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

+ **CS(OS) 1519/2009**

ORIENTAL INSURANCE COMPANY Plaintiff
Through: Mr. Abhishek Kumar, Adv.

Versus

DEOL MARINE SERVICES & ANR Defendants
Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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13.02.2020

1. This suit, though now by Oriental Insurance Company Ltd., against (a) Deol Marine Services, New Delhi and (b) Vallibel Lanka Shipping (Pvt) Ltd., Sri Lanka, was originally instituted by Amira Foods (India) Ltd. against (i) Deol Marine Services, New Delhi (ii) Oriental Insurance Company Ltd., (iii) Vallibel Lanka Shipping (Pvt) Ltd., Sri Lanka and (iv) East Wind Shippings (S) PTE. Ltd., Singapore, for recovery of Rs.2,69,12,754/- with interest, towards loss of goods on account of sinking vessel MV Badulu Valley.

2. Vide order dated 1st October, 2014, Oriental Insurance Company Ltd. was transposed as the plaintiff in substitution of Amira Foods (India) Ltd., and East Wind Shippings (S) PTE. Ltd. deleted from the array of defendants.

3. The counsel for the plaintiff Oriental Insurance Company Ltd. informs that (i) Amira Foods (India) Ltd. had instituted the suit claiming the

suit amount to be jointly and severally recoverable from defendants therein, with Deol Marine Services being liable as shipping agent, Vallibel Lanka Shipping (Pvt.) Ltd., Sri Lanka being liable as owner of the ship/vessel VM Badulu Valley and Oriental Insurance Company Ltd. being liable as the insurer of the goods of Amira Foods (India) Ltd. on the said ship/vessel; (ii) that during the pendency of the suit, Oriental Insurance Company Ltd. paid the insured amount to Amira Foods (India) Ltd. and owing whereto Amira Foods (India) Ltd. was left with no claim and Oriental Insurance Company Ltd., as a subrogee of Amira Foods (India) Ltd., opted to continue the suit for recovery of amount from Deol Marine Services, New Delhi and Vallibel Lanka Shipping (Pvt.) Ltd., Sri Lanka.

4. The counsel for the plaintiff further states that Deol Marine Services, New Delhi and Vallibel Lanka Shipping (Pvt.) Ltd., Sri Lanka, during the time when the suit was being pursued by Amira Foods (India) Ltd. also, were served by publication and had not appeared. It is further stated that after the Oriental Insurance Company Ltd. was substituted as the plaintiff, again summons were ordered to be issued to Deol Marine Services, New Delhi and Vallibel Lanka Shipping (Pvt.) Ltd., Sri Lanka; that Deol Marine Services, New Delhi again did not appear despite service and Vallibel Lanka Shipping (Pvt.) Ltd., Sri Lanka, as recorded in the order dated 28th January, 2020, has been served by publication on 28th January, 2020.

5. The counsel for the plaintiff further states that affidavit of publication along with the publication has been filed in this Court.

6. Neither has any written statement been filed on behalf of Vallibel Lanka Shipping (Pvt.) Ltd., Sri Lanka nor does anybody appear for it.

7. Though the time of thirty days from 28th January, 2020, of filing written statement has not expired but considering the past conduct of Vallibel Lanka Shipping (Pvt.) Ltd., Sri Lanka, the need to await any further is not felt.

8. Deol Marine Services, New Delhi, if not already proceeded against *ex-parte*, is now being proceeded against *ex-parte* and Vallibel Lanka Shipping (Pvt.) Ltd., Sri Lanka is also proceeded against *ex-parte*.

9. The plaintiff, on the basis of averments in the plaint and documents filed therewith is found entitled to recovery of Rs.2,46,28,873/- (stated to have been paid by Oriental Insurance Company Ltd. in satisfaction of insurance claim of Amira Foods (India) Ltd.) from Vallibel Lanka Shipping (Pvt.) Ltd., Sri Lanka, being the owner of the vessel MV Badulu Valley, sinking whereof caused the loss insured with the plaintiff Oriental Insurance Company Ltd.

10. I have enquired from the counsel for the plaintiff, the entitlement of the claim against Deol Marine Services, New Delhi, being merely a shipping agent.

11. The counsel for the plaintiff Oriental Insurance Company Ltd. has been heard on the said aspect but no basis of the claim against Deol Marine Services, New Delhi is made out.

12. The need to relegate the plaintiff Oriental Insurance Company Ltd. to *ex-parte* evidence is not felt.

13. A decree is accordingly passed, in favour of the plaintiff Oriental Insurance Company Ltd. and against Vallibel Lanka Shipping (Pvt.) Ltd., Sri Lanka, of recovery of Rs.2,46,28,873/- with interest @ 8% per annum

with effect from 22nd October, 2012, when the payment was made by the plaintiff Oriental Insurance Company Ltd. to Amira Foods (India) Ltd. and till date and for future, till realisation.

14. The plaintiff Oriental Insurance Company Ltd., having not borne the court fees, no costs.

Decree sheet be drawn up.

RAJIV SAHAI ENDLAW, J.

FEBRUARY 13, 2020

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