that since no insured peril acted causing any damage, the claim does not fall within the purview of the policy. The Defendant, on the basis of the report of the Surveyor, had sent a letter dated 14.07.2011 to the Plaintiff, repudiating the claim of the Plaintiff under both Policies on the ground that there was no fire in the premises and the fumes were only due to evaporation of bromine and therefore, the same is not covered under the terms of the policy.

12. Even though the Plaintiff had sent two letters dated 10.08.2011 and 01.10.2011, explaining the circumstances under which the heat was generated as per the report of the Fire Department, thereby disagreeing with the conclusions reached by the Defendant and requested the

Defendant to reconsider the claim of the Plaintiff. Since the Defendant still repudiated the claim on the same ground, the Plaintiff had filed C.S.No.412 of 2013, in which the Defendant carved out an application for subpoena to the District Fire Officer, Cuddalore to produce documents by wrongly invoking Order XVI Rule 7 of CPC in lieu of Order XVI Rule 6 and to rectify the said mistake, the present application under Order XVI Rule 6 is filed for modification of the order dated 08.06.2018.

13. A cursory glance at the list of witnesses of the Defendant dated 25.09.2018 amply proves the fact that the District Fire Officer, Cuddalore has been called for producing all connected documents for the incident that took place on 07.03.2011 and by no stretch of imagination, it can be construed that the Defendant wanted to examine the said District Fire Officer. When a witness can be summoned under Order XVI Rule 1 and 6, then it is a clear case where the Court has jurisdiction to pass order of summoning of documents and there is no lack of jurisdiction simply because the order has been passed under different provision of law. When there is a power vested in the Court of law to summon the document, there is no illegality in invoking such jurisdiction. In totality of circumstances, it is clear that on the date of incident, the District Fire Officer was not present and therefore, the Defendant wants

the Fire Officer to produce the documents so as to pose questions to the Plaintiff at the time of examination as to whether there was actually a fire or only smoke.

14. Be that as it may, in the Court of Law, the substantial justice has got to be done and merely on technicalities, no one can be thrown out and in that process, the Public will lose their faith in the justice delivery system. According to the Plaintiff, there was a fire and the same has to be established by the Plaintiff and as the Insurance Company is under the realm of payment of huge sum in case of the factum of fire is proved, it is incumbent upon the Defendant to refer to the evidence and cross examine the Plaintiff based on the documents available with them. Hence, this Court is of the view that the documents sought for by the Defendant can be called for, as those documents may be helpful to the Plaintiff too for proving their case, if there was actually a fire. This Court is not lost sight of the fact that the District Fire Officer cannot be called as a Court Witness, but at the same time, the Court is empowered to call for documents, if it feels that such documents are vital and helpful to render substantial justice.

15. It is pertinent to mention that wrong quoting of

<https://hcservices.ecourts.gov.in/hcservices/>

provision cannot simply take away the rights of a party,

especially when the Statute itself permits such adoption of summon. The contention of the Plaintiff that by summoning the document from the District Fire Officer at this stage before evidence of the Plaintiff, the case of the Plaintiff will be prejudiced, cannot be accepted, as in terms of Order XVI Rule 6, in case the document is produced, the Plaintiff shall have right to cross examine the person, who has been directed to produce the document and as such, the subpoena to produce documents will, in a sense, be beneficial to the Plaintiff too. To put it precisely, the express provision of the Order XVI Rule 6 discloses that the person, who is required to produce the document can even send the same without attending the Court and such person can be summoned without actually being summoned to give evidence.

16. On going through the entire pleadings put forth by the Defendant, more particularly the list of witnesses dated 25.09.2018, it is apparent that the intention of the Defendant is to call for the document from the District Fire Officer, Office of the District Fire and Rescue Services, Cuddalore-1 in connection with the incident that had taken place on 07.03.2011 and not for examination on their side. The question, as to whether all the parties need to be examined or in the interregnum, some witnesses can be withdrawn or more witnesses can be added after the

case management, cannot be gone into at this stage in the present application and the said issue is left open.

17. Considering the fact that the documents sought for by the Defendant are not only helpful to the Defendant, but also helpful to the Plaintiff and the Court as well to arrive at a just decision of the suit and also taking into account the fact that such summoning of documents will not cause any prejudice to the Plaintiff, in the considered opinion of this Court, the order dated 08.06.2018 requires suitable modification.

18. Accordingly, this Application is allowed, with a direction to the District Fire Officer, Office of the District Fire and Rescue Services, Cuddalore-1 to produce all connected documents before this Court on or before 30.08.2019, in respect of the incident that took place on 07.03.2011 and on such production, it is for the respective parties to put forth their defence and the learned Master to decide about the genuineness and veracity of the same at the time of cross examination of the Plaintiff.

Sd./-S.V.N.J
29.07.2019

//Certified to be true copy//
Dated at Madras this the day of 2019.

JJ 09/09/2019

COURT OFFICER(O.S.)

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certified copies of the Orders/Judgments/Decrees in this
format.**