

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(CIVIL APPELLATE JURISDICTION)

Present:

Mr. Justice Md. Badruzzaman.

And

Mr. Justice Sashanka Shekhar Sarkar

First Appeal No. 153 OF 2003.

M/S Central Insurance Company Limited.

...Appellant.

-Versus-

Madina Refineries (Salt) Limited and another.

...Respondents.

Mr. A.S.M Abdur Razzak with

Mr. M. Moniruzzaman Khan, Advocates

... For the Appellant

Mr. Md. Mobarak Hossain, Advocate

... For respondent No.1

Heard on: 11.01.2024 and judgment on: 16.01.2024.

Md. Badruzzaman, J:

This appeal by defendant No. 1 is directed against judgment and decree dated 10.08.2002 (decree signed on 15.08.2002) passed by learned Joint District Judge, 1st Court, Chittagong in Money Suit No. 07 of 1998 decreeing the suit for an amount of Tk. 18,86,400/- with a simple interest @ 6% per *annam* with effect from the date of decree.

The material facts, necessary for the disposal of this appeal, are that respondent No. 1 M/S **Madina Refineries (Salt) Limited** as plaintiff instituted Money Suit No. 07 of 1998 in the 1st Court of Joint District Judge, Chittagong contending, inter alia, that the plaintiff is a company registered under the Companies Act and carries on business as purchaser of crude salt, refiner and seller of salt having office and factory at Napithkhali Industrial Area, Cox's Bazar. The salt business of the plaintiff was financed by *proforma* defendant No. 2 and as security

of repayment of the loan amount the plaintiff pledged and hypothecated crude and refined salt lying with the factory and godown of the plaintiff. Crude and crushed salt stored in the said factory and godowns of the plaintiff were insured with the principal defendant under different insurance policies separately covering the goods as mentioned in respective policies being No. CIC/ ZO /CTG/JUB/FP-009 /04 /97, No. CIC/ ZO/ CTG/ JUB/ FP-011/ 04/97, No. CIC/ZO /CTG/JUB/ FP-008 /04/97 and No. CIC/ ZO/ CTG/ JUB/ FP-010/04/97, all dated 03.04.1997 for the period from 29.03.1997 to 29.03.1998 for a sum of Tk. 10,00,000/-, 45,00,000/-, 30,00,000/- and 45,00,000/- respectively. Defendant-respondent No. 1 issued the said policies from its Branch Office at Chittagong in the name of plaintiff as Mortgagor and *proforma* defendant No.2 as Mortgagee covering the risk of loss or damage by fire including cyclone and flood. On 19.05.1997 severe cyclone and flood affected the costal belt of Cox's Bazar and Chittagong area causing damage and loss to the life and properties of the people. The said cyclone and flood seriously affected the Mill and Godowns of the plaintiff causing damage and loss to the insured goods. The plaintiff on 20.05.1997 informed the fact to defendant No. 2 and lodged G.D. with Officer-In-Charge, Cox's Bazar regarding loss and damage of the insured property. The plaintiff by letter dated 21.05.1997 also informed defendant No.1 about the loss of insured properties with request to take necessary steps for ascertainment of loss and damages.

On receipt of the intimation of the loss of the insured properties defendant No. 1 by letter dated. 22.05.1997 appointed M/S James Finaly PLC and M/S Allied Inspection Company Limited as surveyors for holding survey and ascertaining the loss and damage of insured goods and also sent claim forms to be filled up by the plaintiff and *proforma*

defendant No. 2. The plaintiff and *proforma* defendant No. 2 filled up the claim forms and submitted those to defendant No. 1 along with necessary papers and documents. The Joint Survey Team conducted survey on the insured affected goods from 23.05.1997 to 24.05.1997, 13.06.1997 to 15.6.1997 and 30.6.1997 to 31.06.1997 and after detailed survey and verification of the papers and documents submitted joint survey report on 16.11.1997 with a copy to the plaintiff and the defendants. The surveyors assessed a total loss of Tk. 18,86,400/- for the damage and loss of goods due to flood and cyclone which is covered by the said insurance policies. Though said assessment of loss and damage was much undervalued but for amicable and early settlement of the claim plaintiff and *proforma* defendant No. 2 accepted the report and requested defendant No. 1 for early settlement of the claim. Though defendant No. 1 received the survey report but it neither raised any objection against the said report nor asked for any further survey according to the provisions of law. The defendant is, therefore, bound under law to settle the claim within a period of 90 days from the date of submission of the survey report failing which it is liable to pay interest @ 5% above the bank rate per month after expiry of said statutory period of 90 days. The plaintiff made repeated requests for settlement of the claim through personal contact with the officers of defendant No. 1 from time to time but most unfortunately they did not pay any heed to the requests of the plaintiff and as such, the plaintiff filed the suit claiming Tk. 18, 86, 400/- as loss and damage of the insured goods and Tk. 7,35,696/- as interest for non-payment of the ascertained amount @ 13% per month.

Defendant No. 1 appellant filed written statement and contested the suit. Apart from denying the material allegations of the plaintiff, the

defendant contended that the plaintiff violated the terms and conditions of the relevant insurance policies which is an agreement between the plaintiff and defendant No. 1. At the time of taking insurance coverage from the defendant the plaintiff mentioned that the floors of the godowns/factories were *pacca* whereas during the survey the floors were found to be *kacha* and as per condition of the policies the side walls of the godowns/factories were to be built with burnt bricks with roof of C.I Sheets whereas during inspection by the surveyors a portion of the walls were found to be built with bamboo. As per Cyclone and Flood Clauses attached to the policies, the stocks of the salt should have stored on a platform having height not less than 9 inches from the floor whereas during inspection by the surveyors no such platform was found and it was not accounted for in the assessment. The surveyors also assessed loss of the stocks based only on the declaration made by the plaintiff which was unrealistic and unreasonable. This defendant is not responsible for the loss or liable for the alleged claim of the plaintiff. The plaintiff filed the instant suit only to have illegal gain from the defendant and as such, the suit is liable to be dismissed with cost.

The learned Subordinate Judge framed the following issues:

- i. Is the suit maintainable in its present form ?
- ii. Has the Court jurisdiction to try the suit ?
- iii. Is the suit barred by limitation ?
- iv. Is the plaintiff entitled to get a decree as prayed ?
- v. To what relief, if any the plaintiff is entitled to ?

On behalf of the plaintiff, P.W.1 Mr. Osiur Rahman, Managing Director of the plaintiff company was examined. On behalf of defendant

No. 1, Insurance Company Mr. Nur Mohammad, Senior Vice-President of the company was examined as D.W.1.

The plaintiff adduced various documents and papers and those were marked as Exhibits 1-7. Various papers were also filed on behalf of defendant and those were marked as Exhibits Ka-Kha. The learned Subordinate Judge, after considering the evidence and materials on record, decided all the issues in favour of the plaintiff and decreed the suit in-part in its favour vide judgment and decree dated 18.08.2002 as aforesaid. Thereafter, this appeal has been preferred by the defendant, Insurance Company.

Mr. A.S.M Abdur Razzak, learned Advocate appearing for defendant-appellant submits that the trial Court committed an error of law and facts in decreeing the suit in favour of the plaintiff; that the plaintiff at the time taking insurance policies made declarations that the walls of the godowns/factories were built with burnt bricks with roof of C.I Sheets but during survey, the surveyors found that the walls of godowns/factories were built with bamboo; that the plaintiff made declarations that the floors of the godowns/factories were pucca but subsequently it was found that the floors of the godowns/factories were *kacha*; that the plaintiff violated the terms and conditions of the insurance policies in that as per terms of the policies the stocks of the salt should have been stored on a platform having height not less than 9 inches from the floor but during survey conducted by the joint surveyors no such platform was found at the godowns/factories and as such, the plaintiff is not entitled to any money as claimed for loss and damage; that the Court below miserably failed to consider such fault of the plaintiff and illegally decreed the suit and as such, committed illegality.

Mr. Md. Mobarak Hossain, learned Advocate appearing for the plaintiff-respondent submits that after severe cyclone and flood the joint surveyors were appointed by the defendant Insurance Company and the surveyors, after conducting physical survey in the godowns/factories on several occasions assessed the loss and damages of the plaintiff company and filed joint survey report ascertaining the loss equivalent to an amount of Tk. 18,86,400/- and the defendant Insurance Company did not raise any objection against the said report and as such, the appellant is liable to pay the amount as has been assessed as loss of the plaintiff by the joint survey team. Learned Advocate further submits that the surveyors during their survey found that the walls of the godowns/factories were built with burnt bricks with roof of C.I Sheets and that the floors of the godowns/factories were *pucca* and as such, the claim of the defendant that the walls of the godowns/factories were not built with burnt bricks with roof of C.I Sheets or that the floors of the godowns/factories were *kacha* has no basis. Learned Advocate further submits that since the defendant Insurance Company did not raise any objection against the report of the joint survey team and since the defendant itself appointed the joint survey team and the joint survey team, after survey and inspection, ascertained the loss of the plaintiff covered by the insurance policies, the defendant is liable to make good for the loss to the plaintiff. Learned Advocate further submits that since the defendant did not pay the amount in time it is liable to pay interest as per insurance policies and the trial Court, after evaluation of the evidence and materials on record, rightly decreed the suit and as such, interference is not called for by this Court.

We have heard the learned Advocates, perused the plaint, written statement, the exhibited documents and other evidence of the parties. To prove the case the Managing Director of the plaintiff company was examined as P.W.1 who deposed in support of the plaint. He also submitted the insurance policies, cover notes, the G.D entry, the letter issued by the plaintiff to the defendant dated 20.05.1997, the letter of the plaintiff to the defendant company dated 21.05.1997, the joint survey report dated 16.11.1997 and other documents which were marked as exhibits without any objection from the defendant. The defendant also produced the joint survey report which was marked as Exhibit-Kha.

There is no dispute regarding the fact that the godowns and factories of the plaintiff containing crude and crushed salt were insured with the defendant under different policies separately covering the goods comprised in different mills/godowns mentioned in four insurance policies dated 03.04.1997 for a period from 29.3.1997 to 29.03.1998 [Exhibits 1(Ka)-1(Gha)] with four Cover Notes dated 27.3.1997 [Exhibits 2(Ka)-2(Gha)] and those policies were issued to cover the risk of cyclone and flood. There is also no dispute that the defendant-appellant issued the said policies from its Branch Office at Chittagong in favour of the plaintiff and it is also not disputed that on 19.05.1997 severe cyclone and flood affected the costal belt of Cox's Bazar and Chittagong area and said cyclone and flood seriously affected the factories and godowns of the plaintiff causing damage and loss to the ensured goods. It is also not disputed that on 20.05.1997 the plaintiff informed the matter to defendant No. 2 and lodged G.D with Officer-In-Charge of Cox's Bazar Police Station (Exhibit-3). It is also not disputed that the plaintiff by letter dated 21.05.1997 informed the

defendant-appellant about the loss of insured goods with request to take steps for ascertaining loss and damage (Exhibit-5). It is not also disputed by the defendant that on receipt of intimation from the plaintiff the defendant by letter dated 22.05.1997 appointed M/S James Finaly PLC and M/S Allied Inspection Company Limited as joint surveyors for holding survey and ascertaining the loss and damage of insured goods. It is not also disputed that the joint survey team conducted physical survey in presence of the representative of the plaintiff and defendants on the insured affected factories and godowns from 23.05.1997 to 24.05.1997, 13.06.1997 to 15.6.1997 and 30.6.1997 to 31.06.1997 and the Joint Survey Team submitted their report on 16.11.1997 [Exhibit-6(Ka)]. It is also not disputed that the surveyors assessed the total loss equivalent to Tk. 18,86,400/- for the damage and loss of goods covered by said insurance policies. It is also not disputed that the defendant did not raise any objection against the survey report and they did not appoint further surveyor to ascertain the loss and damage of the plaintiff.

The plaintiff contended that the defendant is bound under law to settle the claim within 90 days from 16.11.1997, the date of submission of the survey report to the defendant failing which the defendant is liable to pay interest @ 5% above Bank rate per month after expiry of the statutory period of 90 days and the plaintiff requested the defendant to settle the claim but the defendant did not do so and hence the plaintiff filed the suit claiming Tk. 18,86,400/- for loss and damage of insured goods covered by the insurance policies as ascertained by joint survey team plus Tk. 7,35,696/- as interest for non-payment of the ascertained amount @ 13% from 17.2.1998 to 17.5.1998.

On the other hand, the defendant-appellant contended that the plaintiff violated the terms and conditions of the insurance policies in the way that the plaintiff though mentioned in the Cover Notes that the floors of godowns/factories were *pucca* and walls of the godowns/factories were built with burnt bricks with roof of C.I Sheets but during inspection, the floors were found as *kucha* and that the side walls of the godowns/factories were built with bamboo. The defendant also claimed that as per 'Cyclone and Flood Clauses' attached to the policies, the stocks of the salt should have been stored on a platform having height not less than 9 inches from the floor whereas during inspection by the surveyors no such platform was found.

On perusal of the Cover Notes dated 27.3.1997, Exhibits 2(Ka)-2(Gha), it appears that those were issued by the defendant-appellant before issuance of the insurance policies dated 3.4.1997. First Cover Note being No. FC- 012, Exhibit 2(ka), was issued to the extent of Tk. 30,00,000/- covering the risk on stocks and in process of washed and crushed i.e refined salt in the event of loss or damage by Fire including Cyclone and Flood only which stored in Salt Crushing Mill built of burnt bricks walls with roof of C.I Sheets over Wooden Frame having *pucca* floor owned and occupied by the insured used as Salt Crushing Mills cum Godown. The Second Cover Note being No. FC- 013, Exhibit 2(kha), was issued to the extent of Tk. 10,00,000/- covering the risk on stocks and in process of washed and crushed i.e refined salt in the event of loss or damage by Fire including Cyclone and Flood only which stored in Salt Crushing Mills built of burnt brick walls with roof of C.I Sheets over Wooden Frames having *pucca* floor owned and occupied by the insured used as Salt Crushing Mills cum Godown. Third Cover Note being No. FC- 014, Exhibit 2(Ga), was issued to the extent of Tk.

45,00,000/- covering the risk on stock of Crude and Crushed salt in the event of loss or damage by Fire including Cyclone and Flood only which stored in a building built of burnt bricks wall with roof of C.I Sheets over Wooden Frame having *pucca* floor owned and occupied by the insured used as Godown and the Fourth Cover Note being No. FC- 015, Exhibit 2(Gha), was issued to the extent of Tk. 45,00,000/- covering the risk on stock of Crude and Crushed salt in the event of loss or damage by Fire including Cyclone and Flood only which stored in a building built of burnt bricks wall with roof of C.I Sheets over Wooden Frame having *pucca* floor owned and occupied by the insured used as Godown.

The joint survey team after conducting survey opined as follows:

“ SURVEY & OUR OBSERVATIONS:

Our survey was carried out on 23.05.1997 to 24.05.1997, 13.06.1997 to 15.06.1997, 30.06.1997 to 31.06.1997.

1. At the time of our inspection it was found that there are three godowns for storage of Pledged Crude Salt and two Salt Crushing Mills. Two godowns are attached with both of the Salt Crushing Mills on either side. The third godown is separate and completely detached from the Mills.
2. The above buildings are constructed as follows:
 - (a) Three Nos. Salt Godowns and one No. Crushing Mills are built of burnt brick walls with roof of C.I Sheets on wooden frame and *pucca* floor.
 - (b) One No. Salt Crushing Mill is built partly of C.I Sheets and partly of brick wall with roof of C.I Sheets of wooden frame and *pucca* floor.
3. The C.I sheet roof of the above buildings was found to be damaged to various extents.”

It appears that the Joint Survey Team, after conducting survey in presence of the representatives of the plaintiff and defendants and perusing the insurance policies as well as other relevant documents submitted their report. On perusal of the Cover Notes together with the

report of the Joint Survey Team it appears that the plaintiff mentioned in the Cover Notes that the Salt Crushing Mills and Godowns were built with burnt bricks wall with roof of C.I Sheets over Wooden Frame having *pucca* floors. The defendant-appellant, after accepting those descriptions of the plaintiff, issued the insurance policies on 3.4.1997 and the Joint Survey Team also found that the Salt Crushing Mills were built with burnt brick walls with roof of C.I Sheets over wooden frames and *pucca* floors. So the contention of the defendant that the Godowns/Mills were not built of burnt brick walls with roof of C.I sheets and the floors of the godowns/mills were not *pucca* has no basis at all. It also appears from the Cover Notes [Exhibits 2(ka)-2 (Gha)] and Insurance Policies that there was no condition therein that the stocks of the salt were to be stored on a platform not less than 9 inches from the floor. Accordingly, the contention of the defendant-appellant, that the plaintiff has violated the terms and conditions of the insurance policies, has no basis at all.

Since the defendant itself appointed the Joint Survey Team who, after survey and inquiry, submitted their report assessing the loss of Tk. 18,86,400/- covered by the policies and the defendant did not raise any objection against the report before filing of the suit and did not appoint further surveyor, it is to be presumed that the appellant has accepted the report and accordingly, we are of the view that the plaintiff is entitled to Tk. 18,86,400/- as loss and damage due to cyclone and flood, as has been assessed by the Joint Survey Team.

In regards questions of maintainability of the suit, jurisdiction of the trial Court and limitation the appellant did not take any ground in the memorandum of appeal. The learned Advocate for the appellant did not also make any submission to that effect. On perusal of the

judgment of the trial Court it appears that the trial Court, after detailed discussion of the evidence and materials on record, found that the suit is maintainable and it had jurisdiction to try the suit and the suit is not barred by limitation. We have also perused the plaint, written statement and the documents adduced by the parties and relevant provisions of law from which it appears that the suit is maintainable, the trial Court had jurisdiction to try the suit and the suit is not barred by limitation.

In view of the above discussion of the evidence on record, we find that the plaintiff has able to prove its case. Accordingly, the trial Court has rightly decreed the suit (in-part) in favour of the plaintiff against the contesting defendant-appellant for the amount of Tk. 18,86,400/- with cost with a simple interest @ 6% per *annum* from the date of decree till recovery. We, therefore, find no merit in the appeal.

In the result, the appeal is dismissed, however, without any order as to costs.

The judgment and decree passed by the trial Court are affirmed.

Send down the L.C.R along with a copy of this judgment to the Court below at once.

(Justice Md. Badruzzaman)

I agree.

(Mr. Justice Sashanka Shekhar Sarkar)