IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 14.12.2023	Delivered on: 15.02.2024

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

AND

THE HONOURABLE MR.JUSTICE P.DHANABAL

O.S.A.Nos.149 of 2019 and 248 of 2019

and

C.M.P. No.13298 of 2019

O.S.A.Nos.149 of 2019
and
C.M.P. No.13298 of 2019

The Oriental Insurance Co., Ltd.,
represented by its Senior Divisional Manager,
D.O. III, Pankaj Complex, II Floor,
No.69, Perambur Barracks Road, Vepery,
Chennai-600 007. . ... Appellant / Defendant

Vs.

M/s. Indian Bank
represented by its Deputy General Manager ... Respondent / Plaintiff

PRAYER: Original Side Appeal filed under Order XXXVI Rule 1 of the

Original Side Rules read with Clause 15 of the Letters Patent read with Section 13(1) of Commercial Court Act praying to allow this Original Side Appeal with cost and set aside the judgment and decree dated 29.01.2019 passed in C.S. No.167 of 2011 on the file of the Original Side of this Court and thereby, dismiss the suit with cost.

For Appellant / Defendant : Mr. N. Venkatraman for M/s. Nageswaran and Narichannia

For Respondent / Plaintiff : Ms. Aishwarya.V for M/s. R&P Partners

O.S.A.No.248 of 2019

M/s. Indian Bank
represented by its Deputy General Manager ...... Appellant / Plaintiff

vs.

The Oriental Insurance Co., Ltd.,
represented by its Senior Divisional Manager,
D.O. III, Pankaj Complex, II Floor,
No.69, Perambur Barracks Road, Vepery,
Chennai-600 007. ...... Respondent / defendant

PRAYER: Original Side Appeal filed under Order XXXVI Rule 1 of the Original Side Rules read with Clause 15 of the Letters Patent read with Section 13(1) of Commercial Court Act praying to allow this Original Side Appeal with cost and set aside the judgment and decree dated 29.01.2019 on the file of the Original Side of this Court to the extent of rejection of interest prayed by the appellant / plaintiff in C.S. No.167 of 2011 along with cost.

For Appellant / Plaintiff : Ms. Aishwarya.V for M/s. R&P Partners

For Respondent / Defendant : Mr. N. Venkatraman for M/s. Nageswaran and Narichannia

COMMON JUDGMENT

(Judgment of the Court was made by P.DHANABAL,J.)

Both these Original Side appeals have been preferred as against the decree and judgment passed in C.S. No.167 of 2011 dated 29.01.2019 on the file of the original side of this Court, wherein the plaintiff Indian Bank represented by its Deputy General Manager, Chennai, had filed a Suit as against the Oriental Insurance Company Ltd., represented by its Divisional Manager, Vepery, Chennai.

2. The learned single Judge has decreed the Suit without interest. As against the decree and judgment, the unsuccessful defendant i.e, the Oriental Insurance Company Pvt. Ltd., has filed appeal in O.S.A. No.149 of 2019. As against the non-awarding of interest, the plaintiff Indian Bank has preferred appeal in O.S.A. No.298 of 2019.

3. Since these two appeals are arising out of same decree and judgment, both the appeals have been heard together and this Court passes

this common judgment.

4. **The gist of the plaint averments is as follows:-**

The plaintiff bank, during the course of its business used to take Banker's Indemnity Policy from insurance companies. On 31.03.2006, the plaintiff bank had taken Banker's Indemnity Policy vide Policy No.411800 / 0 /0/MISC/B1/0002/2007 for a sum of Rs.40 crores from the defendant. The period of insurance covered under the Policy is from 01.04.2006 to 31.03.2007 and the same was renewed for a further period of one year ending with 31.03.2008. The said policy is a comprehensive insurance policy and covers any loss occasioned to the bank on account of dishonesty. During the subsistence of the policy, losses were occurred to the plaintiff bank due to the dishonest and criminal act of an employee of the plaintiff bank Mr. Ranjan Mukopadhyaya, Branch Manager of the plaintiff's Puralia Branch for a sum of Rs.1,04,51,803/- by giving credit facilities to the parties beyond his power and with criminal intent. The said Branch Manager allowed credit against various cheques lodged for collection which were returned, thereby the plaintiff suffered loss to the tune of Rs.1,04,51,803/-. The said dishonesty squarely falls under Clause 'D' of the Bankers' Indemnity Insurance Policy. The above said loss occasioned due to the dishonesty of the plaintiff's employee and the same was came to the knowledge of the plaintiff's bank only on 24.08.2006. Thereafter, the said employee namely Mr. Ranjan Mukopadhyaya was suspended with effect from 28.08.2006 and subsequently he was dismissed from his service after due department proceedings. Further, the police criminal complaint was also lodged before the jurisdiction police station. As per the Bankers' Indemnity Insurance Policy, a claim was made by the plaintiff to the defendant on 11.08.2007 and the same was rejected by the defendant through letter dated 03.03.2009 stating that the claim is not covered under Bankers' Indemnity Policy and made an attempt to take shelter under the Exceptions provided in the insurance policy. The losses occurred due to the dishonest or criminal act of the employee of the insured and covered under Clause 'D' of the policy. Further the claim of the plaintiff was rejected by the defendant quoting their Surveyor's report opining that it is not the case of loss due to dishonesty of bank's staff and the same was due to the negligent act of the employee of the bank. Therefore the present suit has been filed by the plaintiff.

5. **<u>The brief averments of the written statement filed by the defendant are as follows:-</u>**

All the averments made by the plaintiff in the plaint are denied except those that are specifically admited hereunder and the plaintiff was put to strict proof of such of those averments. The person who had signed and verified the plaint was put to strict proof of his capacity to represent on behalf of the plaintiff. The plaintiff and the defendant are Public Sector Units (PSU) and the plaintiff should have referred the matter to the Committee on Disputes Government of India for adjudication of the subject dispute. The plaintiff being a Public Sector Unit, against the defendant, who is also a Public Sector Unit, the Suit is not maintainable. The issue of bankers indemnity policy is admitted. However, the loss was not on account of dishonest and criminal intent on the part of the staff of the plaintiff, the Branch Manager namely Ranjan Mukopadhyaya. Further, no police complaint was given as against the Branch Manager and the same was given as against the borrowers. The loss, as stated by the plaintiff, is not on account of dishonesty as set out in clause D of the policy. No amount is payable by this defendant to the plaintiff as per the terms and conditions of the policy. It is true that the claim of the plaintiff was rejected by this defendant through letter dated 03.03.2009. The plaintiff's complaint about the alleged criminal intent on the part of the said Branch Manager is only an after-thought after more than 6 months, for the first time, i.e., dated 21.10.2008. The original complaint given to the police against the absconding constituents binding upon the plaintiff. After receipt of claim intimation, a survey was arranged as per the act and one Mr. R.G. Verma, a Chartered Accountant and a licensed surveyor was arranged and he issued a detailed report. As per his report, the loss was not on account of dishonesty and criminal intent of the employee but due to collective negligence on the part of the employees against whom only department proceedings were initiated and further as per the policy, Exceptions (b) is attracted and hence the defendant is not liable to pay the claim. Therefore, the plaintiff is not entitled for any relief through this Suit. Therefore, the Suit is liable to be dismissed.

6. Based on the above said pleadings and upon perusing the available records, the following 'issues' and 'additional issues' were framed:-

Issues:-

5.1. Whether the plaintiff is entitled to a sum of Rs.1,04,51,803/- together with quarterly compounding interest at the rate of 16% per annum with effect from the date of plaint i.e,. 02.03.2010 till the date of realization in full?

5.2. Does the Bankers' Indemnity Policy cover losses caused due to the dishonest behaviour of the employees of the plaintiff?

5.3. Whether the act of the plaintiff's employee resulted in loss to the plaintiff due to the dishonest intention or due to the collective negligence of a particular employee who indulged in dishonest act or not?

5.4. To what other reliefs the plaintiff is entitled for?

Additional Issues:

5.5. Whether the person who has signed and verified the plaint is competent / authorised to sign and verify the plaint?

5.6. Whether the reported loss is payable as per the terms and conditions of the Bankers' Indemnity Policy, plaint Document No.1?

5.7. Whether the suit claim arose on account of dishonest and criminal intent on part of the branch manager of the plaintiff or due to negligent act or omission of the employee attracting Exceptions (b) of the policy?

6. In order to prove the case before the Trial Court, on the side of plaintiff, PW1 was examined and Ex.P.1 to Ex.P.7 were marked. On the side of defendant, DW1 and DW2 were examined and Ex.D.1 to Ex.D.7 were marked.

7. After evaluating the oral and documentary evidences adduced on either side and after hearing the learned counsel appearing on both sides, the learned single Judge has decreed the Suit without interest and cost. As against the judgment and decree, the defendant has filed the present appeal in OSA No.149 of 2019 and as against the dismissal of the suit with respect to interest, the plaintiff has filed the present appeal in OSA No.298 of 2019.

8. As against the order passed by the learned single Judge, the present appeal in O.S.A No.149 of 2019 has been filed on the following grounds:-

8.1. The judgment and decree is against law, evidence on record and probabilities of the case.

8.2. The learned single Judge failed to appreciate the pleadings, oral and documentary evidences adduced on behalf of the appellant / defendant in proper perspective.

8.3. The findings of the learned single Judge are against proper and fair interpretation of the various documents and the law governing the contract of indemnity / insurance contracts.

8.4. The respondent / plaintiff did not file any document to show that they had initiated any action against the employee, who is alleged to have caused loss through dishonest and criminal act by way of termination or any criminal proceedings through law enforcing authorities.

8.5. The person, Branch Manager, who is alleged to have caused loss to the plaintiff by way of his dishonest and criminal act, has been shown as witness in the petition filed by the plaintiff before the learned Chief Judicial Magistrate and the said branch manager gave a complaint before the local police station. The Branch Manager is arrayed as witness to depose against the accused who cheated the bank by availing loan and failed to repay the same. Hence it is clear that the branch manager cannot be said to have acted against the interest of the plaintiff.

8.6. The Surveyor in his report concluded that the loss due to credit facilities given by the bank are not covered under the Policy. The advance given by the bank cannot be construed as an act of dishonesty but it is a lapse on the part of the bank. The result of bad debt due to waiver of regulations, will not fall within the scope of direct loss. The finding of the Surveyor that the entire bank staff had failed to diligently follow the rules and regulations in dealing with their clients and offered credit facilities, was not properly considered by the Trial Court. The negligent act is not covered under the Bankers' Indemnity Policy term 'D' for a valid claim under the policy.

9. As against the order passed by the learned single Judge with respect to interest, the present appeal in O.S.A No.298 of 2019 has been filed by the appellant / plaintiff on the following grounds:-

9.1. The judgment and decree passed by the learned single Judge as to the rejection of the future interest claimed along with suit claim, is unjust and against law.

9.2. The learned single Judge failed to consider that the appellant has proved its claim falls under clause 'dishonesty' and accordingly, the plaintiff is eligible, not only for the claim amount, but also for the future interest.

9.3. The learned single Judge has rightly admitted the claim amount, but wrongly denied the future interest without any reason.

9.4. The finding of the learned single Judge that the appellant bank is entitled for the claim amount as it deals with public money is erroneous.

9.5. The Trial Court held that the appellant is not entitled for future interest and cost of the suit for the reasons best known to it.

9.6. The Trial Court is not right in holding that the appellant bank did not show proper diligence in filling the claim form and if the form was filled correctly by the appellant bank, then the respondent / defendant would have not repudiated the claim.

9.7. The respondent / defendant has not proved how the claim falls under the Exceptions under the Bankers' Indemnity Insurance Policy.

9.8. The appellant bank is entitled not only for the claim amount but also for the future interest claimed in the suit i.e., from the date of plaint till the date of realization in full. The appellant has calculated interest at the rate of 16% per annum from the date of plaint i.e., 2nd March 2010 till the date of filing appeal.

10. The learned counsel appearing for the appellant / defendant in O.S.A. No.149 of 2019 and the respondent / defendant in O.S.A. No.298 of 2019 has argued that the person who signed and verified the plaint has not been authorised by the plaintiff, who filed the Suit and thereby, on that sole ground itself, the Suit is liable to be dismissed. The claim of the plaintiff is not covered under Clause 'D' of the Policy and it will come under Exceptions (b), since the loss was occurred due to the negligence on the part of the bank Staff and not due to the dishonest and criminal intention of the bank Staff. The plaintiff failed to produce the documents with regard to the action taken as against the Staff of the plaintiff bank and an FIR has been registered as against the borrowers of the loan and not as against the Branch Manager of the particular branch where the loss said to have been taken place. The employee of the plaintiff bank, the Branch Manager has not been added as an accused. Per contra, he was arrayed as witness in the said case. Therefore, the loss has not been occurred due to the dishonest intention of the employee of the plaintiff bank. Since the loss was not occurred due to the dishonest intention of the employee of the bank and the

loss occurred due to the negligence on the part of the employees of the bank, the appellant / defendant need not pay any amount to the respondent / plaintiff. But the learned Single Judge failed to appreciate the evidence adduced by the defendant and mainly relied upon the evidence of plaintiff. The learned singe Judge has denied the future interest, however decreed the suit to pay the suit amount without interest and cost. Further, the Surveyor was appointed as per the Act and the Surveyor filed his report stating that the loss was occurred only due to the negligence on the part of the employees of the plaintiff bank and the same is covered under the Exceptions (b). Without considering the above said aspects, the learned single Judge has erroneously decreed the Suit, thereby the judgment and decree passed by the learned single Judge is liable to be set aside by allowing this appeal in O.S.A. No.149 of 2019 filed by the appellant / defendant.

11. The learned counsel appearing for the respondent / plaintiff in O.S.A. No.149 of 2019 and the appellant / plaintiff in O.S.A. No.298 of 2019 has argued that the employee of the plaintiff bank, the Branch Manager, namely Ranjan Mukopadhyaya, gave credit facilities to the parties beyond his power with dishonest and criminal intention, thereby, a

loss of Rs.1,04,51,803/- was occurred to the plaintiff bank and the bank also initiated disciplinary proceedings and initially he was suspended from 28.08.2006 and thereafter, he was dismissed from service after due department proceedings. Therefore, the loss was occurred due to the dishonest criminal intention of the employee of the bank and the same will come under clause 'D' of the Insurance Policy. The Surveyor was unilaterally appointed by the defendant and his report cannot be taken as evidence and the plaintiff has examined PW1 and marked Ex.P.1 to Ex.P.7 and the learned single Judge has fairly discussed all the aspects and came to a conclusion that the plaintiff is entitled to recover the loss occurred owing to dishonest intention of the employee of the bank and the defendant is liable to pay the claim amount. But at the same time, the learned single Judge failed to award interest for the above said amount and the plaintiff is entitled to interest for the loss caused to the plaintiff. Therefore, the respondent / plaintiff in O.S.A No.149 of 2009 and the appellant / plaintiff in O.S.A. No.298 of 2019 is entitled to the interest at 16% p.a.. Therefore, the appeal filed by the appellant / defendant in O.S.A. No.149 of 2009 is liable to be dismissed and the appeal filed by the appellant / plaintiff in O.S.A. No.298 of 2019 is liable to allowed.

12. Heard both sides and perused the entire materials available on record.

13. Upon hearing both sides and perusing the materials, the points for determination in this appeal in O.S.A. No.149 of 2019 are as follows:-

1. Whether the loss occurred to the respondent / plaintiff was due to the dishonest and criminal act of the employee or due to the negligence on the part of the employee of the respondent / plaintiff bank?

2. Whether the claim of the Suit covered under the policy?

3. Whether the plaintiff is entitled to recover the suit amount from the appellant / defendant?

4. Whether this appeal is to be allowed or not?

5. To what other relieves, the parties are entitled to?

14. The points for determination in this appeal in O.S.A. No.298 of 2019 are as follows:-

1. Whether the appellant / plaintiff is entitled to interest for the loss caused to the plaintiff?

2. Whether this appeal is to be allowed or not?

3. To what other relieves, the parties are entitled to?

15. **Points:**

On Points 1 and 2 in O.S.A. No.149 of 2019:

There is no dispute that the appellant / defendant issued Policy to the respondent / plaintiff for a sum of Rs.40 crores. In this case, there is no dispute with regard to the quantum of loss sustained by the respondent / plaintiff for a sum of Rs.1,04,51,803/-. The appellant / defendant has also not denied the quantum of loss. The respondent / plaintiff has filed a Suit alleging that the plaintiff bank's Purulia Branch Manager namely Ranjan Mukopadhyaya, with dishonest and criminal intention, caused loss to the tune of Rs.1,04,51,803/- by giving credit facilities to the parties beyond his power and the same is covered under Clause 'D' of the Policy. The appellant / defendant has also not denied the Clause 'D' of the Bankers' Indemnity Insurnce Policy. But the contents in the said Clause 'D' will not be applicable to the present facts of the case, because the loss was not occurred due to the dishonest intention of the Staff of the plaintiff bank. Per contra, the loss was occurred due to the negligence on the part of the Staff of the respondent / plaintiff. In order to prove the case of the respondent / plaintiff, PW1 was examined and Ex.P.1 to Ex.P.7 were marked. On the side of appellant / defendant, DW1 and DW2 were examined and Ex.D1 to Ex.D.7 were marked.

15.1. The appellant / defendant raised plea with regard to the maintainability of the Suit on the ground that the plaintiff bank has not given authorisation to the person, who signed and verified the plaint. In this context, the plaintiff has marked Ex.P.1, authorisation letter dated 09.11.2012. On careful perusal of the Ex.P.1, it reveals that one Mr. K. Ravichandran, was authorised to give evidence in the Suit, on behalf of the plaintiff and to do all acts in connection therewith. Therefore, the contention of the appellant / defendant that the person, who signed the Plaint has not been authorised by the plaintiff, is not an acceptable one. Further, PW1 also in his evidence has categorically stated that the General Manager of the plaintiff bank has given an authorisation letter based on the Board Resolution passed by the Board of Directors of the plaintiff bank. The learned counsel appearing for the appellant / defendant would contend that the resolution passed by the Board of Directors has not been produced before this Court and the said Mr. K. Ravichandran has not been duly authorised by the plaintiff. From Ex.P.1., it is seen that the General Manager (IED), Indian Bank has authorised Mr. K. Ravichandran, who signed and verified the plaint and that is sufficient to hold that the person has been authorised by the plaintiff to sign and verify the plaint. Therefore, the contention of the learned counsel for the appellant / defendant is not an acceptable one.

15.2. The further contention of the appellant / defendant is that loss was occurred owing to the negligence on the part of the employees of the plaintiff bank and not due to any dishonest intention. In this context, on the side of defendant, they have examined DW1 and DW2 and Ex.D1 to Ex.D.7 were marked. DW1, who is the General Manager of the defendant insurance company, was examined and he deposed to support the averments of the written statement and he also stated that the claim of the plaintiff will not come under the Clause 'D' of the Insurance Policy and will come only under the Exceptions (b) of the Policy, since the loss was occurred due to the negligence on the part of the employees of the plaintiff. Further, the defendant has also examined DW2, who is the Surveyor appointed by the defendant to survey the claim of the plaintiff and he filed a report Ex.D.7. On careful perusal of the above said report Ex.D.7, it reveals that the loss occurred owing to the negligence on the part of the employees of the plaintiff bank and not due to the dishonest intention. The same DW2, in his cross examination, has stated that from his enquiry, he came to know that the plaintiff bank had initiated departmental enquiry against the concerned Branch Manager for the irregularities committed by the said Branch Manager and also he stated that an amount of Rs.97,11,786/- has been arrived by him subject to certain conditions. Also he admitted that a letter dated 28.08.2006 written by the General Manager (Vigilance) of the plaintiff bank to the Deputy General Manager of the plaintiff bank stating that the Branch Manager has sanctioned to the tune of Rs.104.51 lakhs beyond his discretionary powers and further admitted that in Ex.P.2, the Policy document, 'Dishonesty' has been clearly mentioned. Therefore, from the evidence of PW2, it reveals that there was a loss caused to the plaintiff bank and the Surveyor has assessed the loss for a sum of Rs.97,11,786/-. But as per the records, the Branch Manager has sanctioned credit facilities to the tune of Rs.104.51 lakhs beyond his discretionary powers. The same has also been admitted by DW2.

15.3. Now the point is whether the evidence of DW2 is acceptable or not, if so, to what extent, the report of the Surveyor is to be accepted?

The learned counsel appearing for the appellant / defendant has argued that the Surveyor was appointed under Section 64-UM of the

Insurance Act, 1938 and he filed a report and his report is liable to be accepted, since the Surveyor's report is authorised by law.

15.4. In this case, the learned counsel appearing for the respondent / plaintiff in O.S.A. No.149 of 2019 replied that Section 64-UM of the Insurance Act provides for appointment of Surveyors, but at the same time, he was appointed by the appellant / defendant and his report cannot be accepted as it is and it is only an expert opinion and it cannot be taken as conclusive proof and the Surveyor can survey actually the loss caused to the plaintiff bank and apart from that, he cannot say anything and his opinion with regard to the negligence is not acceptable and therefore, his report is liable to be rejected.

15.5. It is true that as per Section 64-UM of the Insurance Act, the Surveyors are appointed, but the main purpose of the appointment of Surveyor is with regard to ascertain the quantum of loss and the Surveyor cannot form any opinion that whether the loss is occurred due to negligence or dishonest intention. The report of Surveyor with regard to the quantum of amount is acceptable and his opinion with regard to the reason for loss that due to negligence or dishonest intention, is not acceptable since it is only an expert opinion. The evidence of the Surveyor is a piece of corroborative evidence and it cannot be taken as conclusive proof. Therefore, the evidence of Surveyor with regard to the opinion as to whether the loss caused due to negligence or dishonest intention cannot be accepted. In this case, DW2, Surveyor himself has admitted that the particular Branch Manager has sanctioned credit facilities to the tune of RS.104.51 lakhs beyond his powers, but in his report he has assessed the loss to the tune of Rs.97,11,786/-. Therefore, as admitted by the Surveyor, the loss caused to the bank is Rs.1,04,51,803/-. The contention of the respondent / plaintiff is that the above loss to the tune of Rs.1,04,51,803/- was occurred due to the dishonest intention of the bank employee i.e., Branch Manager of the Purulia Branch. The plaintiff bank, had initially suspended the concerned Branch Manager and thereafter, he was dismissed from service after due department proceedings. The said fact has been pleaded in the plaint itself and the enquiry report has been marked as Ex.P.6.

15.6. At this juncture, the learned counsel appearing for the appellant / defendant brought to the knowledge of this Court that the criminal complaint was lodged by the Branch Manager as against the borrowers and not as against the person, who exceeded his limits and extended loan benefits to the borrowers. Per contra, the delinquent officer was cited as witness. Therefore, the plaintiff bank has failed to prove that the loss was caused due to the dishonest intention of the employee of the bank.

15.7. It is an admitted fact that FIR has been registered as against the borrowers and not as against the Branch Manager Ranjan Mukopadhyaya and the said delinquent was cited as witness in this case. Only because the delinquent officer was shown as witness, it cannot be said that the loss was not occurred due to the dishonest intention. The appellant / defendant also admitted that the concerned employee i.e., the Branch Manager was dismissed from his service after due department proceedings. Therefore, from the evidence adduced on either side, it is clear that the employee of the plaintiff bank was dismissed from service due to his criminal act. As far as the plaintiff's contention is concerned, they have taken disciplinary action as against the Branch Manager and he was dismissed from service. As per the Policy terms in Clause 'D', it is stated as follows:-

> "D. DISHONESTY
> by reason of the dishonest or criminal act of the employee(s) of the insured with respect to the loss

> of Money and/or Securities wherever committed and whether committed singly or in connivance with others".

Therefore, as per the Policy, the defendant is liable to pay for the loss caused by the employee of the plaintiff bank. In this context, the learned Single Judge, after elaborate discussion, has categorically held that the loss was caused due to the dishonest and criminal act of the employee of the plaintiff bank. Therefore, the appellant / defendant is liable to pay the loss amount to the respondent / plaintiff.

15.8. In this case, the learned counsel appearing for the appellant / defendant argued that the loss was occurred due to the negligence act of the employee and thereby, it comes under the Exceptions (b) of the Policy. There is no proof to prove the contention of the appellant / defendant. Therefore, as discussed supra, this Court is of the opinion that the respondent / plaintiff has proved that the loss caused by the employee of the plaintiff bank due to his dishonest and criminal act. Thus the **points 1 and 2** are answered accordingly.

16. **<u>On Point No.3:</u>**

This Court, in the previous point, has discussed and decided that the loss caused to the plaintiff bank, was due to the dishonest and criminal act of the employee of the plaintiff bank and as per the Clause 'D' of the Policy, the claim of the plaintiff comes under the Clause 'D" of the Insurance Policy and not comes under the Exceptions (b) of the Policy. Therefore, the defendant is liable to pay the said loss caused to the respondent / plaintiff's bank. The specific purpose of an indemnity policy is to indemnify any loss caused by the Staff of the plaintiff by their dishonest or criminal act. In this case on hand also, the loss was caused due to the dishonest and criminal act of the employee of the plaintiff bank. The appellant / defendant has also issued policy to that effect. Therefore the respondent / plaintiff is entitled to recover the above said loss of Rs.1,04,51,803/- and the appellant / defendant is liable to pay the said amount to the plaintiff. Thus, **point no.3** is answered accordingly.

17. **On Point No.4**

The learned single Judge after elaborate discussion held that the respondent / plaintiff is entitled to the loss of Rs.1,04,51,803/- caused to the plaintiff bank, since the policy covered under Clause ' D' and thereby, directed the appellant / defendant to pay the loss amount of Rs.1,04,51,803/- . Therefore, the judment passed by the learned Single Judge is reasoned one and no warrant for interference is needed and the appeal is liable to be dismissed. Thus **Point no.4** is answered accordingly.

18. **On Point No.5**

As discussed above, the appellant / defendant is not entitled to any relief through this appeal and this appeal in O.S.A. No.149 of 2019 is liable to be dismissed. Thus, **Point no.5** is answered accordingly.

19. **On Point No.1 in O.S.A. No.298 of 2009**

The contention of the appellant / plaintiff in this appeal in O.S.A No.298 of 2009 is that the learned single Judge has decreed the Suit for the loss amount of Rs.1,04,51,803/-, but failed to award interest for the said amount. In this context, the learned single Judge has elaborately discussed in the judgment that *if Bankers' Indemnity Claim form had been submitted with required level of diligence, if the Branch Manager had been cited as an accused in the criminal complaint, the defendant insurance company may well have settled the claim without repudiating / rejecting the same, compelling the bank to file the instant suit. In other words, insurance company cannot be held to be completely at fault in repudiating / rejecting the claim, as it had considered the insurance policy terms very strictly and it did not have the benefit of exemplified details as available before this Commercial Division*. The above reason stated by the learned single Judge is acceptable, as the plaintiff bank has not given any criminal complaint as against the Branch Manager and the complaint was given only as against the borrowers. In that complaint, the delinquent officer i.e., the Manager of the concerned Branch was cited as witness and thereby, the insurance company has rejected the claim. Therefore, the above said decision of the learned single Judge is a well reasoned one and no warrant of interference by this Court is needed. Therefore, the plaintiff cannot pass the entire liability on the insurance company. Therefore, the appellant / plaintiff in O.S.A. No.298 of 2019 is not entitled for the future interest and the learned single Judge has correctly rejected the claim of the appellant / plaintiff in respect of interest. Thus, **Point No.1** is answered accordingly.

20. **<u>On Point No.2</u>**

The learned single Judge after elaborate discussions, declined the relief of interest to the plaintiff by affording reasons. Therefore, this appeal has no merits and thereby, no warrant of interference by this Court, is needed and this appeal deserves to be dismissed. Thus, **Point No.2** is answered accordingly.

21. **<u>On Point No.3</u>**

As discussed in previous points, the appellant / plaintiff is not entitled to any relief. Therefore, this appeal is liable to be dismissed.

22. Accordingly, these O.S.A. Nos.149 of 2019 and 298 of 2019 are dismissed. The judgment and decree dated 29.01.2019 passed in C.S. No.167 of 2011 is confirmed. No costs. Connected miscellaneous petition, if any, is closed.

(D.K.K.J) & (P.D.B.J)
15.02.2024

mjs
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D.KRISHNAKUMAR, J.,
and
P.DHANABAL,J

(mjs)

Pre-delivery judgment in

O.S.A.Nos.149 of 2019 and 298 of 2019

15.02.2024