IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INTERIM APPLICATION NO. 2196 OF 2019
IN
COMMERCIAL SUIT NO. 1041 OF 2019

ICICI Lombard General Insurance Co. Ltd. ... **Applicant**

IN THE MATTER BETWEEN :
ICICI Lombard General Insurance Co. Ltd. ... **Plaintiff**
Vs
Oil And Natural Gas Corporation Ltd. & Anr. ... **Defendants**

Mr. Venkatesh Dhond, Senior Counsel a/w. Mr. Yashesh Kamdar and Mr. Varun Gupta i/b. Tuli & Co., Advocates for the Plaintiff/ Applicant.

Dr. Birendra Saraf, Senior Counsel a/w. Mr. Nishit Dhruva, Mr. Prakash Shinde, Ms. Niyati Merchant and Mr. Yash Dhruva i/b. MDP & Partners, Advocate for the Respondent No.1/Defendant No.1.

Mr. Sharan Jagtiani, Senior Counsel a/w. Ms. Ritika Ajitsaria i/ b. TRILEGAL, Advocate for Respondent No.3/Defendant No.3 ICICI Bank Ltd.

CORAM : R.I. CHAGLA J
DATE : JANUARY 13, 2023

ORDER :

1. By this interim application No.2196 of 2019 the original plaintiff/applicant is seeking a discharge from all liabilities in respect of defendants' policy and the claim made thereunder. Further relief is sought for discharge of plaintiff from the present suit.

2. The original plaintiff/applicant is the insurer under an Energy Package Insurance Policy (Offshore Construction All Risk) bearing No. 2011/D/101661816/01/000. Defendant Nos.1 and 2 are the assured under the insurance policy. The defendant Nos.1 and 2 have raised competing demands on the amounts payable under the insurance policy. Accordingly, the above interpleader suit is filed by the original plaintiff/applicant.

3. The interim application has been taken out by the original plaintiff/applicant for discharge under Order XXXV of the Code of Civil Procedure. This Court by an order dated 16th October 2019 has directed the original plaintiff/applicant to deposit the sum of Rs.55,09,25,835.40Ps. being the monies payable under the policy that forms the subject matter of the suit in this Court on or before 8th November 2019. Thereafter, the original plaintiff/applicant had sought extension of time to make the deposit in Court and this Court by subsequent order dated 5th November 2019 allowed the applicant time till 31st December 2019 to deposit the said amount in the Court subject to simple interest being paid on the amount @ 6% p.a. from 9th November 2019 till the date of deposit.

4. The original plaintiff/applicant has made the deposit of an amount of Rs.55,14,38,701/- pursuant to the order dated 5th November 2019 in the manner shown in paragraph 4 of the interim application i.e. by two demand drafts both dated 13th November 2019.

5. Mr. Dhond, learned Senior Counsel appearing for original plaintiff/applicant has submitted that in view of the deposit of amount under the insurance policy as per the assessed insurance claim which has been assessed as early as in December 2016, the original plaintiff/applicant is not in any manner concerned with the inter-party dispute between the defendants which now is to be adjudicated by this Court to determine which party is entitled to the assessed amount payable under the said policy. He has submitted that considering that the original plaintiff/applicant has made the requisite deposit as directed by this Court of the amount which is assessed and payable under the said policy, the original plaintiff/ applicant be discharged from these proceedings.

6. Dr. Birendra Saraf, learned Senior Counsel has referred Order XXXV Rule 4 of the Code of Civil Procedure, 1908. He has submitted that it is for this Court, at first hearing, to either declare the plaintiff as discharged from all liabilities in respect of the things claimed and dismiss him from the suit or, if it thinks that justice of convenience so require, retain all the parties until the final disposal of the suit.

7. Dr. Saraf has submitted that there is an issue raised as to the interepretation of the said insurance policy and as to whether the defendant No.1 or defendant No.2 is entitled to the monies which have been assessed to be payable under the said policy. For such interpretation of

the policy, the plaintiff would necessarily be required to be retained until final disposal of the suit.

8. Dr. Saraf has further submitted that the defendant No.2/Swiber Offshore Construction Pvt. Ltd. has gone into liquidation and Official Liquidator has been appointed for the defendant No.2 Company. He has accordingly submitted that it would be necessary for the Official Liquidator to be heard. He has also referred to paragraph 10 of the plaint wherein the defendant No.2 had claimed an amount in excess of the assessed amount under the said policy. This issue would also be required to be considered in the presence of the plaintiff.

9. Having considered the submissions, in my view, after giving due regard to Order XXXV Rule 4 of the Code of Civil Procedure, 1908 and in particular, the discretion of this Court either to discharge the plaintiff from all the liabilities to the defendants and dismiss him from the suit or retain the plaintiff until the final disposal of the suit, the former is the better option. This upon considering that the commercial suit was filed by way of interpleader suit and wherein, the monies which were assessed to be payable under the said policy was a sum of Rs.55,09,25,835.40 Ps. The assessment having been done as early as in 2016. The defendant Nos.1 and 2 were well aware of the assessed amount payable under the said policy. The real dispute between defendant Nos.1 and 2 is with regard to which of the defendants is entitled to claim the monies payable under the policy.

10. By the orders of this Court which have been referred to by Mr. Dhond and which include the order dated 16th October 2019, wherein the statement of Mr. Dhond was recorded that he is willing to deposit the entire assessed amount under the said policy of Rs.55,09,25,835.40 Ps. in this Court, this Court had permitted the plaintiff to make such deposit in the Court and monies to be invested by the Prothonotary and Senior Master of this Court. Thereafter, extension of time had been sought and this Court had granted extension of time as aforementioned and by an order dated 16th December 2019, this Court had recorded that pursuant to the order dated 5th November 2019, the plaintiff had deposited with the Prothonotary and Senior Master of this Court the sum of Rs.55,14,38,701/- and it was directed to be invested. This Court also recorded that defendant No.3 had filed an application seeking an order directing the said amount be deposited with defendant No.3 at their Singapore branch. Whereas, the defendant No.1 had also filed an interim application seeking payment of money. This Court had, therefore, permitted the reply be filed in the interim application and matter be kept thereafter.

11. In view of the plaintiff having deposited the said amount which is in conformity with the orders of this Court, the original plaintiff is required to be discharged from these proceedings. The submission of Dr. Saraf with regard to the interpretation of the clauses in the policy in

order to determine which of the defendants i.e. either defendant No.1 or defendant No.2 is entitled to monies as assessed to be payable under the said policy, and requirement of the original plaintiff to remain present in these proceedings is not accepted. Such interpretation can be considered by this Court after hearing the defendants. Further, the contentions of Dr. Saraf that as defendant No.1 has gone into liquidation and Official Liquidator has been appointed and that it would be necessary to hear the Official Liquidator also is not a contention which will deter an order being passed to discharge the original plaintiff.

12. The above commercial suit being an inter-party suit, it would be for the defendant No.1 and defendant No.2 through the Official Liquidator as well as defendant No.3 who claims through defendant No.2 as secured creditor to satisfy this Court as to which of the defendants is entitled to receive the monies, which have been deposited by the original plaintiff. Dr. Saraf had also submitted that defendant No.2 initially demanded monies in excess of the monies assessed were due and payable under the said policy. However, in the present commercial inter-party suit filed by the original plaintiff, there is no such claim made by defendant Nos.1 or defendant No.2 and the claim of defendant No.2 referred to in paragraph 10 of the plaint was prior to assessment under the said policy. After the claim was assessed, this demand has not been pursued and the parties have accepted the assessed claim under the

said policy. It is clarified that in the event any additional amount is found due and payable under the said policy, it is always open for the defendants to adopt appropriate proceedings for making the said claim.

13. In view of the findings arrived at insofar as the present inter-party suit is concerned and the discretion given to the Court under Order XXXV Rule 4 of the Code of Civil Procedure, 1908, the relief sought for in the interim application No.2196 of 2019 is granted.

14. Accordingly, interim application No. 2196 of 2019 is made absolute in terms of prayer clauses (a) and (b) of the interim application.

15. Interim application is disposed of in the above terms.

[R.I. CHAGLA J.]

RAJU DATTATRAYA GAIKWAD

Digitally signed by RAJU DATTATRAYA GAIKWAD
Date: 2023.01.17 18:59:19 +0530