



O.S.A. (CAD).No.84 of 2021

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 27.11.2023

Delivered on: 29.01.2024

**CORAM:**

**THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR**

**AND**

**THE HONOURABLE MR.JUSTICE P.DHANABAL**

**O.S.A. (CAD).No.84 of 2021**

**and**

**C.M.P. No.13733 of 2021**

The Divisional Manager,  
M/s. United India Insurance Co. Ltd.,  
Divisional Office I . ... Appellant / Defendant

**Vs.**

M/s. Indian Potash Ltd., ... Respondent / Plaintiff

**PRAYER:** Original Side Appeal filed under Section 13(1) of Commercial Act praying to set aside the judgment and decree dated 27.01.2021 passed in C.S. No.629 of 2007 on the file of the Original Side of this Court.



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

For Respondent : Mr. K.V. Babu

### **JUDGMENT**

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

This Original Side Appeal has been filed as against the order passed in C.S. No.629 of 2007 dated 27.01.2021 on the file of the original side of this Court, wherein the respondent/plaintiff herein has filed a Suit as against the appellant/defendant and the same was decreed in favour of the respondent / plaintiff and as against the said judgment and decree, this appeal has been preferred by the appellant / defendant.

#### **2. The gist of the plaint averments is that:-**

The plaintiff entered into a contract with M/s. Arab Potash Co. Ltd., Amman, Jordan for the purchase of 7500 Mt. of Muriate of Potash valued at USD9,33,000. The said M/s. Arab Potash Co. Ltd., had chartered a vessel “M.V. Waferah” and the registered owner of the said vessel is M/s. Alfa Marine Universal Shipping and Internal Model Transport Company. The said vessel was expected to sail from Aqaba in Jordan and was expected to arrive at Indian Port on 23.01.2004. The defendant agreed to



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provide voyage insurance for the import of cargo from Aqaba to any of the authorized Indian Port by “M.V. Waferah” and by a letter dated 06.01.2004. The plaintiff also paid a premium of Rs.49,601/- by way of cheque dated 21.10.2004. After receipt of the said cheque, the defendant issued a marine cargo insurance policy bearing No.010100/21/03/80114 for the insurance coverage of Rs.4,23,76,860/-. The vessel sailed from the Port of Jordan on 19.01.2004 carrying 7500 Mt of MOP in bulk was proceeding to the Mumbai Port. However, on 04.02.2004, when the vessel was 800 miles away from the Port of Mumbai, it suffered a major engine trouble. The said incident was intimated to the plaintiff through M/s.Tradex India Corporation, the Indian Agent of M/s. Arab Potash Co. Ltd., by a message dated 06.02.2004.

2.1. On 10.02.2004, the plaintiff received a fax message from M/s. Tradex India Corporation about the declaration of general average by the owners of the vessel. The plaintiff intimated the same to the defendant through a letter dated 16.02.2004 that the owner of the vessel have declared the general average and had requested to intimate the further course of action that could be taken by the plaintiff. The defendant also agreed



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for general average claim vide letter dated 26.02.2004. In the meanwhile, the plaintiff was also informed that the vessel drifted into the port of Salalah in Oman. Further the defendant also informed the plaintiff that as per the duty of the insurance Clause ICC (C), the plaintiff should take quick immediate action and co-ordinate with the ship owners for delivery of the said Cargo through a letter dated 01.03.2004. Further, it was also intimated by the defendant that M/s. Richard Hog Linley Associates have been appointed as average adjuster in respect of the casualties. After survey of vessel, it was confirmed that the vessel was unable to proceed on voyage to Mumbai Port unless expensive repairs including heavy replacements involving heavy expenditure are carried out. In response to the plaintiff's letter dated 18.03.2004, the defendant had insisted that unless notice is given to underwriters for continuation of the cover on or before 60 days, the contract will be terminated and further also stated that the "held cover" provided for a sufficient premium which was available with the defendant and the plaintiff would also be reimbursed for any loss under the policy. Based on the letter dated 18.03.2004, the plaintiff has sought for extension of the insurance cover and had paid an additional premium of Rs.22,370/-, which was also accepted by the defendant without



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any demur and also unconditionally knowing the status of the Cargo insured.

2.2. Further the plaintiff engaged the service of M/s. Cargo Recovery Consultants, London and the Cargo was likely to be damaged irrevocably because of the onset of monsoon and the vessel was berthed in Salalah Port would be towed as a dead vessel in the Port of Mumbai before the onset of monsoon in order to save the cargo. A letter of Credit was also opened to the CRS, London and the said fact has also been conveyed to the defendant on 27.04.2004. The plaintiff by a letter dated 31.03.2004, had also put the defendant on notice with regard to the cost of unloading of cargo, loading it in surrogated vessel and forwarding the same to the Mumbai Port and the cost for the above said purpose is reimbursable under the insurance policy, which has been confirmed by the defendant herein. Pursuant to the agreement entered into with CRC, Londoan, the vessel was towed down from the port of Salalah to Mumbai and the entire cargo was discharged at Mumbai Port. The contractual value of the aforesaid process of towing the vessel from the port of Salalah to the port of Mumbai amounted to USD5,50,000 (Rs.2,31,00,000/- of Indian Rupee).



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2.3. In addition to that, since adequate infrastructure was not available in the berth and further more the supporting equipments on the vessel was not functioning, the CRC, London had to incur an additional expenditure to USD35,000 towards demurrage because of the delay in unloading the cargo. Thus, the plaintiff had made a claim of USD5,85,000. The defendant deliberately have repudiated the contract and have taken a stand that the voyage has been abandoned and the expenses incurred after abandonment is not admissible. But on the other hand, there was a declaration of general average by the owners of the vessel consequent to the ship suffering a major engine breakdown and was stranded off the coast of Oman.

2.4. The aforesaid contingency is clearly covered under Clause 1.2.1. of ICC(C). Further, only based on the repeated demand by the defendant, the plaintiff ensured quick delivery of the cargo. The plaintiff in order to protect the cargo, took step to move the cargo from the Port of Salalah without any delay and the same was also done only with the specific concurrence of the defendant. Further, the plaintiff has also extended the cover and paid additional premium amounting to Rs.22,370/-,



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which was also accepted by the defendant. The plaintiff issued a legal notice dated 18.01.2007, but the defendant after receipt of notice has not sent any reply. The defendant company negated the claim of the plaintiff by letter dated 26.10.2005. Therefore, the plaintiff has filed this Suit for the relief of recovery of money for a sum of USD5,85,000 (equivalent to Indian Rupee of 2,45,70,000/-).

3. **The brief averments of the written statement filed by the defendant are as follows:-**

At the outset, this defendant is not liable to make good the expenses said to have been incurred for towing the vessel M.V. Waferah from the port of Salalah, Oman to Mumbai. A proper understanding of the Institute Cargo Clauses (C) would establish that as per the terms and conditions of the policy of insurance availed by the plaintiff, the claim of the plaintiff is not payable and the plaintiff's claim will not be covered under Clause 1.2.1. Institute Cargo Clause (C). An agreement entered into between the plaintiff and Cargo Recovery Consultants, London (CRC) with knowledge and consent of the defendant is specifically denied. No amount is payable by the defendant to the plaintiff much less the suit amount. The defendant



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at no point of time, during the course of correspondence between the plaintiff and the defendant, admitted the liability of payment of claim. As there was no valid claim payable under the policy, there was no necessity to scrutinise the admissibility of the claim amount demanded by the plaintiff, allegedly paid to M/s. Cargo Recovery Consultants (CRC), London without any approval or consent by this defendant.

3.1. The averments that the defendant vide its letter dated 26.02.2004 have agreed for general average claim is specifically denied. It is the unseaworthiness of the vessel which resulted in the breakdown of one of the two engines. There was no operation of maritime peril resulting in the damage to the engine and consequently there was no sacrifice on account of any maritime peril which would warrant declaration of general average or general average contribution. The plaintiff and the owners of the vessel put to strict proof of operation of a peril capable of resulting in imminent danger to the vessel and the cargo and the fact of general average sacrifice, quantum of such sacrifice and the obligation to contribute to such a sacrifice by the cargo owner i.e., the plaintiffs.



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3.2. The defendant by their letter dated 01.03.2004 addressed to the plaintiff only highlighted the terms of the policy coverage and that any loss or damage arising out of delay is not covered by the policy. Even though the delay might have been caused by the insured peril. The letter dated 01.03.2004 is only to facilitate the plaintiff to protect their interest and the defendant would be pleased to render further assistance. The plaintiff mixing up the contents of this defendant's reply dated 18.03.2004 as though there is an obligation to make good the claim made by them. The letter of plaintiff dated 18.03.2004 should be read in continuation with their letter dated 03.03.2004, reply dated 04.03.2004 and the plaintiff's letters dated 05.03.2004 and 10.03.2004. The fact that the plaintiff obtained extension of cover on payment of additional premium is no admission of liability for payment of claim made by the plaintiff on a later date which is not payable as per terms and conditions of the policy. Based on the representations made by the plaintiff and at the request of the plaintiff, extension of cover was granted as undertaken in the terms and conditions of the policy and for the premium amount paid by the plaintiff. On the date when the extension was granted, the status of the cargo was reported to be safe and sound on board the vessel in question, in which



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cargo, the original transit commenced. Therefore there was no claim in respect of the cargo.

3.3. The whole correspondence was only with respect to the expenses to be incurred for transhipment or for towage pursuant to the inability of the vessel to complete the voyage on account of alleged failure of one of the engines. If it is on account of unseaworthiness, the plaintiff had to necessarily look upon the owners for all incidental claims or expenses, they suffered and seek indemnity under the policy of insurance, only for such of those claims which are covered under the policy. As on the date when they sought for extension of cover based on the letter dated 18.03.2004, there was no cargo claim, there was no claim for transhipment and there was no claim for towage. The defendant to get into touch with the average adjusters to work out a viable solution for safe delivery at Mumbai, which is not the business of this defendant. This defendant never took the responsibility or obligation of assisting the insured, or confirm their act in engaging any such recovery consultants. The plaintiff finalized the agreement with M/s.Cargo Recovery Consultants without the knowledge of the defendant prior to the proposed meeting and forwarded



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the tripartite agreement and called upon the defendant to indicate any changes to be made. On 26.04.2004, the plaintiff sought for further extension of cover to include the adventure of towing the vessel as a dead vessel from the Port of Salalah to any port at West Coast of India with the objective of rescuing the sound cargo and also forwarded their willingness to pay the additional premium to be paid to cover the risk contemplated during the period. Though execution of the agreement with Cargo Recovery Consultants, London took place on 28.04.2004, the terms were finalised and agreed to between the parties as early as on 19.04.2004. Therefore the defendant's participation in the proposed meeting on 27.04.2004 at New Delhi or concluding the agreement which ahead is itself proof of absence of any obligation on the part of this defendant.

3.4. The averment to the effect that the cost of forwarding, unloading, loading the cargo in a surrogated vessel are reimbursable under the insurance policy is denied. Neither the original claim of US\$5,50,000 nor the subsequent claim of US\$5,85,000 is payable by the defendant. The defendant reiterates that the expenses incurred after abandonment are not admissible. There cannot be abandonment of a cargo in as much as it



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could be done only by the plaintiff who were well aware of the fact that the subject matter was safe, sound, in good order and condition on board the vessel. Declaration of general average itself is a dispute in the absence of proof of operation of a maritime peril which necessitated general average sacrifices and declaration. The plaintiff has issued a legal notice dated 18.01.2007 and the same was suitably replied on 19.05.2007. The agreement between the plaintiff and the Cargo Recovery Consultants, London dated 28.04.2004 are completely in violation of Institute Cargo Clause (C), which is governing the contract of insurance. The Clause 13 of the agreement shows that the plaintiff giving a go by to the terms of the contract of insurance relieving themselves and the defendant herein from their liability, if any, for general average, salvage, detention special charges. Though in the instant case, the towage charges were not payable without prejudice to the legal rights, the defendants are constrained to refer to the conduct of the plaintiff to establish the fact that they have conducted themselves in a manner totally contrary to the terms and conditions thereby committing breach and rendering themselves dis-entitled for any relief under the policy. Therefore, the claim of the plaintiff is liable to be dismissed.



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5. Based on the above said pleadings and perusing the available records, the learned single Judge has framed the following issues:-

5.1. Whether the plaintiff's claim is payable and covered under Clause 1.2.1. Institute Cargo Clauses under the policy issued by the defendant?

5.2. Whether the vessel suffered damage during transit which led to unseaworthiness of the vessel and for declaring of General average?

5.3. Whether there was a maritime peril which lead to declaration of general average or general average contribution?

5.4. Whether the agreement between the plaintiff and a third party establish that the owner did not insist upon any general average claim and abandonment of their claim?

5.5. Whether the alleged survey conducted is valid?

5.6. Whether the plaintiff protected the right of recovery under the policy of insurance under Section 79 of Marine Insurance Act?

5.7. Whether the plaintiff is entitled to recover a sum of Rs.2,45,70,000/- (Rupees Two Crores Forty-five Lakhs and Seventy Thousand only) under the Marine Cargo Insurance Policy bearing No.010100/21/03/80114 together with interest?



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5.8. Whether the plaintiff is entitled to damages to the tune of Rs.10,00,000/- (Rupees Ten Lakhs only)?

5.9. To what other reliefs the plaintiff is entitled?

6. In order to prove the case, on the side of plaintiff, PW1 was examined and marked Ex.P.1 to Ex.P.20. On the side of defendant, DW1 was examined and marked Ex.D.1 and Ex.D.2 through PW1 and marked Ex.D.3 through DW1.

7. After analysing 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 and directed the defendant / appellant to pay a sum of Rs.2,45,70,000/- to the plaintiff/respondent together with interest @ 9% p.a. from the date of plaint till the date of decree and thereafter @ 6% p.a. till realisation of amount. As against the judgment and decree, the present appeal has been filed by the unsuccessful defendant.

8. The learned counsel appearing for the appellant / defendant



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would contend that the respondent / plaintiff approached the appellant / defendant for insurance for providing voyage insurance for the import of the cargo from Aqaba to Mumbai Port by “M.V.Waferah” and he also paid a premium of Rs.49,601/- and policy was also issued to that effect on 21.10.2004. Thereafter, the respondent / plaintiff informed the appellant / defendant about the General average due to engine trouble. Thereafter, the respondent / plaintiff alleged to have entered into an agreement with one M/s. Cargo Recovery Consultants, London (CRC) without any approval or consent of the appellant / defendant and the respondent / plaintiff claimed the amount based on the insurance cover policy under Clause 1.2.1. In fact, the Clause 1.2.1. of the policy is not applicable to this case and the appellant / defendant declined the claim of the respondent / plaintiff. Thereby, the respondent / plaintiff filed the Suit and the same was erroneously decreed.

8.1. The findings referred in the judgment are contrary to the Marine Insurance Contract and the insurance policy. The issues framed by the learned single Judge that whether the plaintiff's claim is payable and covered under Clause 1.2.1 Institute Cargo Clauses under the policy issued



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by the defendant? The above said Clause 1.2.1 relates to General Average. The finding of the learned single Judge is that the claim is not one under 1.2.1. General Average. Being that the claim is not under Clause 1.2.1 General Average, the learned single Judge ought to have dismissed the suit. Per contra, the learned single Judge gave a finding that there is coverage under the Policy under 1.1.2. vessel or craft being stranded, grounded, sunk or capsized. In fact, no marine peril led to the ship being stranded, grounded, sunk or capsized and no marine period occurred. But the contingencies had occurred only on engine failure. Therefore, marine peril warranting the declaration of a General Average did not occur. But in spite of that, the learned single Judge decreed the suit.

8.2. The findings regarding coverage under Clause 1.1.2 stranding occurs when the carrying vessel or craft with goods on board at the time runs a ground and remains there for an appreciable period of time. The vessel should have run a ground and strikes the sea bed and remains there for some time. In the present case, the vessel had suffered engine failure in the sea and drifted to the nearest port. The vessel did not go a ground / struck in sea bed or shore. Therefore, in marine terms, the present case



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cannot be construed to be stranding. Further, in the judgement, it was held that the damage suffered by the vessel did not render the vessel unseaworthy and did not give rise to a situation for declaration of a General Average. In the instant case, none of the contingencies had occurred and it was only an engine failure. Therefore, a maritime peril warranting the declaration of General Average did not occur. The entire pleadings and issues are with regard to Clause 1.2.1 of the policy, but the learned single Judge without any pleadings and evidence, held that the claim is covered under Clause 1.1.2 of the policy.

8.3. The learned single Judge has erroneously held that the defendant by Ex.P.6 directed the plaintiffs to take appropriate steps to protect the cargo and co-ordinate with the ship owners for safe delivery of the cargo and the defendants had not taken out a plea that they are not liable since the vessel was unseaworthy. Therefore rendered the finding that damage suffered by the vessel did not render the same unseaworthy and did not give rise to a situation for declaration of a General Average. The above finding of the learned single Judge is erroneous, since as per Ex.P.5 General Average was declared and the voyage was abandoned by



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the owners / charters and parties interested in the vessel which set sail for delivery of the suit cargo. Therefore the finding of the learned single Judge that the damage suffered by the vessel did not render the same unseaworthy and did not give rise to a situation for declaration of a General Average is not proper as the parties interested in the vessel had already declared General Average and abandoned the voyage for which the ship had set sail. The present case of the plaintiff was based on abandonment of voyage by the sea carrier which led to expenses incurred by them for bringing the cargo entrusted to the sea carrier in good order and condition. Therefore, the findings of the learned single Judge are erroneous.

8.4. There was no peril which led to a claim under the policy which is a specific voyage policy. The voyage was abandoned due to mechanical failure due to which the engines of the ship are stopped. The same stoppage and abandonment of voyage cannot be construed to be a maritime peril. Therefore as there was no marine peril, the liability of the defendant was not attracted and the suit should suffer dismissal. Further in the judgment, it is held that the waiver of rights is only from the date of



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discharge or transshipment of the cargo and the claims would not be made against third parties which would result in the claim being made against the ship owner. The plaintiff has also addressed the ship owner through letter Ex.P.13 dated 23.03.2004 holding them liable. Therefore, the contention of the defendant that they have given up their rights cannot be correct.

8.5. Further it is contended that under condition no.16 of the policy, minimising losses, it is the duty of the assured and its servants in respect of loss recoverable thereunder 16.1., to take such measures as may be reasonable for the purpose of averting or minimising such loss and 16.2, to ensure that all rights against carriers, bailees or other third parties are properly preserved and exercised and the underwriters will in addition to any loss recoverable thereunder, reimburse the assured for any charges properly and reasonably incurred in pursuance of these duties. The right of recovery does not pertain to the value of the consignment, but also the expenses incurred for protecting the cargo and bringing it safely to the destination port.



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8.6. The agreement entered into by the plaintiff with a third party to bring the cargo is totally contrary to the terms and conditions of the contract of insurance. The learned single Judge failed to consider the point and the loss minimization as per the policy condition was not initiated by the plaintiff and on that ground also, the suit is liable to be dismissed.

8.7. The findings of the learned single Judge that the agreement between the recovery consultant and the plaintiff was made known to the plaintiff and the plaintiff wanted the defendant to convey its approval. There is no proof filed by the plaintiff to show that the agreement with the recovery consultant was shared with the defendant. The plaintiff has failed to prove the expenses actually incurred by him and no documents as far as evidence adduced to prove the claim. 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.

9. The learned counsel appearing for the respondent / plaintiff would contend that the respondent / plaintiff had entered into a contract



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with M/s. Arab Potash Company Ltd., for the purchase of 7500 metric tons of muriate of potash valued at USD9,33,000 and the same was chartered a vessel “M.V. Waferah” and after discussion with the appellant / defendant, they agreed to provide voyage insurance and the respondent / plaintiff also paid a premium of Rs.49,601/-. Thereafter, when the vessel was on the way from Jordan to Mumbai and 800 miles away from the port of Mumbai, it suffered a major engine trouble. Thereafter, the same was informed to the respondent / plaintiff and then the respondent / plaintiff contacted the appellant / defendant and thereafter, the respondent / plaintiff entered into an agreement with M/s. Cargo Recovery Consultants to tow the vessel from the port of Salalah, Oman to Mumbai Port with the knowledge of the appellant / defendant and the agreement policy sent to the appellant / defendant.

9.1. Due to that engine trouble, there was a declaration of General Average by the owners of the vessel. The said contingency is clearly covered under Clause 1.2.1 of ICC(C). In order to prove the case of the plaintiff, PW1 was examined and Ex.P.1 to Ex.P.20 were marked. On the side of the defendant, DW1 was examined and Ex.D1 to Ex.D3 were



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marked. After evaluating oral and documentary evidence adduced on either side, the learned single Judge has correctly decreed the suit by holding that the claim of this case is covered under the Clause 1.1.2 and thereby, the defendant is liable to pay the above said amount. In fact, the respondent / plaintiff immediately after the engine trouble, informed the same to the appellant / defendant and thereafter, the appellant / defendant also received an additional premium and then the appellant / defendant also sent a letter dated **18.03.2004 (Ex.P.7)** stating that the above said amount incurred by the respondent / plaintiff is reimbursable. Thereafter only, they entered into the agreement with M/s. Cargo Recovery Consultants, (CRC), London and the copy of the Tripartite agreement also forwarded to the appellant / defendant and thereby, the defendant is liable to pay the above said amount. The claim of the plaintiff is not payable and the plaintiff's claim will not be covered under Clause 1.2.1. Institute Cargo Clause (C). The entire policy have to be looked into and thereby, the learned single Judge, after analysing all the points, has correctly decreed the Suit by holding that this case is covered under policy under Clause 1.1.2. of Institute Cargo Clause(C).



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9.2. The entire plaint averments have to be looked into for the purpose of deciding the Suit and cannot isolate the particular point. Therefore, the judgment and decree passed by the learned single Judge is in accordance with law and hence the present liable is liable to be dismissed.

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

11. Upon hearing both sides and perusing the materials, the points for determination in this appeal are as follows:-

1. Whether the General Average was declared and the Clause 1.2.1. of the Policy is applicable to this case?

2. Whether Clause 1.1.2 of the policy is applicable to this case?

3. Whether the Tripartite agreement entered into between the parties?

4. Whether the respondent / plaintiff protected the right of recovery under the policy of insurance under Section 79 of Marine



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5. Whether the respondent / plaintiff is entitled to recover a sum of Rs.2,45,70,000/- under the Marine Cargo Insurance Policy with interest?

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

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

12. **Points:**

**On Points 1 to 3:**

The respondent / plaintiff has filed an Original Suit alleging that he obtained policy from the appellant / defendant and the same is not denied by the appellant / defendant. While so, the appellant / defendant issued a Marine Cargo Insurance Policy to the respondent / plaintiff for cargo. When the vessel M.V. Waferah was proceeding from Aqaba in Jordan to Mumbai Port on 04.02.2004, 800 miles away from the Mumbai Port, it suffered a major engine trouble. The same was informed to the respondent / plaintiff and also informed that if any failure to rectify the trouble, would result in declaration Genereal Average and also the respondent / plaintiff received a fax message from M/s. Tradex India Corporation dated



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10.02.2004 about the declaration of General Average by the owners of the vessel and thereafter, there was no any correspondence with regard to the declaration of General Average.

12.1. It is admitted on both sides that there was no marine peril and it is also an admitted fact that there was engine fault. Therefore the General Average would not arise. The learned single Judge categorically discussed in this aspect. Once the General Average has not declared or not arise, the claim of policy under Clause 1.2.1 of Institute Cargo Clause(C) would not attract. At the same time, due to the engine fault, it necessitated the respondent / plaintiff to tow the vessel in order to safeguard the cargo. As per the policy, Clause 7 – *“Where after attachment of this insurance, the destination is changed by the Assured, held covered at a premium and on conditions to be arranged subject to prompt notice being given to the Underwriters”*. In this case also, due to the engine fault, the destination was changed from Port of Salalah and the same was also informed to the appellant / defendant. Further as per Clause 12 - *“Measures taken by the Assured or the Underwriters with the object of saving, protecting or recovering the subject-matter insured shall not be considered as a waiver*



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or acceptance of abandonment or otherwise prejudice the rights of either party". In this case also, in order to avoid damage to the cargo due to the engine fault and in order to protect the cargo, the same was towed from Salalah Port and then to Mumbai Port. Therefore, from the above said Clauses, it is clear that the respondent / plaintiff, in order to protect the cargo, had taken steps. The above said facts were already informed to the appellant / defendant then and there and also, the said facts have not been denied by the appellant / defendant.

12.2. In fact, the vessel was stopped due to engine fault. Since there was no any declaration of General Average and since the ship was stranded off, it will cover under Clause 1.1.2 of Institute Cargo Clause(C). As per Institute Cargo Clause(C) 1.1.2, the vessels or craft being stranded, grounded, sunk or capsized, are covered. Here, in this case, the vessel was stranded in the high seas, due to the engine problem and the same was informed to the appellant / defendant through a **letter dated 10.02.2004 / Ex.P.4** and the appellant / defendant informed the respondent / plaintiff to pay additional premium and the expenses are reimbursable. Therefore, the defendant cannot deny later under the principle of estoppel. Therefore, as



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discussed supra, these contingencies are covered under 1.1.2 of Institute Cargo Clause(C) / Ex.P.2. Policy. The learned single Judge has elaborately discussed about these aspects and correctly came to a fair conclusion.

12.3. According to the respondent / plaintiff, after receipt of information about the engine problem of the vessel, he informed the appellant / defendant and sought for his assistance. Accordingly, the appellant / defendant also assisted the respondent / plaintiff and based on this assistance, the respondent / plaintiff entered into an agreement with M/s. Cargo Recovery Consultants (CRC), London and thereafter tripartite agreement was also sent to the appellant / defendant and the appellant / defendant admitted the receipt of the said agreement and thereby, the respondent / plaintiff has proved the tripartite agreement between the respondent / plaintiff, appellant / defendant and M/s. Cargo Recovery Consultants (CRC), London. Further, the respondent / plaintiff has intimated the stage and further steps taken by him and in respect of the steps taken by him to bring the cargo intact. Therefore, the respondent / plaintiff has proved that there was a tripartite agreement between the



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parties. Thus the points 1 to 3 are answered accordingly.

**13. On Point No.4:**

According to the respondent / plaintiff, a draft agreement that the plaintiff was entered into with M/s. Cargo Recovery Consultants (CRC), London was forwarded to the appellant / defendant to make such changes as required vide Ex.P.17 letter dated 19.04.2004. The appellant / defendant also admitted the above said letter and on the very same day, it was delivered and the defendant has not made any suggestion. The respondent / plaintiff has informed the appellant / defendant at all stages about the steps taken by him. Therefore, the appellant / defendant estopped from questioning the contents of the agreement and there is no records produced by the defendant that the said agreement is against Section 79 of Marine Insurance Act. Once the appellant / defendant coordinated with the respondent / plaintiff for the safe custody of cargo, the defendant cannot deny later and he estopped from denying the same. Thus, **point no.4** is answered accordingly.



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14. **Point No.5**

The respondent / plaintiff has filed the Suit for recovery of above said amount based on the expenses incurred for taking the cargo from the port of Salalah to Mumbai Port to tow the vessel to Mumbai Port to take the cargo to the Mumbai Port. The respondent / plaintiff has produced the documents and on perusal of the documents, it shows that each and every step taken by the respondent / plaintiff with regard to safeguard the cargo, were intimated to the appellant / defendant and the defendant also suggested to pay extra premium and also suggested to incur expenses and the same can be reimbursed. Believing the words of the appellant / defendant, the respondent / plaintiff had entered into an agreement and then incurred expenses to safeguard the cargo. Therefore, the appellant / defendant is liable to pay the suit amount to the respondent / plaintiff. The learned single Judge has elaborately discussed about the liability of the appellant / defendant and correctly decreed the suit. Thus **Point no.5** is answered accordingly.

15. **Point No.6**

The appellant / defendant has preferred this appeal on various



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grounds and this Court in the previous point, has already decided that the appellant / defendant is liable to pay the suit amount and the learned single Judge, after evaluating oral and documentary evidence adduced on either side and after elaborate discussion, came to a fair conclusion and decreed the suit and this Court also of the view that there is no infirmity or perverse found in the judgment passed by the learned single Judge. Therefore this Court has no warrant to interfere with the judgment and decree of the learned single Judge. Thus, **Point no.6** is answered accordingly.

16. **Point No.7**

As discussed in the above points, this appeal has no merits and deserves to be dismissed.

17. Accordingly, this Original Side Appeal is dismissed. No costs.

The connected miscellaneous petition, if any, is closed.

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

29.01.2024

(1/2)

mjs

Internet : Yes

Index: Yes/No

Neutral Citation: Yes/No



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

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**and**  
**P.DHANABAL, J.**

krk

2. In view of the above submission, the respondent is at liberty to file an application for withdrawal of the amount deposited by the appellant. On filing such application, the said amount shall be refunded to the respondent along with accrued interest forthwith.

[D.K.K., J.] [P.D.B., J.]

29.01.2024

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Index : Yes / No

Internet : Yes / No

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**and**  
**P.DHANABAL,J**

(krk)

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