

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 14TH DAY OF MARCH 2023

PRESENT

THE HON'BLE MR. JUSTICE P.S.DINESH KUMAR

AND

THE HON'BLE MR. JUSTICE T.G.SHIVASHANKARE GOWDA



R.F.A NO. 1074 OF 2010 (MON)

BETWEEN:

NATIONAL TEXTILE CORPORATION LTD.

(AP, K, K & M)

A GOVERNMENT COMPANY AS

PER SECTION 617 OF THE

COMPANIES ACT, 1956

HAVING ITS OFFICE AT CORE-IV

SCOPE COMPLEX, NO.7

LODHI ROAD

NEW DELHI-110 003. AND

HAVING ITS BRANCH OFFICE AT:

NO.29/2, NANJAPPA MANSION

K.H.ROAD, SHANTHINAGAR

BANGALORE-560 027

NOW REPRESENTED BY ITS

DEPUTY MANAGER (PAY & ACCOUNTS)

SMT. INDU RAMESH

W/O SRI. M.S. RAMESH

AGED ABOUT 55 YEARS

...APPELLANT

(BY SHRI. S.S. RAMDAS, SENIOR ADVOCATE FOR

SHRI. PRADEEP S. SAWKAR, ADVOCATE)

AND:

1. UNITED INDIA INSURANCE CO.LTD.,
DIVISION OFFICE V
SHANKARANARAYANA BUILDINGS
25, M.G.ROAD

BANGALORE-560 001.
REPRESENTED BY ITS
DIVISIONAL MANAGER.

2. M/S. P. RAJENDRA & CO.
A PARTNERSHIP FIRM
HAVING ITS OFFICE AT
134/M, NEW CLOTH MARKET
AHMEDABAD-380 002.
REPRESENTED BY ITS
AUTHORIZED PARTNER
MR. PANKAJ PATEL
MAJOR

...RESPONDENTS

(BY SHRI. O. MAHESH, ADVOCATE FOR R1;
R2 SERVED)

THIS RFA IS FILED UNDER SECTION 96 OF CPC., AGAINST THE
JUDGMENT AND DECREE DATED: 06.03.2010 PASSED IN
OS.NO.6190/2003 ON THE FILE OF THE 42ND ADDL. CITY CIVIL AND
SESSIONS JUDGE, BANGALORE, DECREERING THE SUIT FOR
RECOVERY OF MONEY.

THIS RFA, HAVING BEEN HEARD AND RESERVED FOR
JUDGMENT ON 16.11.2022 COMING ON FOR PRONOUNCEMENT OF
JUDGMENT, THIS DAY, **P.S.DINESh KUMAR J.**, PRONOUNCED THE
FOLLOWING:-

JUDGMENT

This appeal by the plaintiff is directed against the
judgment and decree dated March 06, 2010 in O.S. No.
6190/2003 passed by the 42nd Additional City Civil and
Sessions Judge, Bangalore, dismissing the suit for recovery
of money against first defendant.

2. Brief facts of the case are, plaintiff, NTC¹ is a Government of India undertaking². NTC and second defendant entered into a Depot Agreement dated January 01, 2000, where under second defendant had given a cash security deposit of Rs.4,00,000/- and a bank guarantee for a sum of Rs.13,00,000/- in favour of NTC from Vijaya Co-operative Bank Limited, Ashram Road, Ahmedabad. NTC also obtained "Special Contingency Insurance Policy" (hereinafter referred to as 'the Policy') for the period from April 1, 2000 to March 31, 2001 from first defendant- United Insurance Company (hereinafter referred to as 'insurer') for Rs.2,85,00,000/- to cover against any loss or damages to its property at any time during the currency of respective agreements with various depot keepers.

3. NTC's case is, second defendant was appointed as depot keeper for the State of Gujarat for sale of mill yarns subject to the control and approval by NTC. Second defendant started defaulting in payments and as on

¹ National Textile Corporation

² Incorporated under Companies Act, 1956

August 20, 2000 a sum of Rs. 29,90,000/- was due to NTC. NTC invoked the bank guarantee. The bank did not honour the same on a ground that it was a fake one. NTC adjusted the security deposit of Rs.4,00,000/- and lodged a complaint before the concerned jurisdictional police station. It also filed a claim before the insurer to pay the loss suffered. The insurer refused to settle the claim on the ground that the claim is inadmissible. With these averments, NTC has brought the instant suit with a prayer *inter alia* to direct the defendants to pay a sum of Rs.25,00,000/- along with interest from the date of rejection of claim till the date of payment.

4. Insurer resisted the suit by filing written statement contending *inter alia* that NTC had failed to take reasonable care and caution to verify the bank guarantee. The amount claimed by NTC is not in respect of the goods supplied during the Policy period. The Policy covers risks in respect of claims arising out of transactions that took place during the period when the insurance Policy was in force.

NTC had allowed the outstanding payment to be carried forward from year to year without taking any action. The loss caused was a trade loss and therefore, inadmissible.

5. With the above pleadings, parties went to the trial. Based on the pleadings, the learned Trial Court has framed following issues:

1. Whether the plaintiff proves that the suit claim is well within the scope of insurance policy taken by it from defendant no.1 as pleaded in the plaint?

2. Whether the plaintiff proves that the defendants are liable to pay the sum of Rs. 25,00,000/- as claimed in the suit?

3. Whether defendant no.1 proves that the suit of plaintiff is not maintainable in law and the same is liable to be dismissed for the reasons stated in the written statement?

4. Whether the plaintiff is entitled for the current interest rate at the prevailing banking rate as claimed in the suit?

5. What order or decree?

6. On behalf of plaintiff-NTC, one witness was examined as P.W.1 and Exs. P1 to P11 marked. First defendant-insurer examined two witnesses viz. D.W.1 and

D.W.2 and got marked Exs. D1 to D3. Answering issue No. 1 in the negative, issue Nos. 3 and 4 in the affirmative and issue no. 2 in the affirmative only against second defendant, the Trial Court has decreed the suit.

7. Shri. S.S. Ramdas, learned Senior Advocate for NTC, submitted that:

- the second defendant with dishonest intention had given a fake bank guarantee which amounted to a criminal act and it is covered by the Policy;
- the monetary loss suffered by NTC is not a trade loss, but a loss that occurred due to the dishonest act of second defendant;
- insurer is duty bound to settle the claim;
- The learned Trial Court has erred in permitting the insurer to rescind a valid claim made under the said Policy.

8. He has placed reliance on *Smt. Dulhariya Devi Vs. Janardhan Singh and Ors*³ in support of his case.

9. Opposing the appeal, Shri O. Mahesh, learned Advocate for the insurer, submitted that:

- accrued, unrecovered arrears are not covered under the Policy;
- second defendant has defaulted in making payment of balance dues which amounts to trade loss and the same is not covered under the Policy;
- NTC has not exercised its due diligence in verifying the genuineness of the bank guarantee.

10. With these submissions, Shri. O. Mahesh prayed for dismissing the appeal.

11. We have carefully considered rival contentions and perused the records.

³ AIR 1990 SC 1173

12. In the light of the above pleadings on record and the contentions urged, following points arise for our consideration:

(1) Whether NTC is entitled for the insurance claim from the insurer?

(2) If point no.1 is in the affirmative, then what shall be the amount payable by the insurer?

(3) Whether the impugned judgment and decree requires any interference?

Re. Point No. 1:

13. Undisputed facts of the case are, second defendant was appointed as a depot keeper. He had furnished cash security deposit of Rs.4,00,000/- and a bank guarantee of Rs.13,00,000/-. The bank guarantee turned out to be a fake one. NTC had taken the Policy for loss and damage occurring due to dishonest or criminal act of depot keeper. The Policy was valid from April 1, 2000 to March 31, 2001 for a sum of Rs.2,85,00,000/-. For non-payment of dues by second defendant as on August 20, 2000, NTC lodged a claim with the insurer for a sum of

Rs. 25 Lakhs and the insurer repudiated the claim on the ground that it was a trade loss.

14. We may record that in *Lucena v. Craufurd*⁴, a contract of insurance has been defined as a contract by which one party in consideration of the price paid to him adequate to the risk, becomes security to the other, that he shall not suffer loss, damage, or prejudice by the happening of perils specified to the certain things which may be exposed to them. The main purpose of NTC taking the insurance Policy was to protect itself against any pecuniary loss by reason of any act of fraud or dishonesty by a depot keeper.

15. When NTC sought to invoke the bank guarantee, it was found to be a fake one.

16. The definition of 'fraud' provided under Section 17 of the Indian Contract Act, 1872 reads as follows:

⁴(1806) 2 B&P (NR) 269, HL

"Fraud" means and includes any of the following acts committed by a party to a contract, or with his connivance, or by his agent, with intent to deceive another party thereto of his agent, or to induce him to enter into the contract:—

(1) the suggestion, as a fact, of that which is not true, by one who does not believe it to be true;

(2) the active concealment of a fact by one having knowledge or belief of the fact;

(3) a promise made without any intention of performing it;

(4) any other act fitted to deceive;

(5) any such act or omission as the law specially declares to be fraudulent."

(Emphasis Supplied)

17. A perusal of the Policy shows that a loss occurring due to any fraud or dishonesty committed by the depot keeper is covered. The relevant clause in the Policy reads thus:

"15. If this policy shall be continued in force for more than one period of indemnity or if any liability shall exist on the part of the Company under this policy and also under any other policy in respect of fraud or dishonesty of the C & F Agent, the liability of the Company hereunder shall not be accumulated or increased thereby but the aggregate liability of the Company during any number of periods of indemnity

and for any number of acts of fraud or dishonest committed by the C & F agent shall not exceed the sum insured hereunder or the sum insured under any other such policy as aforesaid whichever is greater.”

(Emphasis Supplied)

18. In a similar English case, *Wasserman Vs. Blackburn*⁵, the plaintiff was insured against loss or deprivation of bonds, cash, cheques, bank notes or any documents of value by robbery, theft or other loss whatsoever through theft or any other dishonesty. The plaintiff was induced by false representations to discount bills of exchange which were later dishonoured. It was held that the plaintiff's loss was caused by dishonesty within the meaning of the Policy and that he was entitled to recover.

19. One of the main contentions urged on behalf of the insurer is that NTC has not exercised its due diligence in verifying the genuineness of the bank guarantee. The said contention is untenable. Firstly because, Special Condition No.3 of the Policy states that:

⁵ (1926) 43 T.L.R 95

"The Insured shall if and when required by the Company but at the expense of the Company if a conviction be obtained, use all diligence in prosecuting any of the C&F agents to conviction for any act which such policy and shall at the Company's expense give all information and assistance to enable the company to sit for and obtain reimbursement by any such C&F agents by reason of whose act of defaults a claim has been made or by the state of such C&F agent or money which the Company shall have become liable to pay in respect thereof."

(Emphasis Supplied)

20. On a careful perusal of the above clause, we are of the view that, insured is required to use all due diligence and assist the insurer if depot keeper is prosecuted by the insurer. We may record that NTC has exercised necessary due diligence as per the Policy by lodging a complaint against the depot keeper in the jurisdictional police station.

21. In *Suraj Mal Ram Niwas Oil Mills (P) Ltd. Vs. United India Insurance Company*⁶, the Hon'ble Supreme Court of India has held that:

⁶ (2010) 10 SCC 567

"26. Thus, it needs little emphasis that in construing the terms of a contract of insurance, the words used therein must be given paramount importance, and it is not open for the Court to add, delete or substitute any words. It is also well settled that since upon issuance of an insurance policy, the insurer undertakes to indemnify the loss suffered by the insured on account of risks covered by the policy, its terms have to be strictly construed to determine the extent of liability of the insurer. Therefore, the endeavour of the Court should always be to interpret the words in which the contract is expressed by the parties."

(Emphasis Supplied)

22. There is no ambiguity in the conditions of the Policy and if the terms of the policy are strictly construed/interpreted, as held in *Suraj Mal*, NTC was only required to use due diligence in prosecuting the depot keeper which has been done by lodging a police complaint.

23. It is settled that if there is any ambiguity, the interpretation would be in favour of the insured person. *(See: Mountain Vs. Whittle⁷).*

⁷ [1921] 1 A.C. 615

24. Secondly, insurance is a contract upon speculation⁸. Generally, a person enters into insurance policies or contracts to protect himself from certain risks or contingencies which cannot be foreseen or taken care of. Diligence has to be exercised wherever possible but if the insured person is expected to exercise diligence everywhere, the question of contingencies or perils would never arise and the entire purpose of insurance would fail.

25. In the present case, NTC is a Government of India undertaking having several branches across the country. It has appointed various depot keepers. It is impractical to expect NTC to verify the genuineness of every bank guarantee and it is for the said reason NTC has taken the Policy. The insurer has covenanted to indemnify the NTC against any loss or damage occurring due to fraud or criminal act on the part of the depot keepers.

⁸ As per Lord Mansfield in *Carter v. Boehm* (1766) 3 Burr.1905 referred at pg No.1 in *Colinvaux's Law of Insurance*, Sweet & Maxwell, Sixth Edition, 1990

26. In our considered view, issuance of a fake bank guarantee by second defendant is a dishonest act and therefore, covered by the Policy. Hence, NTC shall be entitled for the insurance claim from insurer. Accordingly, this point is answered in the ***affirmative***.

Re. Point No. 2:

27. NTC has claimed a sum of Rs.25 Lakhs from the insurer being the loss occurred on account of fraudulent act by the depot keeper.

28. As per the Policy, the insurer shall be liable to indemnify the insured against a direct pecuniary loss sustained by reason of act of fraud or dishonesty committed on or after the date of commencement of the Policy and during the currency of the Policy.

29. A careful perusal of Ex. P3 shows that there was total outstanding of Rs.29.90 Lakhs payable by the depot keeper as on February 08, 2001. The Bank guarantee was issued on January 01, 2000 for Rs. 13 Lakhs. If the bank

guarantee were to be genuine, NTC could have recovered Rs. 13 Lakhs from the Bank. Though NTC has claimed a sum of Rs. 25 Lakhs from both the insurer and the depot keeper, in our considered opinion, insurer shall be liable to indemnify NTC upto Rs. 13 Lakhs, the amount covered by the bank guarantee. We say so because notwithstanding the contention urged by the insurer that the liability had not accrued whilst the Policy was in currency, NTC could have certainly recovered a sum of Rs.13 Lakhs by invoking the bank guarantee.

30. Accordingly, we answer point no.2 holding that insurer shall be liable to pay a sum of Rs. 13 Lakhs to NTC.

Re. Point No. 3:

31. In view of the above discussion, on points no. 1 and 2, this appeal merits consideration. Hence, the following:

ORDER

- a) Appeal is ***allowed in part.***
- b) The judgment and decree in O.S. No. 6190/2003 is modified holding that Plaintiff-NTC shall be entitled to recover from the first defendant-insurer a sum of Rs.13,00,000/- along with interest at 12% p.a. from the date of the institution of suit till the date of recovery jointly and severally with the second defendant.
- c) The remaining portion of the judgment and decree qua the second defendant shall remain undisturbed.

No costs.

**Sd/-
JUDGE**

**Sd/-
JUDGE**