ORDER OD – 8

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

APOT/81/2022
WPO/556/2021
IA NO: GA/2/2022

BUDGE BUDGE REFINERIES LIMITED
VERSUS
UNITED INDIA INSURANCE COMPANY LIMITED & ANOTHER

BEFORE:

HON'BLE CHIEF JUSTICE PRAKASH SHRIVASTAVA
HON'BLE JUSTICE RAJARSHI BHARADWAJ

Date: 25th November 2022.

APPEARANCE:

Mr. T.K. Moitra, Advocate
Mr. Protyush Chatterjee, Advocate
... for appellant.

Mr. Rajesh Singh Advocate
Mr. Aniruddha Singh, Advocate
... for respondent no.1.

Mr. Partha Sarathi Mondal Advocate
... for Union of India.

The Court:- By this intra-court appeal, the writ petitioner has questioned the order of the Learned Single Judge dated 8th September 2021 whereby WPO/556/2021 has been dismissed by observing that if the appellant has any sustainable claim in law, it may agitate the same before the appropriate civil or other forum.

The appellant had approached the Writ Court with the plea that between the period April 2011 and August 2011, the appellant had imported seven consignments of crude palm oil which were duly insured with the respondent no.1 insurance company. According to the appellant, on arrival of the said consignments, the appellant had appointed a marine insurance surveyor for inspection and on survey, it was found that there was shortage of certain quantity of oil in each consignment. The stand of the appellant in this regard is that the survey reports between the period

29th April 2021 to 26th August 2011 were submitted by the surveyor so appointed mentioning about the shortage. It is alleged that the appellant vide letters dated 8th July 2011, 9th July 2011, 30th October 2012 and 1st November 2012 had informed the respondent no.1 insurance company and made a prayer to settle the claim. The appellant thereafter had filed WPO/28/2020 wherein the Learned Single Judge by order dated 27th December 2020 had directed the respondent no.1 to reconsider the claim of the appellant on the basis of the documents annexed to the writ petition and also to decide the claim. While passing that order, it was specifically mentioned that the Learned Single Judge had not gone into the merits of the insurance claim of the appellant and/or the maintainability thereof and all the points were kept open for decision by the respondent no.1. Thereafter, the respondent no.1 had considered the claim of the appellant and vide communication dated 19th March 2021 had repudiated the same.

Submission of learned counsel for the appellant is that after the order of the Learned Single Judge, passed in WPO/28/2020, in the earlier round of litigation, the claim of the appellant ought not to have been rejected on the ground of delay.

As against this, learned counsel for the respondent no.1 has submitted that not only the appellant had belatedly reported the claim to the respondent no.1 insurance company but it did not approach the Court or took any action within a reasonable period of time. He has also submitted that it is a case of short delivery of oil due to loss in transit which cannot be ascertained by the respondent no.1 insurance company due to delayed reporting and even otherwise it also falls under the exclusion clause.

We have heard learned counsel for the parties and perused the records.

The order passed by the Learned Single Judge under appeal reflects that the Learned Single Judge has taken note of the delay on the part of the appellant in raising the claim and also pursuing it. The record reflects that the consignments had arrived between April 2011 to August 2011. The insurance policy, Annexure-P1, requires the insured to submit the claim immediately and provides that "In the event of loss or damage which may result in a claim under this Insurance, immediate notice must be given to Policy Issuing Office or nearest Office."

Though in the petition the appellant had taken a plea that vide letters dated 8th July 2011, 9th July 2011, 30th October 2012 and 1st November 2012, the appellant had informed the respondent no.1 insurance company about the loss, but none of the letters has been placed on record. It is the stand of the respondent no.1 that none of the letters was received by the insurance company. Hence, it cannot be held, in terms of the above clause of the insurance policy, appellant had sent immediate notice to the respondent no.1 insurance company.

That apart, the record further reflects that thereafter the appellant had remained silent and for the first time, after 9 years, in the year 2020, it came up with WPO/28/2020. The Learned Single in the said WPO vide order dated 22nd December 2020 though had directed to consider the claim of the appellant but had kept all the points open for decision by respondent no.1 including the issue of maintainability.

The impugned order of repudiation dated 19th March 2020 reveals that due reasons have been assigned by the respondent no.1 while repudiating the claim.

The repudiation letter states that the risk in question was not covered. Learned counsel for the respondent no.1 insurance company has also drawn the attention of this Court to clause 1.1.82 sub-clause 4 which is the exclusion clause and sub-clause 4.2 thereof which excludes "ordinary leakage, ordinary loss in weight or volume, or ordinary wear and tear of the subject-matter insured."

Hence, we find that in the above circumstances Learned Single Judge has not committed any error in dismissing the petition. The order passed by the Learned Single Judge does not suffer from any error and no case of interference is made out. Appeal is accordingly dismissed.

[PRAKASH SHRIVASTAVA, C.J.]

[RAJARSHI BHARADWAJ, J.]

s.kumar / sm