

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 91 OF 2001

M/s. Ajeet Seeds Ltd.,
having its registered office at
2nd Floor, Tapadia Terraces,
Adalat Road, Aurangabad
through its authorized
General Manager Shri Vijay
Bhanudasrao Choudhari,
Age 41 years, Occ. Service
Resident of Aurangabad.

.. APPELLANT
[ORIGINAL PLAINTIFF]

VERSUS

1] The Oriental Insurance Co. Ltd.,
having its Branch at Gomtesh Market,
Samadani Building
Gulmandi Road, Aurangabad.

2] The Branch Manager,
The Oriental Insurance Co. Ltd.,
Gulmandi Branch, Samadani Building,
Gulmandi Road, Aurangabad.

.. RESPONDENTS.
[ORIGINAL DEFENDANTS]

Shri D.V. Soman, Advocate for the appellant
Shri Jayant Chitnis, Advocate for respondents.

CORAM : N.W. SAMBRE,J.
DATE : 31st JULY, 2015.

JUDGMENT :-

1] Heard. This appeal is by original plaintiff in Special civil suit No. 193 of 1996, dismissed on December 23, 1999, by the Civil Judge (Senior Division) Aurangabad, which was initiated for recovery of an amount of Rs. 14,00,000/- (rupees fourteen lakhs) towards the insurance claim.

2] Facts, as are necessary for deciding the present appeal are as under :-

[a] The appellant/original plaintiff claims to be a Limited Company engaged in the business of production of seeds and are carrying out business in the name and style as "Ajeet Seeds Private Limited". The defendant Nos. 1 and 2, were the Insurance Company and its Manager, respectively, with which the entire stock lying in Gat No. 233 of the seed cotton/cotton seeds was insured, the extent of liability was worth Rs. 2 Crores. The said stock was ensured for a period from 19.1.1995 to 18.1.1996, against the insurance premium of Rs. 52368/-, covering the liability for fair or damage caused due to fire. It is claimed by the plaintiff/appellant that the appellant was insuring their stock, building, plant and machinery since 1988 onwards with the respondent insurance company.

[b] It is claimed that on 24th December, 1995, at about 4.30 p.m. Gat No. 233, where the Godown cum Processing Plant is situated and where, the goods, such as cotton, seeds was kept for drying, caught fire because of the fall of live wire on the said goods resulting to damage to the tune of Rs. 12,93,120/-. As such, according to the plaintiff, since it was entitled for the damages as covered under the policy in question, the claim was lodged for recovery of Rs. 14 Lakhs on which interest @ 18% p.a.

[c] The claim was resisted by the defendants at Exhibit 20.

Admitting everything, i.e. The insurance of the goods, the happening of the event of accident in question, the defendants/respondents herein denied the liability to pay the damages on the ground that the stock lying in open was not insured.

[d] Considering the contentions of the rival parties, the learned Civil Judge (Senior Division) Aurangabad, upon interpreting the terms of the policy dismissed the suit of the appellant/plaintiff by judgment and order dated 23.12.1999. As such the present appeal.

3] Shri Soman, learned counsel for the appellant would urge that only point that falls for consideration of this court is, whether, the court below has committed an error in mis-interpreting the contents of the policy of insurance at Exh. 32. So as to evaluate his contentions, he has taken me through the pleadings in the plaint, written statement and the evidence adduced by the appellant and the respondents in support of their claim. It is required to be noted that in support of the claim, the plaintiff has examined Shri Vijay Bhanudasrao Chaudhari, General Manager of the plaintiff company at Exh. 31, and has placed on record copy of the Cover Note Exhibits. 32, 33, 34 and 35.

4] The plaintiff has also placed on record communication seeking compensation at Exhibit 38 issued to the respondent alongwith details of the loss caused. The plaintiff has also examined one Aziz Tajoddin Shaikh, working as Security Officer with the plaintiff company at Exhibit 43, Manohar

Pathrikar, Accounts Manager, at Exh. 50 and has also placed on record the additional documents, statements in respect of stock of cotton seeds, Vouchers showing receipt of the cotton seeds from Exh. 52 to 66.

5] The defendants have examined Mishrilal Kisandas Bhandari, Insurance Surveyor and loss assessor at Exh.73, who has produced his Survey Report at Exh.74. Arvindkumar Shrimotilal Ravikar, Branch Manager of the defendant's Branch at Aurangabad is at Exh. 75. In addition to above, defendants have placed on record document Exh.76, the Cover Note Exh.77. The report of the Robert Rodrigues at Exh. 80, who is insurance surveyor who was examined at Exh.79 with other relevant documents.

6] Learned counsel for respondent/defendant would support the judgment of the trial court. According to him, the trial court has upon appreciating the evidence in the background of pleadings was right in denying the claim of the appellant. He would further urge that the terms of policy, the premium charge was correctly appreciated. He prayed for dismissal of the appeal.

7] From the pleadings and the evidence that is brought on record, the point that falls for determination of this Court is, whether the claim of insurance as is canvassed by the appellant/plaintiff is covered within the scope of the Insurance Policy at Exh.32. The issuance of insurance policy Exh.32 is also not in dispute. Exh. 33, the cover note which is issued prior in point of time to that of the policy, is initial document, which is issued with an intention to cover the risk from the time of the insurance.

8] Exh.33 cover note speaks of issuance of the same by the respondent herein, in favour of the appellant on 19.1.1995 at 5.00 p.m. having validity up to mid night of 18.1.1996. The cover note was for fire policy. The contents of the said cover note speaks of the stock to the extent of 96Lakhs, stock of cotton seeds and/or such other type of vegetable seeds and/or such other goods pertaining to the insured, stored and/or lying at Gat No. 233, at Post Chitegaon, Taluka Paithan, Dist Aurangabad, Maharashtra. Exh.33 then speaks of fire policy for the stock of cotton and cotton seeds, Jawar, Bajra and/or such other types of vegetable seeds, etc.

9] Exh. 32 policy speaks of the property insured situated at Gat No. 233 at Post Chitegaon, Taluka Paithan, Dist. Aurangabad and the said policy was issued for a period of 12 months from 19.1.1995 to 18.1.1996 in favour of the present appellants covering the risk of fire In the description of property, it is specifically mentioned that the stock of cotton seeds and/or such other goods pertaining to the insured “stored” and or “lying” the sum insured was Rs. 1,00,00,000/- (Rupees One Crore).

10] This court is now required to interpret the terms of the said insurance policy, as reproduced herein above, Exh.32, whether the same covers the risk/damage that is caused to the present appellant because of fire that took place in his factory premises.

11] As stated here-in-above, Exh.32, insurance policy speaks of covering the property situated at Gat No. 233 and it further speaks of the

other risk occupied as Godown. In description of property in the said policy, it is in specific terms mentioned that the stock of cotton seeds and/or other goods pertaining to the insured stored and/or lying. From the plain reading of the language used in Exh.32, the inference that could be drawn is, that the goods which are stored viz, cotton seeds and other such goods or lying, the risk is covered under the said policy. The analysis of the evidence of the plaintiff's witness Mr. Chaudhari who was working as General Manager who has deposed that the goods lying viz. Goods which are damaged in the fire were also covered as those goods were lying in Block No. 233. The plaintiff's witness Aziz examined at Exh.43, speaks of the accident of fire and also damage caused.

12] The witness of the plaintiff Manohar Pathrikar, PW-3 examined at Ex.50 has deposed in support of the receipts produced on record at Exhibits 52 to 66, so as to establish that the goods worth 60 quintals and 82 Kilograms of cotton seeds were damaged by fire and water used in extinguishing the fire. He has also produced on record the receipt of the said goods, however, the register was not produced. He has in clear terms admitted that there is a ledger so as to demonstrate the person who had sold cotton seeds to the plaintiff and as such, receipts were prepared and produced. The evidence of PW-3 at Exh.50 establishes the stock that was damaged.

13] The defendants so as to demolish the claim of the plaintiffs, has examined its Branch Manager DW-2 Arvind Kumar Ravikar at Exh.75. Said

witness has deposed in support of the policy document issued at Exh.76. It's carbon copy is at Exh.77 dated December 7, 1994. He has also deposed that Exh.32 policy which is for a period of 19.1.1995 to 18.1.1996. Exh.32 and new policy in continuation with the earlier policy and deposes that there were two policies in respect of the cotton and other vegetable seeds. He deposed that Exh.32 covers the insurance of the items such as cotton seeds, vegetables seeds and other goods pertaining to the insured stored in godown of Class-I construction. Then he deposed that premium was already paid for storage of cotton in Class-I construction. In his evidence, it is not brought on record that, why the discrepancy in Exh.32 has occurred, which covers the goods which are lying in open (not stored in godown). Apart from above, it is also not brought on record by the said witness as to what tariff is provided for covering the goods which are lying in open or atleast no such case was pleaded by the defendants. Though, in cross examination, he has stated that subject matter is mentioned in the cover note, and what is mentioned in the cover note is to which the insurance company is liable for. He admits that Exh.33 cover note is pertaining to the stored and goods lying at Gat No. 233.

14] As such, from the cumulative reading of his evidence, coupled with the entries made in Exhibits 32 and 33, takes this court to only conclusion and interpretation that goods lying in Gat No. 233 were also covered under the risk, which is covered by the policy at Exhibit 32 and cover note at Exh. 33.

15] As such, this court comes to the conclusion that the goods which are lying in open and which were damages during the fire were duly covered by the insurance policy Exh.32 and the cover note Exh.33. In view of the above, in my opinion, the insurance company respondent herein is liable to make good the loss/damages as are suffered by the appellant herein.

16] In view of the above, the next issue that is required to be dealt with herein is, whether the appellants here were able to establish the loss of goods to the tune of Rs. 14 Lakhs as is claimed in the plaint. In support of the same, plaintiffs as stated hereinabove, have examined their General Manager at Exh.31 who has deposed about the incident of fire and the loss caused.

17] The evidence of the witness of the plaintiff, namely, Manohar Pathrikar working as Accounts Manager speaks of the purchase of 157.89 Kgs. Of cotton seeds, vide Exh.51. He also deposed that 15 receipts of cotton Ajit-20 were purchased which were signed by his clerk. According to him, of the total stock that was available 60 quintals and 82 Kilograms of cotton seeds were damaged due to fire. He has also tried to justify the said fact by producing on record the original receipts Exhibits 52 to 66. In cross examination, though he has stated that stock register was not produced, however, he has admitted that there specific entries of the record and the original receipts are produced.

To this, the respondents have examined their surveyor who in categorical terms admitted loss of Rs. 8,28,700/-. While assessing the said loss, he has produced on record report Exhibit 74.

18] In view thereof, it will be appropriate in my opinion, to allow the claim of the present appellant to the extent of the damage assessed by the said surveyor, as from the evidence of witness of the plaintiff, namely, Manohar, Stock Register and Ledger Register was produced, as is apparent from his evidence. He was also unable to answer as regards preparation of receipt at Exh.66.

19] In view of the above, it will be appropriate in my opinion, to allow the present appeal by setting aside the judgment dated 23.12.1999 delivered in Special Civil Suit No. 193 of 1996. As a consequence thereof, the present appeal stands allowed. Claim of the appellant Company stands allowed to the extent of Rs. 8,28,700/-, which was carry interest @ 9% p.a. From the date of filing of the suit. Decree be drawn accordingly.

[N.W. SAMBRE]
JUDGE.

grt/-