IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO 420 OF 2020
WITH CA/8296/2020 IN SA/420/2020

THE ORIENTAL INSURANCE CO. LTD.
VERSUS
JALGAON JANTA SAHAKARI BANK LTD. JALGAON.
...
Advocate for the Appellant : Mr. Dhananjay Deshpande.
Advocate for the Respondent : Mr. A. N. Nagargoje.

CORAM	:	**MANGESH S. PATIL, J.**
RESERVED FOR ORDER ON	:	**14.01.2022.**
PRONOUNCED ON	:	**10.02.2022.**

PER COURT :

Heard both the sides at the stage of admission.

2. The appellant is an Insurance Company and the original defendant. The respondent is the original plaintiff and is a bank.

3. Under a 'bankers indemnity policy' dated 01.04.1998 entered into between the parties the appellant had undertaken to indemnify the respondent-bank for various losses occurring in terms of the policy. The policy was operative for the period between 01.04.1998 and 31.03.1999. A person opened a current account on 25.02.1999 and presented a demand draft for an amount of Rs. 4,50,000/- drawn on Bank of Baroda, Malad-East branch with the respondent's branch. The respondent's branch discounted the demand draft and paid the amount of draft to that person. When the demand draft was subsequently forwarded by the respondent's branch to the Jalgaon branch of Bank of Baroda the latter refused to honour the demand draft saying that it was reported to be lost. In spite of strenuous efforts and lodging of complaint with police the person could not be traced. Therefore, the respondent bank put up a claim for indemnification under the policy.

4. The appellant refused to indemnify for the reasons communicated to

the respondent bank on 07.08.2000. The respondent filed the suit for recovery of money on 06.08.2003. The Trial Court dismissed the suit holding that the loss was occasioned to the respondent on account of a 'trading activity' which was specifically excluded by the term of the policy. The respondent challenged the judgment and order of the trial court by filing an appeal before the district court which has quashed and set aside the judgment and order of the trial court and decreed the suit.

5. Though it was indicated that the second appeal could be heard and decided finally at the stage of admission, in my considered view after having heard both the sides, it deserves to be admitted and is accordingly **admitted** on the following substantial questions of law:

(i) Whether the loss that had occasioned to the respondent bank due to encashment of a misused demand draft was due to 'trading' and therefore was not covered by the policy ?

(ii) Whether even the loss caused due to encashment of a misused demand draft drawn on some other bank, other than the respondent was also covered by the policy ?

(iii) Whether the appellate court in the facts, circumstances and the evidence was justified in decreeing the suit ?

6. In view of admission of appeal, the execution of the decree under challenge shall stand stayed till final disposal of the appeal subject to the appellant furnishing security before the trial court to its satisfaction, for due performance of the obligation under the decree if it attains finality.

7. Civil Appli33cation No. 8296/2020 stands disposed of.

(MANGESH S. PATIL, J.)

mkd/-