

A.Nos.3312 to 3313 of 2021
in
C.S.No.747 of 2012

R.SUBRAMANIAN, J.

These applications have been taken out by the plaintiff, who challenges the repudiation of the insurance policy on the ground that the peril is not covered by the terms of the policy.

2.The evidence of the parties was completed and the suit was posted for arguments. The learned counsel for the plaintiff had partly argued the case also. Thereafter, these applications have been taken to enable the plaintiff to re-open its evidence and examine three individuals as witnesses and also to produce certain documents relating to the identity of the said individuals. The application to examine witnesses has been filed under Order XVIII Rule 4(1B) of C.P.C. as amended by the Commercial Courts Act, 2015 and the application to receive additional documents has been filed under Order XI Rule 5 of C.P.C., as amended by the Commercial Courts Act, 2015. Order XVIII Rule 4(1B) reads as follows:-

(1-B) A party shall not lead additional evidence by the affidavit of any witness (including of a witness who has already filed an affidavit) unless sufficient cause is made out in

an application for that purpose and an order, giving reasons, permitting such additional affidavit iscv passed by the Court.”

2.1.Order XI Rule 1 Sub-Rule 5 reads as folllows:-

“(5) The Plaintiff shall not be allowed to rely on documents, which were in the plaintiff's power, possession, control or custody and not disclosed along with plaint or within the extended period set out above, save and except by leave of Court and such leave shall be granted only upon the plaintiff establishing reasonable cause for non-disclosure along with the plqaint.”

3.The fundamental question that is to be decided in the suit is the cause of leakage of gas from the cylinder in the factory belonging to the plaintiff. While the plaintiff would contend that it is the case of explosion, which falls with in the perils insured, the defendant would contend that the leakage was caused by a mechanical defect or wrong handling, which is not one of the causes covered by the contract of insurance.

4.It is the case of the plaintiff that there was an explosion, which

caused the leakage. It is therefore, upto the plaintiff to prove that the cause of leakage is within the perils covered by the Insurance Company. A letter addressed to the plaintiff by the President of Thandalam Village Panchayat, a village situate within the vicinity of the plaintiff's factory has been marked as Ex.P4, subject to objection that the Author of the documents has not been examined.

5.From the recording of evidence, it could be seen that P.W.1 was examined in 2015 and thereafter, he was cross-examined only in 2019. It is common ground that the suit was not listed for hearing between the two dates namely, 06.02.2015 and 03.01.2019. Eventually, the evidence was closed some time in December, 2019. A reading of the above two provisions of C.P.C., as amended by the Commercial Courts Act, 2015 would demonstrate that the plaintiff has to show reasonable cause for non-production of the documents and in case of an application under Order XVIII Rule 4(1B), the plaintiff has to show sufficient cause for non-examination.

6.Mr.Srinath Sridevan, learned counsel for the applicant would vehemently contend that immediately after the closure of the evidence of the parties, there was an out break of the pandemic and as such he could not take steps to examine the Author of Ex.P4 earlier and he would submit that he has made out a sufficient cause for non-examination of the Author or any other witness earlier. In the A.No.3212 of 2021 permission is sought for to examine atleast three witnesses of whom, the first one Mrs.A.Praveena is said to have been President of the Thandalam Village Panchayat and other two witnesses, Mrs.Sheela Thulasingam and Mr.Thulasingam are said to be the residents of the village, who have heard the explosion on the date of the accident.

7.Mr.M.B.Raghavan, learned counsel for the respondent Insurance Company would submit that if such re-opening is permitted it would amount to filling up the lacunae in the evidence and therefore, the plaintiff should not be allowed to re-open the evidence. I have considered the submissions of the learned counsel.

8.As far as the production of documents is concerned, the

documents that are sought to be produced are only identity card of the witness and they were not in the possession or within the knowledge of the plaintiff at any point of time prior to the filing of these applications but in order to enable the plaintiff to produce documents, the application under Order XVIII Rule 4(1B) namely, A.No.3312 of 2021 will have to be considered first. Only if the A.No.3312 of 2021 is allowed, the necessity to produce documents would arise. Order 18 Rule 4 (1B) requires a party to give sufficient cause for non-examination.

9.Pointing out the fact that the plaintiff / applicant has specifically stated that it will have to prove the explosion on the fateful day, Mr.M.B.Raghavan would submit that it was well within the knowledge of the plaintiff that it has to establish the explosion to succeed in the suit and therefore, the plaintiff ought to have taken steps to examine witness or tender oral evidence regarding the explosion even at that point of time when the examination of P.W.1 was concluded. The plaintiff should not have waited till closure of the evidence and now attempt to fill up the lacunae.

10.The term "sufficient cause" is capable of a liberal or a strict

interpretation. While examining the same term used in Section 5 of the Limitation Act, the Hon'ble Supreme Court has pointed out that there should be a liberal approach. It will be useful to refer to the judgments in **Collector, Land Acquisition, Anantnag & Another Vs. Katiji & Others** reported in **AIR 1987 SC 1353** and the judgment in **University of Delhi Vs. Union of India and others** reported in **2019 SCC Online SC 1634**. If a liberal interpretation has to be adopted in a case filing under Order 18 Rule 4(1B) of C.P.C., as amended by the Commercial Courts Act, 2015, it may lead to parties being allowed to fill up the lacunae in the evidence at any point of time. Therefore, unless the parties show a reasonable cause or a justifiable cause for non-examination, I do not think that the Court could allow the parties to re-open the evidence and let in further evidence at a stage where, the evidence of the defendant is also complete. I am therefore, of the opinion that such liberal interpretation as adopted by the Hon'ble Supreme Court in the above cases which arose under Section 5 of the Limitation cannot be applied to the term "sufficient cause" used in Order 18 Rule 4(1B) of the Commercial Courts Act, 2015.

11.Adverting to the case on hand, there is some indication of the

involvement of Mrs.A.Praveena in the case even prior to the evidence of the parties was closed. She had written a letter to the plaintiff seeking explanation for the explosion that was heard by the villagers on the fateful day, which was marked as Ex.P4. It is seen from the evidence that the marking of Ex.P4 has been objected to by the defendant on the ground that the Author of the document has not been examined. Therefore, I am of the considered opinion that this application could be allowed to that extent to allow examination of Mrs.A.Praveena alone.

12.As far as the other witnesses are concerned, I do not think that the plaintiff has made out a sufficient cause for non-examination of such witnesses earlier. Introduction of such evidence at this stage will definitely result in prejudice to the defendant. I am of the considered opinion, these applications could be allowed to the limited extent of examining Mrs.Praveena Annamalai then the President of the Village Panchayat and production of two documents namely, Identity Card and Ration Card alone. In other aspects, these applications stand dismissed.

R.SUBRAMANIAN, J.

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13.Registry is directed to list the suit before the learned Additional Master – II on 28.09.2021. Filing proof affidavit of the witness and marking of documents by 28.09.2021. Cross-examination to be completed by 08.10.2021.

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21.09.2021



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