

\* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Reserved on: 24<sup>th</sup> August, 2022  
Pronounced on: 25<sup>th</sup> November, 2022

+ CS(COMM) 118/2021

**Kataria Carriers**

Registered Partnership firm

Through its Partner, Mr. Manish Kataria,

Office at: 133/198, Transport Nagar, Kanpur-208023

..... Plaintiff

Through: Mr. Ramesh Singh, Sr. Advocate  
along with Mr. Gaurav Tanwar and  
Ms. Shreya Jain, Advocates.

versus

**1. National Insurance Company Limited**

Delhi Regional Office-IV, 803-A, 8<sup>th</sup> Floor,  
Konnectus Tower, Tower-3,  
Opp. New Delhi Railway Station,  
Ajmeri Gate, Bhavbhuti Marg,  
New Delhi- 1100022.

**2. J. Basheer & Associates Insurance Surveyors  
and Loss Assessors Pvt. Ltd.,**

12-A, Khatau Building, 1st Floor,  
Alkesh Dinesh Modi Marg, Fort, Mumbai-400 001.

**3. Bharat Heavy Electrical Limited,**

Registered office:  
BHELHouse,  
Siri Fort Institutional Area,  
August Kranti Marg,  
Asiad Village,  
New Delhi- 110049

..... Defendants

Through: Mr. Niraj Singh and Mr. Dev Hans  
Kasana, Advocates for Defendant  
No.1.  
Ms. Garima Sharma, Advocate for  
defendant No.3.

**CORAM:**  
**HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA**

**J U D G E M E N T**

**NEENA BANSAL KRISHNA, J.**

**I.A.11184/2021 (For Rejection of Complaint)**

1. An application under Order VII Rule 11 read with Section 151 Code of Civil Procedure (*hereinafter referred to as "CPC"*) has been filed on behalf of defendant No.1 National Insurance Co. Ltd. for rejection of the complaint.
2. It is submitted in the application that the plaintiff has filed a suit for Declaration, Mandatory and Prohibitory Injunction against the defendants, whereby the plaintiff has sought that the Letter of Repudiation dated 19<sup>th</sup> November, 2015 issued by defendant No.1 rejecting the Insurance claim of Defendant No.3 and Statutory Surveyor Report dated 19<sup>th</sup> August, 2014 of the Surveyor/ defendant No.2 be declared as wrong, invalid, erroneous, null and void.
3. It is submitted that defendant No.3 Bharat Heavy Electrical Limited had obtained a Comprehensive Project Insurance Mega Policy bearing No. 350600/44/08/5050000011 from Defendant No.1 National Insurance Co. Ltd. for insuring the Goods during transportation by the plaintiff who is the Transporter. During transit, the goods/"Generator Stator" got damaged due

to collapse of bridge. Upon receipt of intimation from defendant No.3 regarding damage, defendant No.1 appointed defendant no.2, M/s J. Basheer & Associates, a Statutory Surveyor to survey and assess the loss suffered by defendant No.3. A Survey Report dated 19<sup>th</sup> August, 2014 was submitted by the Defendant No.2/Statutory Surveyor and on its recommendation defendant No.1 repudiated the claim of defendant No.3 on 19<sup>th</sup> November, 2015.

4. It is submitted that the Contract of Insurance was between defendant No.1 and defendant No.3 and the claim of defendant No.3 was repudiated by defendant No.1. If any party is aggrieved on account of such repudiation, it is defendant No.3 and not the plaintiff. There is no Privity of Contract between plaintiff and defendant No.1 and also there was no insurable interest of the plaintiff under the Policy and thus, the plaintiff has no cause of action to seek any relief against defendant no.3 arising out of Insurance Policy, Surveyor report or the Repudiation Letter issued by defendant No.1 to defendant No.3.

5. The plaintiff has also sought a decree of Mandatory Injunction against defendant No.1 to appoint a Surveyor for conducting Survey and make loss assessment under the Policy issued by defendant No.1 to defendant No.3. Defendant No.1 had appointed Defendant No.2, a duly licensed Surveyor to survey and assess the loss suffered by defendant No.3. It was only for defendant No.3 to approach the Competent Authority i.e. Insurance Regulatory Development Authority (IRDA) under Section 64UM(4) of the Insurance Act, 1938 for appointment of another Surveyor. The plaintiff has no right to ventilate his grievance against defendant No.1 before this Court for want of privity of contract.

6. Section 34 of Specific Relief Act, 1963 deals with declaratory suits. To enable an Order on declaration, the plaintiff is required to prima facie satisfy that the rights of the plaintiff was infringed by defendant No.1 and the declaration sought is that of legal character or right of the plaintiff. The plaintiff cannot clothe itself with legal character or legal status to file the suit for Declaration and Mandatory Injunction in respect of Repudiation Letter dated 19<sup>th</sup> November, 2015. The plaintiff cannot acquire the legal character to seek or enforce any relief against defendant No.1.

7. Under Section 39 of Specific Relief Act, 1963, there are twin requirements for mandatory injunction: *firstly*, an obligation of the defendant towards plaintiff and *secondly*, a breach thereof by the defendant. In the present case, both the requirements are absent.

8. Moreover, this suit is also barred by limitation. The cause of action according to the plaintiff first arose on 29<sup>th</sup> September, 2011 when defendant No.2 was appointed by defendant No.1 to conduct the survey while the present suit has been filed on 12<sup>th</sup> March, 2021 and is clearly barred by limitation.

9. Further, admittedly, defendant No.3 had invoked Arbitration and Learned Arbitrator Justice B.S. Verma has already passed an Award on 16<sup>th</sup> March, 2021. The grievance, if any, can be ventilated by the plaintiff by way of Objections under Section 34 of Arbitration & Conciliation Act, 1996. The plaintiff cannot be allowed to indulge in Forum shopping to avoid its liability. It is, therefore, submitted that the suit of the plaintiff is liable to be rejected with costs.

10. The plaintiff in its **detailed reply** has taken a preliminary objection that the application filed by defendant No.1 is an abuse of process of law. It

does not state correct proposition of law or the factual matrix. It is a settled proposition of law that while considering an application under Order VII Rule 11 CPC, only the averments made in the plaint and the documents appended thereto are to be read as a whole to gauge if the suit discloses any cause of action. At this stage the material relied upon by the defendant cannot be looked into. For this reliance has been placed on P.V. Guru Raj Reddy and Ors. vs. P. Neeradha Reddy and Ors. (2015) 8 SCC 331.

11. It is claimed that in terms of the Comprehensive Project Insurance Policy, it was issued in favour of defendant No.3 and its sub-contractors/vendors of BHEL. Defendant No.3 had engaged and awarded the contract to the plaintiff for transportation of its consignments to various sites. Thus, the plaintiff is squarely covered under the Insurance Policy and has privity with defendant No.1. Further, Clause 1.1 of Special Conditions of the Insurance Policy provided that all risks (which include the transit of the consignment) were deemed to be covered under the Policy. The argument of defendant No.3 in the application that there was no insurable interest in favour of the plaintiff is totally absurd and illogical. Further, even though the repudiation of the Insurance claim is of defendant No.3 but serious prejudice to the rights of the plaintiff has been caused in as much as it has led to the demand of claim against the plaintiff in the Arbitration proceedings. The rights of the plaintiff have been prejudiced as defendant No.3 could recover the amount from defendant No.1 on receipt of Insurance claims.

12. It is further claimed that the subject matter of challenge in the present suit could not have been raised in the arbitration proceedings as defendant No.1 and 2 were not parties in the said proceedings. It is a settled proposition of law that there cannot be splitting of parties or of cause of

action. The present suit is a complimentary and a parallel exercise in addition and not in derogation to arbitration proceedings. Therefore, neither the arbitration proceedings nor the Award has any bearing on the present suit.

13. The plaintiff has further explained that the cause of action for filing the present suit is based on Final Surveyor Report dated 28<sup>th</sup> September, 2014 and Letter of Repudiation dated 19<sup>th</sup> November, 2015. The plaintiff came to the knowledge of the Repudiation Letter and the Surveyor Report dated 02<sup>nd</sup> November, 2019 that were handed over during the Arbitration proceedings initiated by Defendant no.3. Before then, the plaintiff was not aware about the Repudiation Report and thus, the present suit has been filed well within the limitation. Even otherwise, the question of limitation is a mixed question of fact and law and cannot be decided summarily without proper pleadings and evidence.

14. **On merits**, it is claimed that the loss, if any, had occurred due to sheer negligence and remissness of defendant No.3. Defendant No.1 and 2 in connivance with defendant No.3, have shifted the entire blame on the plaintiff to absolve themselves from the legal liability and obligations. It is claimed that the averments made in the application are without merit as the plaintiff discloses a cause of action and the application is liable to be rejected.

15. **The defendant No.1 in its rejoinder** has reaffirmed that the suit does not disclose any cause of action.

16. **Submissions heard.**

17. The present application has been filed under Order VII Rule 11 CPC for rejection of plaint. The underlying object of Order VII Rule 11(a) CPC is

that it in a suit, no cause of action is disclosed, or the suit is barred by limitation under Rule 11(d), the court would not permit the plaintiff to unnecessarily protract the proceedings in the suit. In such a case, it would be necessary to put an end to the sham litigation, so that further judicial time is not wasted. Under Order VII Rule 11, a duty is cast on the court to determine whether the plaint discloses a cause of action by scrutinising the averments in the plaint, read in conjunction with the documents relied upon, or whether the suit is barred by any law.

18. In Azhar Hussain vs. Rajiv Gandhi 1986 SCR (2) 782 the Apex Court held as under:

*“12. ...the whole purpose of conferment of such powers is to ensure that a litigation which is meaningless and bound to prove abortive should not be permitted to occupy the time of the court, and exercise the mind of the respondent. The sword of Damocles need not be kept hanging over his head unnecessarily without point or purpose. Even in an ordinary civil litigation, the court readily exercises the power to reject a plaint, if it does not disclose any cause of action.”*

19. The Supreme Court in T. Aribanandam vs. T. Satyapal AIR 1977 SC 2421 observed that if on a meaningful – not formal reading of the plaint it is manifestly found to be vexatious and meritless in a scent of not disclosing a right to sue, the Judge should exercise the power under Order VII Rule 11 CPC.

20. In ITC Limited vs. Debt Recovery Appellate Tribunal AIR 1998 SC 634 the Apex Court reiterated the same principle and observed that question

is whether a real cause of action has been set out in the plaint or something purely illusory has been stated with a view to get out of Order VII Rule 11 CPC. Clever drafting creating illusions are not permitted in law and a clear right to sue should be shown in the plaint.

21. In a recent case of Dahiben vs. Arvinbhai Kalyanji Bhanusali & Ors. 2020 SCC OnLine SC 562, the Hon'ble Supreme Court has observed that the remedy under Order VII Rule 11 CPC is an independent and special remedy, wherein the court is empowered to summarily dismiss a suit at the threshold, without proceedings to record evidence, and conducting a trial, on the basis of the evidence adduced, if it is satisfied that the action should be terminated on any of the grounds contained in this provision. However, a word of caution was also given that the power conferred on the court to terminate a civil action is, however, a drastic one, and the conditions enumerated in Order VII Rule 11 CPC are required to be strictly adhered to.

22. A suit which is without any cause of action is as much as is frivolous, vexatious and meritless and has to be thrown out at the nascent stage since its continuation would only burden the already overburdened judicial infrastructure and will also result in harassment to the opposite party which has to face the rigmarole of full trial.

23. In the light of the principles enumerated above, it needs to be determined if the plaint discloses any cause of action. The plaintiff has filed a suit for declaring the Letter of Repudiation dated 19<sup>th</sup> November, 2015 issued by defendant No.1 rejecting the Insurance claim of defendant No.3, the Final Survey Report dated 19<sup>th</sup> August, 2014 submitted by defendant No.2, the Surveyor appointed by defendant No.3, as illegal and void and for Mandatory Injunction for directing defendant No.1 to appoint a Surveyor

afresh to make an assessment of loss and also for Permanent Injunction to restrain defendant No.3 from continuing to participate or execute the execution proceedings pending between the plaintiff and the defendant.

24. The **facts in brief** giving rise to the present suit is that the defendant No.3 had engaged the plaintiff for transportation of T.G. Strators/ Consignments through modular hydraulic trailer from point to point basis from BHEL, Haridwar to project sites of defendant No.3. An Agreement dated 27<sup>th</sup> June, 2011 was executed between the plaintiff and defendant No. 3 and various consignments were awarded to the plaintiff. The present suit pertains to a transaction for transportation of 1 T.G. Strator from BHEL, Haridwar to N-Chennai-1 @ of Rs. 205.95 Lacs with the delivery time being 100 days. Defendant No.3 represented to the plaintiff that it had already obtained a Comprehensive Project Insurance Policy and the goods were adequately covered. While the consignment was being transported, it met with an accident on 27<sup>th</sup> September, 2011 on account of collapse of bridge and the goods got damaged. The defendant No.3 made a Claim against defendant No.1, the Insurance Company for damages but the same got repudiated.

25. The defendant No.3 initiated Arbitration proceedings to recover the losses from the plaintiff who then has filed the present suit challenging the Final Survey Report and the Letter of Repudiation.

26. To understand the entire controversy, it would be pertinent to reproduce the Reliefs sought by the plaintiff. They read as under:

*“(a) Pass a decree of declaration that the Letter of Repudiation dated 19.11.2015 issued by Defendant No. 1 with reference to Comprehensive Project Insurance Policy bearing no.350600/44/08/5050000011, is wrong,*

*erroneous, invalid, null and void, and without any legal effect.*

*(b) Pass a decree of declaration that the final survey report bearing No. JBPL/077 /2011-12 dated 19.08.2014 prepared and submitted by Defendant No. 2, recommending Defendant No. 3 to recover the entire loss from the Plaintiff, is wrong, erroneous, invalid, null and void, and without any legal effect.*

*(c) Pass a decree of mandatory injunction against the Defendant no. 1 thereby directing Defendant no. 1 to appoint a surveyor or loss assessor, having a valid license under the provisions of the Insurance Act, 1938 and Regulations made thereunder, in accordance with Section 64UM(4) of the Insurance Act, 1938 for conducting survey and loss assessment under the Comprehensive Project Insurance Policy bearing no. 350600/44/08/5050000011 in respect of damage caused to TG Stator.*

*(d) Pass a decree of permanent injunction restraining Defendant No. 3 from continuing, participating, enforcing, and executing the arbitration proceedings pending adjudication between the Plaintiff and Defendant No. 3 titled as BHEL v. Kataria Carriers, before Justice (Retd.) B.S.Verma.*

*(e) Order granting the cost of the present suit in favour of the Plaintiff and against the Defendants;*

*(f) Any other order and/or further relief(s), which this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case."*

27. The first aspect which emerges from the pleadings is that defendant No.3 had entered into an independent Contract of transportation of consignment with the plaintiff. Simultaneously, the defendant no.3 insured the consignment by entering into an independent Contract of Insurance with defendant No.1. The plaintiff on being informed about a Comprehensive

Insurance Policy already being taken by defendant No. 3, felt no further need of taking an Insurance Policy of its own.

28. It is rightly submitted on behalf of defendant No.1 that there is no privity of contract whatsoever between plaintiff and defendant No.1 in respect of the Comprehensive Insurance Policy. In case the policy has been wrongly repudiated or if the Survey Report was not prepared properly, the locus was with defendant No.3 to challenge the repudiation and thereby claim recovery of damages from defendant No.1.

29. In M.C. Chacko vs. The State Bank of Travancore (1969) 2 SCC 343, it was observed that a person not a party to the Contract cannot enforce the terms of the Contract. The only recognized exceptions are the beneficiaries under the Contract or where a contract is a part of family arrangement, which may be in a nature of trust being created in favour of the beneficiary or in the case of family arrange, no third person can enforce a contract to which it is not a party.

30. In the present case, two independent contracts were entered into by defendant no 3; one with defendant no.1 and the other with the plaintiff. There is no privity of Contract between the plaintiff and Defendant no. 1 &2. As is evident, the relief no. 1 & 2 of the plaintiff is to challenge the Repudiation Letter or the Survey Report issued by defendant no. 1 & 2 for which it has no locus. For the same reason, the relief no. 3 to direct Defendant no.1 to appoint another Surveyor is also not maintainable.

31. It is clear and evident from the submissions made by the plaintiff itself and also from the documents appended along with the plaint that the Contract was between plaintiff and defendant No.3 for transportation of consignment. The defendant no.3 may have chosen to take steps to cover up

any damages to its goods in transit by taking an Insurance Policy, but plaintiff cannot claim any benefit of the same as a matter of right. It is settled law that the damages cannot be claimed by a party twice and if defendant No.3 had been able to get its damages from defendant No.1, the benefit of the same would have definitely enured to the plaintiff. However, this cannot be claimed as a matter of right. It was for defendant No.3 to have challenged the Survey Report or the Repudiation Report, but the locus is not with the plaintiff who is a stranger/ third party to the Contract of Insurance between defendant No.3 and defendant No.1.

32. In addition to this, the other aspect for consideration is whether a declaratory relief for setting aside the Repudiation Report and the Survey Report of Defendant no. 1 & 2 respectively, is maintainable at all under the Law.

33. **Section 34 of Specific Relief Act, 1963** provides for grant of declaration as to status or right. It reads as under:

*“34. Discretion of Court as to Declaration of Status or Right.*

*Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right, and the court may in its discretion make therein a declaration that he is so entitled and the plaintiff need not in such suit ask for any further relief:*

***Provided*** that no court shall make any such declaration where the plaintiff being able to seek further relief than a mere declaration of title, omits to do so.

***Explanation:*** A trustee of property is a “person interested to deny” a title adverse to the title of some-

*one who is not in existence and for whom, if in existence, he would be a trustee.”*

34. In Ramakrishna Pattar vs. Narayana Pattar AIR 1915 Mad. 584, a declaration that a certain contract continued and subsisted, was claimed from the court. The High Court held that such a declaration of contractual rights could not be claimed under Section 42 of Specific Relief Act, (*Old Act*) as they could not be held to relate to any person's legal character. It was observed that the declaratory suits pertained to a legal character or a legal status which is constituted by the attributes which the law attaches to a person to his individual or personal capacity, the distinctive mark or dress, with which the law clothes him apart from the attributes which may be said to belong to normal humanity in general.”

35. The Patna High Court in Tian Sahu vs. Mulchand Sahu AIR 1922 Pat. 432 while considering a suit filed by the plaintiff for declaration about his entitlement to a contribution from the defendant as and when the occasion arose, observed that such a suit is not maintainable. Identical view was taken by Bombay High Court in Sripat Rao vs. Shankar Rao AIR 4930 Bom. 331. In Nathu Ram vs. Mula AIR 1937 Lah. 25 following the aforementioned judgments the Lahore High Court observed that such a suit for declaration claiming that defendant is liable to contribute money to the plaintiff do not come under Section 42 as it affects only the pecuniary relationship between the parties to the contract. Similar position of law was reiterated in Firm Gopal Das Parmanand vs. Mul Raj AIR 1937 Lah. 389 and in Madan Lal vs. State of Madhya Bharat (S) AIR 1955 MP 111 and by Allahabad High Court in Mahabir Jute Mills vs. Firm Kedar Nath Ram Bharose AIR 1960 All 254.

36. These aspects came up for consideration in Princeton Niketan Pvt. Ltd. vs. Faiz Murtaza Ali & Anr. 2010 SCC OnLine Del. 4214. After making a reference to all the aforementioned judgments, it was concluded that a Declaration that an Agreement to Sell executed by defendant No.1 in favour of second defendant is illegal, void and not binding on the plaintiff, cannot be granted in law.

37. In the present case, the relief sought is not in respect of any declaration in regard to the legal character of the status but is purely in respect of the monetary claims which per se are not maintainable.

38. The other relief sought by the plaintiff is Permanent Injunction against the Defendant No.3 to restrain it from continuing with the Arbitration proceedings. S.41(a) of Specific Relief Act, 1963 bars injunction *to restrain any person from prosecuting a judicial proceeding pending at the institution of the suit in which the injunction is sought, unless such restraint is necessary to prevent a multiplicity of proceedings*. On this ground itself, the relief of Permanent Injunction as claimed against Defendant No.3 is not maintainable.

39. Further, defendant No. 3 admittedly had initiated arbitration proceedings for recovery of damages from the plaintiff. The plaintiff itself has stated that it had filed its reply/ counter-claim. The Award has been made by the learned Arbitrator on 16<sup>th</sup> March, 2021 vide which the claim of defendant No.3 against the plaintiff has been allowed in the sum of Rs.21,74,33,145/- and the counter-claim of the plaintiff has been allowed in the sum of Rs.3,29,08,068/-.

40. The plaintiff herein had taken similar defences and made the counterclaim, as have been agitated by way of present suit. The claims of the plaintiff raised in the present suit, have already been adjudicated by a Competent Forum i.e in arbitration and the present suit cannot be permitted to continue to raise the same issues afresh. The reliefs claimed by the plaintiff in the present suit are not maintainable and no cause of action is disclosed in the suit.

41. Moreover, this relief has already become infructuous as the arbitration proceedings have been concluded and the Award made on 16<sup>th</sup> March, 2021.

42. In the present case there is no cause of action whatsoever which has been disclosed in the suit which is hereby rejected. The application under Order VII Rule 11 CPC is accordingly allowed.

**(NEENA BANSAL KRISHNA)**  
**JUDGE**

**NOVEMBER 25, 2022**

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