IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.12.2024

CORAM:

THE HON`BLE MR.JUSTICE A.A.NAKKIRAN

C.S. No. 112 of 2008

M/s.Surans Traders
Represented by its Partner K.K. Ramalingam,
24, Park Road,
Erode – 638 003. ....Plaintiff

..Vs..

ECGC Limited,
Southern Regional Office,
"Spencer Towers"
7th Floor, 770 A, Anna Salai,
Chennai – 600 002. ....Defendant

(Amended as per order dated 05.01.2021 in A.No.170 of 2021)

Prayer: Plaint filed under Order VII Rule 1 and Order XXXIII Rules 1 & 2 of C.P.C. read with Order IV Rule 1 of OS Rules praying to pass a Judgment and decree against the Defendant:

(i) To sue as an indigent person,

(ii) For directing the defendant to pay for a sum of Rs. 1,99,19,125.88/- together with interests @24% p.a. on Rs.1,59,47,945.73/- from the date of plaint till the date of payment;

(iii) For the cost of the suit and,

(iv) To pass such further or other orders

For Plaintiff	: Mr. K.C.Ramamurthy
For Defendant	: Mr. Krishnasrinivasan Senior Advocate for Mr. Ramasubramaniam Associates

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JUDGMENT

This Civil Suit is filed for the relief as stated in the prayer.

2. The case of the Plaintiff, as set out, in the plaint is as follows:-

(i)The plaintiff is a partnership firm consisting of K.K.Ramalingam, his wife Smt.R.Selvi, and his two sons R.Sukumar and R.Anand as its partners. One of its partners K.K.Ramalingam was carrying on business of manufacturing and sale of various textile goods. They were doing business in the names of several concerns. They have earned good reputation for their best quality and prompt supply and delivery to customers. Apart from the local sales, they were also exporting goods to various countries including Sri Lanka and Italy. The group concerns were doing good business which can be seen from the figures given below:

S. No.	Name of the Concern	01.04.2001 to 13.9.2001	01.04.2000 to 31.03.2001	01.04.1999 to 31.03.2000
1.	M/s.K.K.Ramalingam & Co	Rs.1,38,10,068/-	Rs.4,90,03,388/-	Rs.4,79,63,604/-
2.	M/s.Surans Traders	Rs.1,44,13,093/- (5 Months)	Rs.5,34,02,043/-	Rs.16,59,045/- (from 01.03.2000 to 31.03.2000)
3.	R.Sukumar Tex Corporation	Rs.1,44,50,148/-	Rs.2,59,58,415/-	Rs.2,66,25,721/-
4.	M/s.Anand Tex Corporation	Rs.1,29,85,319/-	Rs.2,80,12,861/-	Rs.2,47,35,774/-
5.	M/s.Arul Tex	Rs.1,46,42,667/-	Rs.2,74,71,568/-	Rs.2,52,97,220/-

ii)From the beginning of the year 2000, they were receiving several orders, due to the quality of their goods and timely supply of materials as per the orders placed by the buyers in Sri Lanka, They were doing exports in the name of their concern M/s.K.K. Ramalingam & Co and it was taking Risk Polices from the Defendant for the exports made by them. As far as the Plaintiff was concerned, at their request, initially, the Defendant had issued the Shipments Comprehensive Risk Policy/Small Exporters' Policy No.SCR

9900360 for the period 22.03.2000 to 31.03.2002 fixing the liability of the Defendant at Rs.50,00,000/-. Subsequently, it was periodically increased upto a total liability for Rs.2,00,00,000/-on 16.08.2001 at request of the plaintiff on its application.

iii). Apart from the comprehensive policy referred above, as stipulated in the said policy of insurance, the Plaintiff sought for a suitable credit limit for each of the exporter which was accordingly done by the Defendant. Depending upon the volume of exports made, the credit limit of each of the buyer was periodically evaluated and the specific policy for each buyer fixing the credit limit was being issued by the Defendant. Apart from the buyers mentioned above, they were exporting goods to some 6 other buyers also and were paying premia for the same to the Defendant. In the regular course of business after receiving specific orders from the buyers in Sri Lanka, the Plaintiff supplied them the goods ordered for. In respect of the exports made to several buyers, 5 buyers did not make payments for some of the exports made to them. They are (i) M/s. S.M.Textiles, (ii) M/s. Top Selections, (iii) M/s. Market Makers Pvt.Ltd., (iv) M/s. Deluxe Traders, (v) M/s. Cloth Centre.

iv)That supplies were made to the aforesaid 5 buyers, after receipt of specific orders from them. The terms of payment for the exports made to the above buyers, except M/s.Top Selections were: "Payment after acceptance of documents but within 60 days from the date of shipment". In the case of M/s.Top Selections "the payment was to be made against the documents on arrival of the Steamer". The documents were sent to the respective banks of the buyers as per their instructions. Though these buyers made payment for several purchases made, for certain sales they failed and neglected to pay the amounts due. After making several attempts, the Plaintiff preferred a claim with the Defendant under the said policy of Insurance for non-receipt of the sale proceeds. The Plaintiff furnished all the documents asked for by the Defendant was to pay amount due under the policy on receipt of the claim from the Plaintiff, they took their own time for evaluating the claim. After a long delay the Defendant repudiated their liability under the said policy of insurance in respect of the exports made to the said 5 parties. The details of the earlier exports made, the bills for which payment is due, the efforts taken by the Plaintiff for realizing the monies from these buyers are given below:

(I) M/s. S.M.Textiles, Sri Lanka:-

(i) The above party during the period 23.08.2000 to 08.08.2001 purchased goods under 17 bills totaling Rs.27,30,436.37 which was duly paid by them and failed to make payment in respect of 7 exports made during the period 08.05.2001 to 10.08.2001 totalling to Rs.66,65,672/-. Further, the above claim for non-receipt of the payment was lodged with the Defendant on 28.09.2002. The claim was rejected by the Defendant on 11.07.2003.

(ii) M/s. Top Selections, Sri Lanka

The above party during the period 29.03.2000 to 28.08.2000 purchased goods under 10 bills totaling Rs.29,91,864/- which was duly paid by them and failed to make payment in respect of 9 exports made during the period 06.12.2000 to 04.01.2001 totalling Rs.47,80,063.48. Further, the above claim for non-receipt of the payment was lodged with the Defendant on 20.01.2003. The claim was rejected on 02.04.2003.

(iii) M/s. Market Makers Pvt. Ltd, Sri Lanka

The above party failed to make payment in respect of 5 exports made during the period 27.04.2001 to 18.07.2001 totalling Rs.31,26,335.25. The above claim for non-receipt of the payment was lodged with the Defendant on 28.09.2002. The claim was rejected on 11.07.2003.

(iv) M/s. Deluxe Traders, Sri Lanka:

The party during the period 31.08.2000 to 11.07.2001 purchased goods under 11 bills totaling Rs.54,06,828/- which was duly paid by them. and failed to make payment in respect of export made on 21.02.2002 for Rs. 11,03,375/-. The above claim for non-receipt of the payment was lodged with the Defendant on 01.10.2002. The claim was rejected on 11.07.2003.

(v) M/s. Cloth Centre, Sri Lanka

The above party during the period 10.10.2000 to 15.03.2001 purchased goods under 7 bills totaling Rs. 18,79,632.61 which was duly paid by them and ailed to make payment in respect of export made on 20.03.2001 for Rs.2,72,500/-. The above claim for non-receipt of the payment was lodged with the Defendant on 01.10.2002. The claim was rejected on 02.04.2003.

(iv). All the exports were made to the respective parties as per the specific orders placed by them. All the documents for each transaction were sent to the respective banks of the said parties and except for one or two instances these parties took delivery of the goods but failed to make the payment as agreed. The Defendant repudiated their liability on the following grounds:

(i) that submission of declaration and payment of premium was made after due date/ after occurrence of default.

(ii) that Shipments were made prior to effective date of credit limit well before the grace period of 15 days.

(iii) that when shipments were made there were overdues from the party as on the date of shipments.

(iv) that claim was preferred after the prescribed limit of 2 years.

(v) that default was reported later than the prescribed date.

(vi) that order copy and original un-paid B/E were not submitted

(vii) that 4.85% of the shipment value has not been declared as per the export turnover statement.

(viii) that noting and protesting was not done

(ix) that no effective steps were taken to recover the dues.

v)The repudiation of the claim by the Defendant on the above grounds is illegal and there is no justification for the same as explained below:

(i) Submission of Declaration: -

Periodical declarations of shipments were submitted every month for the exports made as required under the Deed of Policy.

ii) Payment of Premium:-

Premia were paid before the due date. It is relevant to note that the comprehensive policy was valid from 22.03.2000 to 31.03.2002 and the premium for each export was paid before the due date. Further, for the relevant year the Plaintiff had paid about Rs.6,56,000/- as premia to the Defendant.

(iii) Shipments were made prior to grant of credit limit:-

They have been exporting goods to the above said 5 parties from the beginning of the year 2000. The Defendant also issued individual credit limit policy to the above said 5 parties from the start of exports. Depending upon the volume of sale, the credit limit was being periodically evaluated and fresh policy was issued. Therefore the plea that the shipments were made prior to the issue of effective date of credit limit is illegal and in any event technical and having regard to the business being done with these parties from the beginning ought to have been overlooked.

(iv) Payment was overdue from the party at the time of shipment:-

As mentioned above the exports for which the default was committed was not a stray transaction. These buyers have been purchasing from the Plaintiff from the beginning of the year 2000 and therefore there could have been overlaps between the payments made. The Plaintiff further submits that as a businessman, as and when orders were received they were bound to make exports without insisting upon the previous payments as otherwise the party would not have been to do business with the Plaintiff.

(v) Claim was preferred after the prescribed limit of 2 years:-

The clause in the policy which stipulates that the claim must be preferred within 2 years is illegal and cannot be given effect to. As per Section 28 of the Contract Act "Every Agreement which extinguishes the rights of any party thereto or discharges any party thereto from any liability under or in respect of any contract on the expiry of a specific period so as to restrict any party from enforcing his rights it void to that extent".

(vi) Late report of default:-

Soon after the due date when the payments were not made by the parties, they were following up the matter with the respective parties and pressing them for payment. They also complained to the High Commission of India in Colombo who in turn called upon the said buyers to make the payment to the Plaintiff without fail. The Plaintiff also sent notice through their Counsel threatening with legal action if payment was not made. The Plaintiff was under the bone fide impression that their efforts would fructify and the parties would make the payment for the goods received by them. However, only when it had became clear that these parties have deliberately failed and neglected to pay the amounts, the Plaintiff informed the Defendant and duly filed the declaration under Form No.205 for the defaults made.

(vii) Submission of original un-paid B/E:-

The Plaintiff could not submit them as they were with the concerned Banks.

(viii) Export turnover:-

Declaration was duly made.

(ix) Noting and protesting not done:-

For noting and protesting the documents, they were informed that they would have to incur expenses of about US $750 per document. This expense was very high and prohibitive. Hence the Plaintiff immediately complained to the High Commission of India. The Commission wrote to the parties asking them to settle the dues to the Plaintiff. The plaintiff also sent legal notices to the parties. The Plaintiff therefore submits that the Defendant is not justified in raising this technical ground for repudiating their claim.

(x) No effective steps taken to recover the dues:-

The Plaintiff states that as mentioned above apart from following up the matter with the parties personally and through several letters, they made complaints to the High Commission of India who in turn made demands on the parties and has been pressurizing them to settle the dues. The Plaintiff had also sent legal notices to the parties through their Counsel H.M.Siddeek, Advocate, Colombo 6. They also contacted a Recovery Agent, who was approved by the Defendant themselves viz., Total Credit Management Services Lanka Pvt. Ltd., Colombo 3 to take steps to recover the dues from these parties. The Plaintiff even offered them a percentage of the amount recovered as fees payable to the said Recovery Agent.

vi)Therefore, the repudiation of their claim by the Defendant is illegal and unjustified. The rejection is merely on superficial and technical grounds and cannot be justified. The Defendant is bound to pay 90% of the value of shipment in the event of non-payment by the buyer within 4 months from the date of shipment. The Defendant ought to have made the payment at least immediately on a claim being made by the Plaintiff especially when the said non-payment was not due to any fault of the Plaintiff. The Defendant ought to have settled the claim, as the Plaintiff failed in all its sincere efforts to recover the amounts from the said buyers. The Preamble of the Policy of Insurance makes it abundantly clear that the very purpose for which the policy was taken by the Plaintiff and given by the Defendant was to cover the risk of non- payment by a foreign buyer. This is the sole object of the formation of the Defendant by the Government of India so that the business of exporters is not crippled and closed down due to instances of non-payment by the foreign buyers. As can be seen from the records filed along with the plaint, the Plaintiff made exports worth several crores of Rupees to several buyers in Sri Lanka. Even the 5 years who committed default were regular buyers, honoured the bills worth several crores for the supplies made earlier. The Defendant ought to have taken into consideration all these facts and upheld the claim of the Plaintiff and made the payment to them. Even the request made for release of interim payment till final adjudication by the Plaintiff did not evoke any response from the Defendant. This has resulted in over Rs.1.5 crores of money being held up. Due to lack of the funds, the Plaintiff could not buy raw materials and export goods to other buyers.

vii)In the regular course, the Defendant ought to have settled the claim within 4 months from the due date of respective bill in the event of non-payment by the buyer or within a month of filing the claim. Due to the illegal repudiation by the Defendant their entire business had to be closed down as the Plaintiff did not have any amount to start the business. The Plaintiff has reduced to a stage where the above suit is filed as an indigent person. Although they own several immovable properties worth over Rs.2,00,00,000/-, they do not have means to pay the necessary Court Fee on the Plaint. The Defendant is therefore liable to pay interest from a month of respective claim @24% p.a. on the claim amount. Thus, the Defendant is due and liable to pay a total sum of Rs. 1,99, 19, 125.88 including interest @24% p.a since it ss regular commercial transaction.

viii)Due to the illegal repudiation by the Defendant, they have been deprived of the amounts legitimately due to them. The Plaintiff and the sister concerns were unable to do any production and sale. They had no liquid cash to purchase raw materials and do business. They could not raise any loan on the immovable properties owned by them as all the properties were given as collateral security for the credit facilities availed by them from Canara Bank, Erode Branch and Federal Bank Limited, Erode Branch. Had the Defendant settled the Plaintiff's and its sister concerns' claims within the reasonable time, they not only would have regularized accounts with Canara Bank and Federal Bank Limited, but would have started business. Further, as the Defendant had not settled the claim within a reasonable time, the Plaintiff and its sister concerns could not pay the amounts due by them to their suppliers and other parties. In view of the default committed by the Plaintiff and the sister concerns in not regularizing the account, the Canara

Bank and the Federal Bank Limited have filed various cases before the DRT, Coimbatore. In view of non-receipt of the amount from the Defendant, the Plaintiff and its sister concerns could not honour several post-dated cheques given by them to their suppliers. This resulted in these creditors filing criminal proceedings against them under Sec. 138 of the Negotiable Instruments Act. Thus the plaintiff prays the relief as sought for in the suit.

3.The case of the Defendant, in a nutshell, as set out in the written statement, is as follows:-

(i)The Defendant is a company wholly owned by the Government of India, functioning under the administrative control of the Department of Commerce, Ministry of Commerce & Industry. The Defendant endeavours to support and strengthen the export endeavours of Indian entrepreneurs by providing a range of credit risk insurance policies to cover them against the risk of loss involved in export of goods on credit terms and to their bankers against credit risks involved in advancing funds to exporters and thus facilitating easy availability of funds on liberal terms to exporters for financing exports. One of the most popular schemes of the

Defendant company for exporters is the Shipments (Comprehensive Risks) Policy, generally referred to as 'standard policy' for protection against payment risks involved in export of goods on short-term credit terms.

(ii) The credit protection available under Standard Policies inter alia in respect of commercial risks are against losses that might arise from protracted default by the buyer and / or insolvency of the buyer of on account of failure or refusal by the buyer to accept the goods shipped political risks insured against include loss arising from transfer delay (of Funds), war, civil war, insurrection, diversion of voyage, etc. The risks, insured under the policy are always subject to the provisos, exclusions and limitations as also to the conditions and warranties of the policy.

iii) Shipment Comprehensive Risks (SCR) Policy No. 9900360 was issued by the Defendant to the Plaintiff on 22-03-2000 to cover all the shipments to be made during the Policy Period i.e. 22.03.2000 to 31.03.2002. The Policy was initially issued with Maximum Liability of Rs 50 Lakhs which was enhanced to Rs 1.00 Cr on 05.09.2000 and further enhanced to Rs 2.00 Cr on 16.08.2001.

iv) In contracts of commercial insurance as in this case, strict compliance with the terms and conditions of the Insurance Policy is final, binding and mandatory on the both the parties. The policy document is a contract and it has to be read and acted upon in words and spirit strictly.

v)The Relevant terms and conditions of the Policy are summarized/extracted herein to illustrate the various breaches on the part of the Plaintiff.

a) The benefits under the Policy do not accrue to the exporter unless he complies with the terms arid conditions of the policy throughout the policy period [Policy Covering letter dated 22.03.2000].

b) The exporter must obtain the prior approval of the Insurer for suitable credit limits in respect of each buyer prior to shipments. In the absence of such approval, no claims arising from any commercial risks will be entertained even if premium has been paid [Policy Confirmation letter and Clause 21 of Policy].

c) The exporter must disclose all shipments made during the policy period on a monthly basis. Declaration of shipments for each calendar month has to be submitted by the 15th day of the following month [Policy Confirmation letter and Clause 8(a) and 19 of Policy].

d) On learning of non-payment of any bill, the exporter must [Policy Covering letter]:

i.)Notify the insurer of default by way of filing statement of vib PHOIS overdue payments.

ii.) Take steps to prevent/minimize the loss including such action as may be recommended by the Insurer.

iii.)Get the bill noted and protested for non-payment.

iv.)Desist from making any further shipment to the buyer until he has made the payment for the bill in default.

e. The Insurer will not be liable for any loss due to failure of the buyer to pay for the goods if the latter raises any claims on breach of contract by the exporter e.g.: quality. Such loss will be covered only if the Insurermagrees in writing to the contrary and the insured has obtained a judgment against the relevant buyer in the country of the buyer [Proviso (d) of Policy].

f. The Insurer will not be liable for any loss if the claim is made beyond two years from the due date of shipment [Proviso (g) of Policy]daily

g. The Insured's proposal and the declaration form part of the policy and if any of the statements in these are incorrect in any respect, the policy shall be void but the Corporation may retain any premium that has been paid [Clause 1 of Policy].

h. The policy is given on the perpetual condition that the Insured has disclosed and will disclose all facts in any way affecting the risks insured [Clause 2 of Policy].

i. The Insured shall use reasonable and usual care, skill and forethought and take all practicable measures, including any measures which may be required by the Corporation, [including if required the institution of legal proceedings) to prevent loss [Clause 7 of Policy].

j. The Insured shall notify without delay the occurrence of any event likely to cause loss within 30 days from becoming aware of such event [Clause 7 of Policy].

k. The Insured shall deliver, on or before the 15th day of every calendar month, a declaration in the form prescribed by the Corporation of all payments which remained unpaid for more than 30 days from due date of payment till the end of the previous month [Clause 8(b) of Policy].

1. The Insured shall furnish the corporation promptly with any

further information that the Corporation may from time to time require [Clause 8(b) of Policy].

m. The Insured shall pay the applicable premium, calculated according to the agreed schedule, while submitting the relevant declaration of shipments [Clause 10 of Policy].

n. The maximum percentage of loss which the insurer is liable to pay is 90% [Clause 13 of Policy]. 2

o. Admission of claims is subject to the claims being supported by evidence and verification of loss [Clause 15 of Policy].

p. The due performance and observance of all the above terms and conditions are a condition precedent to any liability of the Insurer [Clause 28 of Policy].

vi) The reasons for rejection of all the above mentioned claims were:

a) Submission of declaration and payment of premium after due date / after occurrence of default: - Plaintiff has only stated that he has made periodical declaration of shipment, whereas a declaration of all shipment made during a month, by 15th of subsequent month was mandatory for the plaintiff as per clause 8 (a) of the Policy issued to him. Payment of premium for most of the shipments under claim was delayed beyond due date is a matter of record. Plaintiff has violated clause 10 of the Policy. Premium was required to be paid by 15th day of the subsequent month as per policy.

b) Some Shipments were made prior to effective date of credit limit on the buyer: That the shipments were made prior to approved CL on the buyer is a matter of record.

c) Further shipments were made to the buyer when earlier shipment(s) were already overdue from the buyer. 305 26 apnio99

d) Some claims were lodged after the prescribed time limit of two years.

e) Default / overdue declaration submitted with delay.

f) Order copy and unpaid bills of exchange not submitted.

g) Non declaration of shipments other than under claims up to 4.85%. 21/19m

h) Noting and protesting not done.

i) No effective steps taken for recovery.

j) Buyers had refused payment on quality or breach related issues. No enforceable judgment against buyers obtained by insured Plaintiff.

vii)Non compliance with the obligations described above dis-entitled the Plaintiff to benefits under the policy. Non-compliance with terms of policy is not condonable. These insurance claims were repudiated by the Corporation due to non compliance of basic terms and conditions read with clause 29 of the insurance policy taken by the Plaintiff from the defendant Corporation. The reasons for repudiation of insurance claims have been communicated to the Plaintiff by the Corporation. It is pertinent to note here that the suit filed by the Plaintiff is completely devoid of merits as no proper and sensible reasons have been brought out by the Plaintiff as to why their claims should be honoured by the Defendant in the face of glaring breaches and deficiencies on their part. The repudiation of claims is not illegal and is based on valid and reasonable grounds with documentary evidence to support the same.

viii) The plaintiff has made various misleading averments regarding the terms and conditions of the Policy and the Plaintiff's failure to comply with the same. Each and every Claim suffers fatally from chronic defaults and contravention of the strict terms of the Policy. The Defendant is not in breach of the terms of the policy and has always acted in strict accordance with the terms thereof. The terms and conditions of the Policy are standard stipulations and are strictly in accordance with law, custom, trade practice and insurance conventions. Strict conformity with the said terms by the Plaintiff is a condition precedent to availing the benefits of insurance under the Policy. It is well settled that the Insurer is bound by the terms of the Policy and cannot go beyond the said terms. Applying the same to the case on hand, it can be seen that the claims made by the Plaintiff are devoid of any merits whatsoever. Thus, he prays to dismiss the suit.

4.On the pleadings of the parties, the following issues were framed in the suit:-

1. Whether the shipments made prior effective date of credit limit ?

2. Whether the clause stipulating time limit of 2 years for *preparing the claim is void and illegal, as per Sec. 28 of the Contract Act ?*

3. Whether the default was represented later than the prescribed date ?

4. Whether the Defendant was justified in repudiating the claim for non-furnishing of unpaid B/E ?

5. Whether the Defendant was justified in repudiating the claim on the ground that noting and protesting of the documents were not made inspite of the reasons given by the Plaintiff ?

6. Whether the Plaintiff failed to take effective steps to recover the dues ?

7. Whether the Plaintiff has complied with the terms and conditions of Shipment Comprehensive Risks (SCR) Policy No.9900360 in relation Policy? to his claims under the said policy?

8. Whether the Defendant is justified in rejecting the *claims of the Plaintiff ?*

9. To what relief the parties are entitled to?

5. To substantiate the respective contentions, P.W.1 was examined and Ex.P1 to Ex.P37 were marked on the side of the plaintiff. D.W.1 was examined and Ex.D1 to Ex.D28 were marked on the side of the defendants.

6. Heard both sides and perused the materials available on record.

Issues: 1 to 3:

7. The learned counsel for the plaintiff submits that the Defendant issued Shipments Comprehensive Risk Policy/ Small Exporter's Policy No.SCR 9900360 dated 22.03.2000 for the period 22.03.2000 to 31.03.2002, (Ex P1 and Ex D2). Initially the limit of liability was fixed at Rs.50,00,000/-. Subsequently, the liability was increased to Rs.1,00,00,000/- and later to Rs.2,00,00,000/-.

8.It has been further submitted that the goods were supplied to the 5 buyers on receipt of specific Orders from them. The terms of payment for 4 buyers were: "payment after acceptance of document but within 60 days from the date of shipment". In the case of Top Selections" the payment was to be made against the documents on arrival of the steamer." The documents were sent to the respective Banks of the buyers as per their instructions.

9. The learned counsel for the plaintiff further submits that the comprehensive policy covered all 68 exports made. The premium for each export was paid in the regular course. The defendant rejected the claim for 23 exports stating that the shipments were made prior to the effective date of policy. As the policy itself is the comprehensive policy, the plea is untenable and in any event involves only certain exports.

10.It has been further submitted that prviso (g) of policy bond says “ provided always that the Corporation shall not be liable for any loss: unless the claim for the said loss is made by the insured to the Corporation in writing in the form prescribed by it within two years from the due date of payment" the said clause is illegal. Because Section 28 of the Indian Contract Act says that agreements on restraint of legal proceedings void.

11.The learned counsel for the plaintiff further submits that the 23 exports were made to the foreign buyers who failed to make payment to the 23 exports. All the 23 exports the premium were paid. Hence the plaintiff is entitled for insurance cover since the date of shipment and default by the foreign buyers are immaterial. The defendant ought to have paid the amount claimed by plaintiff without any demur and the rejection of 23 claims is superficial and on technical grounds.

12. It has been further submitted that pursuant to specific orders received from 5 Srilankan buyers:1.SM Textiles, 2.Top Selection, 3.Market Makers, 4.Deluxe Traders, 5.Cloth Centre, the plaintiff supplied the goods during the period 2002. There were total 68 shipments to the said 5 buyers payments were received for 45 shipments and they failed to pay balance 23 shipments. For all the 23 shipments the plaintiff submitted claims for the 23 claims, the defendant being the insurer rejected for all the 23 claims. One of

the reasons for the rejection of the claim is that the original bills of exchange were not submitted. In this regard, the plaintiffs made a specific plea that all the shipments have been made through the bank. Hence the originals are not required for the claim.

13. It has been further submitted that noting and protesting is required only when the exporter directly deal with the foreign buyer for all 23 exports as the exports were negotiated through the bank noting and protesting was not registered. The purpose of noting and protesting only to maintain recourse against the buyer. In the present case there is a proof of non-payment as buyer accepted goods and undertake to pay the amount on due dates.

14.The learned counsel for the plaintiff further submits that upon the cross examination of DW1 that in respect of all the exports one of reasons for rejecting the claims was that no recovery action was taken as stipulated. Exporter has not taken appropriate recovery action against the buyer. This clause is to emphasize that exporter should pursue recovery action on the buyer even after payment of claim and should not stop recovery proceedings against the buyer. This can be read with clause 7 of policy bond. Exporter was instructed vide letter dated 27.08.2001-exhibit D22 about suitable recovery action. Hence claim was not considered due to exporter not taking suitable measures of recovery is untenable.

15. The learned counsel for the plaintiff further submits that the defendant is not a profit making Enterprise. It is the Insurance Company established by the Government of India to provide succor to the Indian Exporters, whose payments are not made by the foreign buyers. The defendant by rejecting all the 23 claims made by the plaintiff on technical grounds has defeated the very purpose for which it has been established. The plaintiff neither suppressed any material facts nor made any false statements. There were 23 exports were made. The foreign buyers failed to make the payments for the said 23 exports. The insurance premium for the 23 exports were paid. In the regular course the defendant ought to have settled the claims within 4 months. In support of his argument, he is relying upon the judgement of Hon'ble Supreme Court of India in the case of (i) "*Haris*

Marine Products vs Export Credit Guarantee Commission", (ii) "Peacock Plywood Ltd., vs Oriental (2021) 7 SCC 151 Para 37 to 42" As per the ratio laid down in the above case the plaintiff submitted that the reasons of rejection of the claim by the defendant is not justifiable. Thus, the Plaintiff prays the relief as prayed in the suit.

16. The learned counsel for Defendant submits that in respect of two buyers viz. Top Selections and Cloth Centre, the plaintiff put the claim for the shipments made prior to effective date of credit limit. On the date of application for credit limit the dues to the above said buyers were outstanding. On 36.06.2000, the credit limit was Rs.5,00,000/-, on 11.08.2000 the same was enhanced to Rs.30,00,000/- . The enhanced credit limit was applicable in respect of shipments made on or after 01.08.2000 with condition that there cannot be any overdue payments pending on the date of approval. In this case, the shipment was made on 31.03.2000. Further, as per policy, the approval of credit limit is subject to the condition that the buyer has not already dihounoured any bills either by acceptance or by non-payment. In respect of buyer Cloth Centre, as per Ex.D.9, the

defendant approved a credit limit of Rs.20.00 lakhs on 19.06.2001. As per Ex.P35 the date of shipment is 20.03.2001 which is prior to the effective date of credit limit. That the plaintiff failed to adhere to the clause 3 (i) of Ex.D2, policy letter in respect of the both the buyers.

17. It has been further submitted that the clause (g) requires that the insured submit a claim for loss to the Insurer within a period of two years from the due date. The policy of the insurance cannot be stated as an agreement in restraint of legal proceedings. The restriction is limited to the claims made to the defendant after a period two years. In this case the claim of the plaintiff was rejected on various grounds as mandated in the policy's terms and conditions.

18. The learned counsel for Defendant further submits that Clause 8 (b) of policy- the declaration with regard to overdue payments to be made within the time stipulated therein. In respect of the buyer SM Textiles, the payment for the shipment for the months of May to August

2001 found overdue. But, the declaration as per clause 8 (b) of policy have been submitted on 04.01.2002 and on 26.08.2002. Thus, the overdue declaration have been made beyond the period as per the policy. The plaintiff placed the overdue declaration in MRC. There is a delay about 10 to 12 months. In the case of Deluxe Traders the shipment was made on 21.12.2002, but, the declaration was submitted on 27.06.2002. In respect of the buyer Cloth Shipment was made on 23.01.2001 the declaration was submitted on 04.01.2002. Further, the original bills of exchange were not filed. By relying upon clause 3 (III A) it is one of the condition precedent for the claims.

19.The learned counsel for defendant further submits that the bills were not noted and protested for foreign buyers. Despite several opportunities, the plaintiff had not submitted the registered documents except one buyer in the absence of any documents as per policy conditions the defendant is not in a position to honor the same. Further, the obligation of the insured clearly set out in class 7 (a). The defendant on receipt of claim forms the defendant made independent investigations by addressing letters to the Indian High Commission, Srilanka. The reply was that the plaintiff supplied inferior quality materials. Hence, there were disputes with regard to quality. Shipment not complied with the purchase orders, different material supply etc. for which no effective steps were taken by the plaintiff.

20. It has been further submitted that the several specific terms and conditions prescribed in the SCR policy are not complied with by the plaintiff. The claim was not rejected only on technical grounds. It is are all condition precedents to honour the claims made under the policy. The reasons for rejection are (i) credit limit not available on the date of shipment, (ii)Declaration of shipments and payment premium, (iii) No noting and protesting done (iv)No recover action initiated (v)Over due not declared on time, excluded liability of the Insurer, (iv)Delay in remittance of premium (vii)No authenticated documents provided to establish the loss and reason for not realisation of bills, (viii)Non declaration of shipments and

non-remittance of premium excludes the liability of insurer. Further, the burden of proof is on the plaintiff that the rejection of the claim was illegal and the plaintiff has complied with the all the terms and conditions of the Policy. All the rejected grounds are all too technical. The plaintiff failed to establish how he is entitled for the reliefs. The plaintiff had taken a risk policy with the defendant which reimburse or compensate the loss to the foreign buyers. For the said reimbursement the plaintiff ought to have fulfil the conditions of the agreement. On such fulfilment the claim shall be reimbursed. The conditions of the contract shall not be onerous and it must be bilateral. In support of his argument, he relied upon the following judgements *(i) 1991 (1) SCC 357, (ii)2000 (2) SCC 734 (iii) 2015 (9) SCC 414 (iv) 2014 (1) SCC 686* and Judgement in *O.S.A.No.17 of 2008* on the file of the High Court, Madras. Hence, he seeks to dismiss the suit with costs.

21.On perusal of the records, it is seen that initially the policy note and Shipments Comprehensive Risk Policy No.SCR 9900360 dated 22.03.2000 for the period 22.03.2000 to 31.03.2002, vide Ex P1 and Ex D2 is covered for Rs.50,00,000/-. Thereafter, the liability was increased to Rs.1,00,00,000/- on 05.09.2000 and later to Rs.2,00,00,000/- on 16.08.2001.

As per policy, the approval of credit limit is subject to the condition that the buyer has not already dihounoured any bills either by acceptance or by non-payment. As per Ex.P35 the date of shipment is 04.01.2001 and 20.03.2001 which is prior to the effective date of credit limit ie.16.08.2001. That the plaintiff failed to adhere to the clause 3 (i) of Ex.D2. In respect of the policy of insurance, this court is of the view that it is the duty of the insured to comply with conditions of the policy. Though the plaintiff claimed that the policy itself is the comprehensive risk policy covered all 68 exports, the credit limit is enhanced from time to time and the premiums were paid for each exports, the plaintiff has failed to comply the clause 3 (i) of Ex.D2 since the enhanced credit limit is effect from 16.08.2001 while the shipment made prior to the effective date of credit limit. Hence, the issue No.1 is answered accordingly.

22. As per the clause (g), a claim for loss to the Insurer within a period of two years from the due date. The restriction is limited to the

claims made to the defendant after a period two years. In this case the claim of the plaintiff was rejected on various grounds as mandated in the policy's terms and conditions. Further, there is no agreement to restraint the legal proceedings and the agreement/condition is only in respect of the claims. In view of the above, the Policy is between the plaintiff and the defendant where the condition made by the defendant as per the policy, the plaintiff should adhere and fulfill the terms and conditions of the policy and it cannot be termed to the Contract Act. Acccordingly, Issue No.2 is anwered.

23.As per Clause 8 (b) of policy vide Ex.D2 the declaration with regard to overdue payments to be made within the time stipulated therein. In respect of the buyer SM Textiles, the payment for the shipment for the months of May to August 2001 found overdue. But, the declaration as per clause 8 (b) of policy have been submitted on 04.01.2002 and

26.08.2002 vide Exhibit D11 series. Thus, the overdue declaration have been made beyond the period as per the policy. As the plaintiff has not made the declarations as per the clause 8 of the Policy and the shipment remained outstanding beyond its due date and the very concept of insurance law is that the utmost good faith must be observed by contracting parties and If certain discrepencies made right by giving liberal interpretation to the terms of insurance policy it will lead to allowing the false claims, the delay in making the claim is long. Hence, it is seen that the plaintiff made default in representing to the defendant later than the prescribed date. Accordingly, Issue No.3 is answered.

Issue No.4, 5, and 8:

24. On perusal of the terms of the Insurance Policy, it is the duty of the insured to comply with the terms and conditions stipulated in the policy of insurance. Moreover, it is a bilateral agreement and irrespective of the payment of premium, the conditions to the agreement must be complied. As mandated in the policy of insurance it is the duty of plaintiff to submit

the originals or to have got the authenticated copy of bills from the bank to the defendant. The defendant's demand of the original bills of exchange to avoid the false claims. Further, It is the duty of the insured to make a claim through the forms which are the vital documents to prove that the payment were not received from the buyer, they have defaulted and effective steps have been taken for the recovery. Therefore, it is seen that the plaintiff has not produced the original bills or Bank Statement showing the default amount to the defendant. Hence, the defendant justified in repudiating the claim of the plaintiff for non-furnishing of the unpaid bills. Accordingly, Issue No.4 is answered. The plaintiff has failed to adhere to the terms of agreement which is fatal and to establish how he is entitled for the reliefs. Moreover the plaintiff himself admit that the form noting and protesting is not required, as the plaintiff had taken a risk policy with the defendant which reimburse or compensate the loss to the foreign buyers, they ought to have fulfil the conditions of the agreement. The demand for the proof of shipments, declarations in time, coverage of the policy for the limited period, noting and protesting and effective steps for the recovery of dues are not complied by the plaintiff as per the terms and condions of the Insurance. Without any valid documents, the reasons alleged by the plaintiff is not considerable and rejected by the defendant as per Policy terms and conditions. Hence, it is seen the defendant justified in repudiating the claim on the ground that noting and protesting of the document were not made in spite of the reasons given by the plaintiff. Accordingly, Issue No.5 is answered. In view of the above, it is seen that the reasons for the claim made by the plaintiff is not as per the terms and conditions of the policy and the rejection made by the defendant as per the reasons are (i) credit limit not available on the date of shipment, (ii)Declaration of shipments and payment premium, (iii) No noting and protesting done (iv)No recover action initiated (v)Over due not declared on time, excluded liability of the Insurer, (iv)Delay in remittance of premium (vii)No authenticated documents provided to establish the loss and reason for not realisation of bills, (viii)Non declaration of shipments and non-remittance of premium excludes the liability of insurer. Hence, the rejection made by the defendant is valid and justified as per terms of the Policy. Accordingly, Issue No.8 is answered.

Issue Nos.6, 7 and 9:

25. As per the Policy the plaintiff has to take effective steps to set right the defects pointed of the policy that the insured shall or to litigate in the manner known to law. However, the plaintiff issued notices to the defaulters and also stated that the litigation expenses are very high, so the

plaintiff has not taken any steps to recover the due amount from the buyers. The policy stipulates effective steps and the same was not complied. Further, The plaintiff's transactions are commercial in nature and claims made by it are all depend upon the terms and conditions of the policy. Having signed the agreement of policy the plaintiff ought to have fulfil the conditions of the agreement. The plaintiff cannot act against the terms and conditions of the policy, the policy itself is risk policy covering all the risks it should be subject to payment of premium and other declarations. The plaintiff ought not to have given any room from the defaulters side to make complaint as against the shipments. The plaintiff ought to have taken steps which is effective in the manner known to law but, the plaintiff has not taken any effective steps to recover the over due amount from the buyers and also not complied with the terms and conditions of the shipment

Comprehensive Risks Policy to his claim under the said policy. Hence, the plaintiff is not entitled any other releif as prayed for. Accordingly the issue Nos.6,7 and 9 are answered.

26.In the result, this suit stands dismissed. No costs.

09.12.2024

Index:Yes/No
Web:Yes/No
Speaking/Non Speaking
Lbm

Witnesses examined on the side of the plaintiff and defendant:

K.K. Ramalingam (PW1)

Mr. Chakravarthi (DW1)

Exhibits produced on the side of the plaintiff:

S.No	Exhibits	Description of documents
1.	Ex P1	The shipments policy dated 22.03.2000 by the defendant to the plaintiff.

S.No	Exhibits	Description of documents
2.	Ex P2	The original letter of enhancement of limit dated 05.09.2000 by the defendant to the plaintiff.
3.	Ex P3	The original letter of enhancement of limit dated 16.08.2001 by the defendant to the plaintiff.
4.	Ex P4	The certified true copy of claim form dated 28.09.2002.
5.	Ex P5	The certified true copy of letter dated 28.03.2002 from the plaintiff to S.M. Textiles.
6.	Ex P6	The certified true copy of letter dated 30.03.2002 from the plaintiff to the High Commissioin of India
7.	Ex P7	The certified true copy of letter dated 12.08.2002 from the plaintiff to the Total Credit Management Service Lanka Pvt. Ltd. (Ex.PS to Ex.P7 are marked subject to the objection raised by the learned counsel for the defendant.)
8.	Ex P8	The copy of the E-mail message dated 18.04.2002 from Total Credit Management Services Lanka Pvt. Ltd to the plaintiff.
9.	Ex P9	The copy of Fax message dated 01.04.2002 from the plaintiff to the High Commission of India.
10	Ex P10	The original letter dated 11.07.2003 received by the plaintiff from the defendant.
11.	Ex P11	The original policy dated 11.08.2000 from the defendant to the plaintiff.
12.	Ex P12	The certified copy of the claim form dated 20.01.2003 from the plaintiff to the defendant.
13.	Ex P13	The xerox copy of letter dated 22.12.2001 from the Top selection to the plaintiff.
14.	Ex P14	The xerox copy of letter dated 26.12.2001 from the Top selection to the plaintiff. (Ex.P13 and

S.No	Exhibits	Description of documents
		Ex.P14 are marked subject to the objection raised by the learned counsel for the defendant.)
15.	Ex P15	The certified copy of letter dated 04.10.2001 from the plaintiff to SriLankan Port Customs.
16.	Ex P16	The certified copy of letter dated 15.06.2001 from Top selection to the plaintiff.
17.	Ex P17	(Series) (4 Nos) are the certified copy of the letters dated 07.04.2003 from the plaintiff to the defendant.
18.	Ex P18	The office copy of the legal notice dated 04.04.2003 from the plaintiff counsel to Top selection.
19.	Ex P19	The original letter dated 02.04.2003 from the defendant to the plaintiff.
20.	Ex P20	The original policy dated 02.07.2001 from the defendant to the plaintiff.
21.	Ex P21	The certified copy of claim form dated 28.09.2002 from the defendant to the plaintiff.
22.	Ex P22	(Series) (2 Nos) are the certified copy of letters dated 19.06.2002 from the High Commission of India to M/s Market Makers and SM Textiles.
23.	Ex P23	The certified copy of fax message dated 26.06.2002 from the plaintiff to the High Commission of India.
24.	Ex P24	The certified copy of letter dated 05.03.2002 from the plaintiff to the Market Makers.
25.	Ex P25	The certified copy of Fax message dated 28.03.2002 from the plaintiff to the Market Makers.
26.	Ex P26	(Series) (5 Nos) are the certified copy of notice

17.	Ex P17	(Series) (4 Nos) are the certified copy of the letters dated 07.04.2003 from the plaintiff to the defendant.
		dated 18.09.2002 sent by the plaintiff's counsel to the Market Makers.
27.	Ex P27	(All the certified copies are marked subject to the objection raised by the learned counsel for the defendant.) The certified copy of the letter dated 19.11.2002 from the defendant to the plaintiff. (Ex.P27 is marked subject to the objection raised by the learned counsel for the defendant.)
28.	Ex P28	The original letter dated 11.07.2003 from the defendant to the plaintiff.
29.	Ex P29	The original policy dated 18.06.2001 from the defendant to the plaintiff.
30.	Ex P30	The certified copy of the letter dated 05.12.2002 from the plaintiff to the defendant.
31.	Ex P31	The certified copy of the letter dated 02.01.2003 from the plaintiff's counsel to the defendant.
32.	Ex P32	The certified copy of the letter dated 11.04.2003 from the defendant to the plaintiff. (Ex.P30, Ex.P31 and Ex.P32 are marked subject to the objection raised by the learned counsel for the defendant.)
33.	Ex P33	The original letter dated 11.07.2003 from the defendant to the plaintiff.
34.	Ex P34	The original policy dated 19.06.2001 from the defendant to the plaintiff.

35.	Ex P35	The certified copy of claim form dated 01.10.2002 from the plaintiff to the defendant. (Ex.P35 is marked subject to the objection raised by the learned counsel for the defendant.)
36.	Ex P36	The original letter dated 01.04.2003 from High Commission of India to Cloth Centre.
37.	Ex P37	The original letter dated 02.04.2003 from the defendant to the plaintiff.

Exhibits produced on the side of the defendant:

S.No	Exhibits	Description of documents
1.	Ex D1	The authorization letter dated 06.09.2022.
2.	Ex D2	The original Policy Note and Shipments Comprehensive risk policy dated 22.03.2000.
3.	Ex D3	The photocopy of the monthly declaration of shipments dated 17.09.2001. (As per orders in A.No.4341 of 2022 photocopies are marked as secondary evidence.)
4.	Ex D4	The original credit limit approval for SM textiles.
5.	Ex D5	The original credit limit application dated 08.08.2001.
6.	Ex D6	The office copy of the letter sent to the Canara Bank dated 04.09.2001.
7.	Ex D7	The original credit limit approval for top selections.
8.	Ex D8	The original credit limit application dated 03.08.2001.
9.	Ex D9	The original credit limit approval for cloth center dated 19.06.2001.
10	Ex D10	The original claim form for deluxe traders dated 07.10.2002.

S.No	Exhibits	Description of documents
11.	Ex D11	(Series) are the original overdue monthly declaration for SM textiles dated 15.04.2002, 12.04.2002, 26.08.2002 and 04.01.2002.
12.	Ex D12	The original overdue monthly declaration for top selections dated 04.01.2002.
13.	Ex D13	(Series) are the original overdue declaration for deluxe traders dated 26.08.2002 and 15.04.2002.
14.	Ex D14	The office copy of the letter from the defendant to the plaintiff dated 11.04.2003.
15.	Ex D15	(Series) are the original letter from plaintiff to defendant dated 07.04.2003.
16.	Ex D16	The office copy of the letter dated 11.10.2002 from the defendant to the plaintiff with enclosures.
17.	Ex D17	The office copy of the letter from defendant to plaintiff dated 04.12.2002.
18.	Ex D18	The office copy of the letter from defendant to plaintiff dated 19.11.2002.
19.	Ex D19	(Series) are the office copy of the letter from the defendant to the plaintiff dated 04.01.2002.
20	Ex D20	(Series) are the office copy of the letter from the defendant to the plaintiff dated 17.04.2002.
21.	Ex D21	The office copy of the letter from the defendant to the plaintiff dated 27.06.2002.
22.	Ex D22	The office copy of the letter from the defendant to the plaintiff dated 27.08.2001.
23.	Ex D23	The office copy of the letter dated 01.04.2002 from the defendant to High Commission and original reply letter dated 24.04.2003 from High Commission to the defendant.

S.No	Exhibits	Description of documents
24.	Ex D24	The copy of the Email sent by the plaintiff to the defendant (The learned counsel for the plaintiff has represented that to mark the document subject to objection. The learned counsel for the defendant has replied that it was the email received from the buyer by the plaintiff and copy of the above said Email sent by the plaintiff to the defendant.)
25.	Ex D25	The photocopy of the letter from people Bank Colombo to Canara Bank dated 10.06.2002. (As per orders in A.No.4341 of 2022 photocopy is marked as secondary evidence.)
26.	Ex D26	The photocopy of the letter from Canara Bank Erode to Canara Bank Madurai dated 29.08.2002. (As per orders in A.No.4341 of 2022 photocopy is marked as secondary evidence.)
27.	Ex D27	The original letter from Oriental Insurance company to the defendant dated 30.04.2003.
28.	Ex D28	The original letter from H.M. Siddeek lawyer to the defendant dated 02.01.2003.

09.12.2024

A.A. NAKKIRAN, J,

Lbm

C.S. No. 112 of 2008

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