IN THE HIGH COURT AT CALCUTTA

ORDINARY ORIGINAL CIVIL JURISDICTION
[COMMERCIAL DIVISION]
ORIGINAL SIDE

Present :

THE HON'BLE JUSTICE ARINDAM MUKHERJEE

IA No.GA 3 of 2022
In
CS-COM 356 of 2024
(Old No.CS 45 of 2022)

M/S. NEO CARBONS PRIVATE LIMITED
Vs
NATIONAL INSURANCE COMPANY LIMITED

For Plaintiff	:	Ms. Anupa Banerjee,
		Mr. Himadree Ghosh,
		.........Advocates
For the Defendant	:	Mr. Debajyoti Datta, Sr. Adv.,
		Mr. Arijeet Doss Mullick
		.... Advocates
Last Heard on	:	20.05.2025.
Judgment on	**:**	**21.05.2025.**

ARINDAM MUKHERJEE, J.

1. This is an application filed by the sole defendant for rejection of the plaint and/or for the plaint being taken off the file inter alia on the ground that the claim of the plaintiff as made out in the plaint filed in CS 45 of 2022 is ex facie not payable and as such the plaintiff has no cause of action to file the suit.
2. It is submitted by the defendant that the plaintiff purchased a Marine Cargo specific Voyage Policy Bearing No. 100301211910000080 for the year 2020 from the defendant an insurance company on 14th February, 2020 (hereinafter referred to as the said policy).
3. The Institute Cargo Clause (A) being annexure-I to the said policy formed an integral part thereof. As per Clause 8.1.4 of the institute the Cargo Clause the Policy was to remain in force for a period of 60 days after completion of discharge overside of the insured cargo from the overseas vessel at the final port of discharge of the destination. The cargo was Off Sagar Island at the Anchorage on 5th March, 2020.
4. It is also the case of the defendant that the goods were admittedly brought to Kolkata Port by five barges, the last of which reached Kolkata Port on 12th March, 2020. On the goods being unloaded at Sagar Anchorage, the Cargo is to be considered to have been unloaded at the final port of discharge. The plaintiff could have transported the goods to any place therefrom but close to bring the same to Kolkata. The policy, therefore, should be reckoned to be valid for 60 days from 5th March,

2020 i.e., up to 5th May, 2020 and not from 12th March, 2020. The plaintiff admittedly could not lift the entire quantity of cargo from Kolkata Port till 21st May, 2020 despite getting the time from 12th March to 21st March. Even considering the National Lockdown on 20th May, 2020 and thereafter continuously from 24th March, 2020 the functioning again started from 5th May, 2020 as admitted by the plaintiff. The plaintiff could not remove the Cargo even by 19th May, 2020 and as such a part of the Cargo got damaged on 20th May, 2020 by the severe cyclone "Amphan". The defendant was required to extent the policy beyond 5th May, 2020 but did not do so. The failure on the part of the defendant's transporter as alleged in the plaint does not extend the tenure of the policy. Moreover, the plaintiff did not take appropriate steps even on 19th May, 20202 when the defendant was unable to take appropriate steps even on 19th May, 2020 when the defendant was unable to remove the Cargo. Even if the date of arrival of Cargo at Kolkata Port is reckoned to be the final part of discharge, then also on 19th – 20th May, 2020 there was no valid coverage. The defendant also says that from the plaint it is also evident that the materials discharged 200 metric ton of raw petroleum coke which was lying at Kolkata Port was damaged due to severe cyclone "Amphan".

5. The plaintiff raised a claim for loss suffered due to damage of the cargo on the defendant being the insurer. The claim was repudiated by the defendant on 27th May, 2020 on the ground that the goods were not

insured as on 19th May, 2020. The plaintiff, therefore, has no cause of action to file and maintain the suit and the plaint is liable to be and should be rejected and taken off the file.

6. The plaintiff, on the other hand, says that it had entered into an agreement with western carrier India Ltd., on 19th February, 2020 for transporting the cargo from Kolkata to Barauni. Between 11th and 21st March, 2020 due to intervening Holi festival, the entire cargo could not be transported. On and from 20th March, 2020, there was one day National Lockdown followed by continuous lock down was declared and as such the cargo could not be transported from Kolkata to Barauni. Subsequently, the lockdown was withdrawn but it is to public knowledge the normalcy was not restored. There were intermittent lockdown declared by various States and partial lockdown at different areas. Due to such abnormality owing to the pandemic, the plaintiff was unable to transport the entire cargo till 20th May, 2020 when the super-cyclone passed through Kolkata and nearby areas thereby causing severe damage to a portion of the cargo. The delay in lifting the cargo was beyond the control of the plaintiff. So the force majeure clause came into operation according to the plaintiff. The plaintiff, therefore, could not be held responsible for not having lifted the cargo within 60 days from the discharge thereto.

7. The plaintiff also says that the Hon'ble Supreme Court of India by pronouncing a series of orders and judgments and order from time to

time has excluded the application of the provisions of Limitation Act, 1963 till 28th February, 2022. The benefit of such exclusion should be given to the plaintiff. The insurance coverage obtained by the plaintiff from the defendant in view of such judgments also got extended and was valid on 20th May, 2020 when the goods were damaged due to the super-cyclone.

8. The plaintiff says that at this stage without evidence being laid down it cannot be held that the plaintiff has no cause of action to file and maintain the suit. The necessary pleadings are there which provides the foundation of laying the evidence in support of validity of the plaintiff's claim which can be done only at the trial.

9. After hearing the parties and considering the materials on record, the only question which falls for consideration is whether the insurance coverage relating to the goods imported by the plaintiff under the insurance policy obtained from the defendant was valid and operational on 20th May, 2020.

10. On a perusal of the plaint and the documents annexed thereto and taking the admitted dates provided in the plaint and the documents annexed to the plaint. It is evident that the damage occurred admittedly beyond 60 days from the date of discharge. The exclusion of limitation period as held by the Hon'ble Supreme Court on reading of the said orders clearly shows that the same was applicable to legal judicial proceedings and not to agreements between parties like that of an

insurance policy and/or in respect of the coverage. Thereunder, in the instant case, the validity of the policy admittedly expired on 11th May, 2020 and the damage was caused subsequent thereto. The plaintiff's claim, therefore, arose when admittedly the policy was not in force.

11. This is not a case where the claim arose when the policy was valid but could not be lodged within the time frame provided in the policy. In such a case, the orders passed by the Hon'ble Supreme Court, excluding the limitation could have some application if the claim was repudiated on the ground of delaying the lodging the same. It was all along known to the plaintiff that the policy would expire on the expiry of 60 days from the date of discharge of cargo. The date of discharge was known to the plaintiff and it was prior to the National Lockdown. The plaintiff had a reasonable opportunity for removing the cargo prior to the declaration of the National Lockdown. Even after the National Lockdown was withdrawn the plaintiff had sufficient time to remove the cargo prior to 20th May, 2020. The port operations for release of the cargo was on going after withdrawal of the National Lockdown as it is the case of the plaintiff that removing the goods after the National Lockdown was withdrawn.

12. The plaintiff after the opening of the National Lockdown did not obtain any clarification from the defendant as to whether the period of the policy would stand extended for the reason that the transport

operations for removing the cargo remained suspended or was in limited score. The plaintiff did not seek any clarification.

13. It is also not the case of the plaintiff that the office of the defendant was closed as a consequence whereof the extension of the policy dispute applied could not be availed. The averment in the plaint on the contrary clearly demonstrated that the electronic mails issued by the plaintiff were promptly replied by the defendant. It was also open to the plaintiff to approach the defendant for extension of cover beyond 60 days from the date of discharge of cargo when the plaintiff could not lift the cargo within 10th May, 2020.

14. The approach in deciding the application under Order 7 Rule 11of the Code of Civil Procedure, 1908 (in short 'CPC') has been clarified by the Hon'ble Supreme Court in the judgment reported in (***2020)7 SCC 366 [Dahiben Vs, Arvindbhai Kalyanji Bhanusali (Gajra) Deed through Legal Representatives]***. In paragraph 23.3 of ***Dahiben*** (supra) the Hon'ble Supreme Court clearly laid down the following:-

> *"23.3. The underlying object of Order 7 Rule 11(a) is that if in a suit, no cause of action is disclosed, or the suit is barred by limitation under Rule 11(d), the court would not permit the plaintiff to unnecessarily protract the*

> *proceedings in the suit. In such a case, it would be necessary to put an end to the sham litigation so that further judicial time is not wasted."*

15. The same principles are to be followed while deciding this application. On a reading of the plaint in the context of the paragraph quoted above. It is clear that if in a suit no cause of action is disclosed the Court would not permit the plaintiff to unnecessarily protract the proceedings in the suit. In such a case, it would be necessary to put an end to the said litigation so that further judicial time is not wasted. In the instant case despite being aware that the insurance cover will expire after 60 days from the date of discharge of cargo at the final destination from the vessel by which it was imported, the plaintiff could not lift the cargo, the plaintiff did not get a clarification as to whether the time of the coverage stood extended due to conditions arising out of the pandemic. The defendant cannot be blamed for any of this. The plaintiff did not take any extended cover beyond 10th May, 2020 when it was known to the plaintiff that it was not being able to lift the entire cargo. In the aforesaid facts and circumstances, it is apparent that the provision of Order 7 Rule 11(a) of Code of Civil Procedure, 1908 is attracted as the plaint does not disclose a cause of action in support of plaintiff's claim and the plaintiff also does not have any cause of action against the defendant, as there was no insurance cover at the time when the goods were destroyed. On the

point of preliminary issue as contended by the plaintiff, I have considered the judgments of the Hon'ble Supreme Court respectively reported in ***2020 (6) SCC 557 (Nusli Neville Wadia vs. Ivory Properties & Ors.)*** and ***2022 (7) SCC 644 (Sathyanath & Anr. Vs. Sarojamani)***. On the plaint being read as a whole in the context of the two judgments as aforesaid, I do not find any reason to relegate the issue of rejection of plaint for non-disclosure of cause of action as also absence of cause of action in favour of the plaintiff as against the defendant. The force majeure clause may have came into operation for damage of a part of the goods if there was a valid cover on the date when the loss occurs.

16. Following ratio laid down in the ***Dahiben*** (supra) in the plaint is rejected and directed to be taken off the file. The suite instituted by filing the plaint is CS 45 of 2022 is also dismissed.

17. Application being I.A. G.A. No. 03 of 2022 is according allowed and stands disposed of.

ARINDAM MUKHERJEE, J.