IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 14.12.2021

Delivered on : 14.02.2022

CORAM :

THE HONOURABLE MRS. JUSTICE S. KANNAMMAL

C.R.P. (PD) Nos.819 and 820 of 2018

M/s.UCFS Logistics
PKV Illam
No.3/2, Lafond Street,
Chintadripet,
Chennai – 600 002. ... Revision Petitioner in both petitions

Vs.

1.M/s.Rane TRW Steering Systems Ltd.,
Represented by Power Agents/Subrogee
M/s.United India Insurance Company Ltd.,
98, A.Dr. Radhakrishnan Street,
Chennai – 600 004.

2.M/s.United India Insurance Company Ltd.,
Corporate Cell,
98, A.Dr. Radhakrishnan Street,
Chennai – 600 004. ... Respondent in both petitions

Prayer : Civil Revision Petitions in C.R.P. (PD) Nos.819 and 820 of 2018 filed under Article 227 of the Constitution of India, against the fair and decreetal order, dated 24.11.2017 in I.A.Nos.2891 and 2892 of 2017 respectively in O.S.No.4543 of 2013 on the file of the XVI Assistant City Civil Court, Chennai.

For Petitioner : Mr.S.P.Sathish Kumar in both petitions

For Respondents : Mr.Nageswaran

COMMON ORDER

(Through Video Conferencing)

These Civil Revision Petitions have been filed against the common order, dated 24.11.2017, in I.A.Nos.2891 and 2892 of 2017 in O.S.No.4543 of 2013, passed by the learned XVI Assistant Judge, City Civil Court, Chennai, allowing the petitions filed by the plaintiffs to re-open the plaintiff's evidence for examination of P.W.2 for marking of additional document and to grant leave to the plaintiffs to file the additional document, i.e., certified copy of the Insurance Policy.

2.For the sake of convenience, the petitioner and the respondents shall hereinafter be referred to as “defendant” and “plaintiffs” respectively.

3.The brief facts leading to the filing of these Civil Revision Petitions are as follows :

- The suit has been filed by the plaintiffs for recovery of Rs.5,06,629/- with interests and costs on account of delivery of damaged goods by the defendant.
- It is the case of the plaintiffs that the defendant sent the suit consignment in a damaged condition to the 1st plaintiff, however, the suit goods were covered under a Marine Policy of Insurance bearing No.500200/21/09/05/000000081, dated 10.08.2015, issued by the 2nd plaintiff/insurer to the 1st plaintiff/insured and the period of insurance was from 01.01.2010 to 31.12.2010 and the loss occurred during September, 2010, which was covered during the currency of the policy. It is the further case of the plaintiffs that the original policy could not be traced from the office of the 1st plaintiff, hence, for the purpose of marking the said policy as an additional document, the applications were filed. The 2nd plaintiff/insurer had settled the claim of the 1st plaintiff on the basis of the Insurance Policy.

- The defendant, in their counter, have raised an objection that the suit was reserved for judgment on 29.08.2016 and on that day, the judgment was not delivered, but the Court directed the plaintiffs to submit the Insurance Policy and for the said purpose, the case is adjourned from time to time. Though it is a vital document, the plaintiffs have neglected to file the same along with the plaint, not even during the course of trial.
- The trial Court, after considering the rival contentions, by a common order dated 24.11.2017, allowed the petitions to re-open the plaintiffs' evidence and to mark the Insurance Policy as additional document.
- The said common order is impugned in the present Civil Revision Petitions.

4.The learned counsel for the defendant/revision petitioner submitted that, after conclusion of evidence and after reserving the judgment, recalling of witness or marking of additional document to fill up the lacunae in the evidence, cannot be permitted. In support of his contention, the learned counsel relied upon the judgment of the Hon'ble Supreme Court in the case of ***M/s.Bagai Construction through its Proprietor Lalit Bagai v. M/s.Gupta Building Material Store*** reported in ***AIR 2013 SCC 1849***. The learned counsel further submitted that the additional document sought to be filed is only a true copy and not the original, hence, the secondary evidence is not admissible. Therefore, the learned counsel prayed for setting aside the impugned order.

5.Per contra, the learned counsel for the plaintiffs/respondents submitted that the suit consignment was insured with the 2nd plaintiff under the Insurance Policy bearing No.500200/21/09/05/000000081, dated 10.08.2015, and the original of the said policy could not be traced from the office of the 1st plaintiff. Since the loss occurred during the period of insurance cover, the 2nd plaintiff/insurer settled the claim of the 1st plaintiff/insured, which is not disputed by the defendant. Therefore, the learned counsel submitted that no prejudice would be caused to the defendant, if the document is marked and hence, prayed for dismissal of these Revision Petitions.

6.Heard the learned counsel on either side and perused the materials available on record.

7.It is admitted that the defendant accepted to deliver the suit consignment to the 1st plaintiff, but the same was received by the 1st plaintiff in a damaged condition. The 1st plaintiff submits that the goods were insured with the 2nd plaintiff under the Insurance Policy stated *supra*, and since the loss occurred when the insurance policy was in currency, the 2nd plaintiff settled the claim made by the 1st plaintiff, which is also not disputed by the defendant. The defendant has also not disputed the Insurance Policy between the 1st and 2nd plaintiffs, but has only challenged the liability of the defendant towards the damages and the *locus standi* of the 2nd plaintiff. Though these issues are subject matter of the suit, the point that can be inferred is that the Insurance Policy is not under dispute.

8.However, the issue is whether the Insurance Policy can be marked as additional document after the evidence was closed and the suit was reserved for judgment. The Hon'ble Supreme Court, in *M/s.Bagai*

Construction (supra) has held as follows :

> ***"11.*** *... It is further seen that during the entire trial, those documents have remained in exclusive possession of the plaintiff but for the reasons known to it, still the plaintiff has not placed these bills on record. In such circumstance, as rightly observed by the trial Court at this belated stage and that too after the conclusion of the evidence and final arguments and after reserving the matter for pronouncement of judgment, we are of the view that the plaintiff cannot be permitted to file such applications to fill the lacunae in its pleadings and evidence led by him."*

However, in the case on hand, the Insurance Policy now sought to be filed is stated to be misplaced and was not in exclusive possession of the 1st plaintiff from the inception. Therefore, they have sought to file a certified copy of the same before the trial Court. Moreover, the Insurance Policy remains undisputed and therefore, this document has nothing to fill up the lacunae in the evidence of the plaintiff and marking of such document would not cause any prejudice to the defendant in any manner. The defendant themselves have stated that the trial Court has directed the plaintiffs to submit the Insurance Policy. The Hon'ble Supreme Court in *M/s.Bagai Construction (supra)* has also held that the Court is entitled to invoke the powers under Order XVIII Rule 7 CPC to clear any ambiguity that may have arisen during the course of examination of witnesses. Therefore, when the document is not intended to fill up the lacunae in the evidence nor would it cause any prejudice to the defendant, the order of the trial Court allowing the impugned applications, cannot be found fault with.

9.In view of the above discussion, this Court finds no infirmity or perversity in the impugned common order, dated 24.11.2017, in I.A.Nos.2891 and 2892 of 2017 in O.S.No.4543 of 2013 on the file of the XVI Assistant City Civil Court, Chennai.

10.Therefore, these Civil Revision Petitions stand dismissed. No costs.

14.02.2022

Internet : Yes
Index : Yes / No
Speaking order / Nonspeaking order

To

The XVI Assistant Judge,
City Civil Court, Chennai.

S. KANNAMMAL, J.

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14.02.2022