



REPORTABLE

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL NO. 2323 OF 2021

SOHOM SHIPPING PVT. LTD. ...APPELLANT(S)

VERSUS

**M/S. THE NEW INDIA
ASSURANCE CO. LTD. & ANR. ...RESPONDENT(S)**

J U D G M E N T

SATISH CHANDRA SHARMA, J.

1. The present dispute hinges on the phrase “*voyage should commence & complete before monsoon sets in*” contained in the contract for insurance between the parties, and raises questions regarding its validity, interpretation and materiality.
2. The appeal before us has been preferred by the Appellant under Section 67 of the Consumer Protection Act, 2019 (hereinafter “**COPRA**”) against the final judgement and order dated 13.04.2021 (hereinafter “**Impugned Order**”) passed by the

National Consumer Disputes Redressal Commission, New Delhi (hereinafter “**NCDRC**”) dismissing the consumer complaint filed by the Appellant herein on account of the doctrine of *Uberrima Fidei* being compromised.

3. Factual Background

- 3.1. The Appellant is engaged in the shipping business and has its offices at Sougor Road Kulpi, Diamond Harbour, Haldia and Kolkata. The Appellant purchased a newly built barge ‘Srijoy II’ (hereinafter “**the Vessel**”) and sought to undertake its maiden voyage from Mumbai to Kolkata.
- 3.2 In pursuance of the same, the Appellant applied for a ‘single voyage permit’ to the Director General of Shipping (hereinafter “**DGS**”), wherein the Vessel was expected to sail from Mumbai on 30.04.2013 and arrive at Kolkata on 15.05.2013. The DGS directed the Indian Register of Shipping (hereinafter “**IRS**”) to carry out a detailed inspection.
- 3.3 The Appellant sought to insure its voyage and the Vessel, and submitted its insurance proposal to the Respondent. Thereafter, an insurance contract was entered into between the parties for the period between 16.05.2013 to 15.06.2013 (hereinafter “**the Insurance Contract**”). The Insurance Contract

contained a special condition that the “voyage should commence & complete before monsoon sets in”. Further, it contained Special Warranties, *inter alia* that the “Vessel to depart in local weather condition not exceeding Beaufort Scale No. 4...”.

- 3.4 The IRS granted clearance to the Appellant to undertake its voyage in accordance with MS Circular No. 03 of 2008. Thereafter, the DGS issued a “No objection” with respect to the same.
- 3.5 The Vessel undertook the voyage on 06.06.2013. Unfortunately, on the very next day it was anchored off near Ratnagiri Port due to bad weather and engine failure. Ultimately, the Vessel ran aground.
- 3.6 The Appellant sought assistance from the Respondent for towing and salvaging the Vessel after the Insurance Contract had expired. On 25.07.2013, the Appellant issued a ‘Notice of Abandonment’ to the Respondent claiming total loss on the ground that repair of the Vessel would be more expensive than the amount insured for.
- 3.7 On 12.09.2013, the Respondent issued a ‘Repudiation Notice’ rejecting the claim of the Appellant on the ground that the Vessel set sail after ‘monsoon set in’ breaching the special condition in

the Insurance Contract. Subsequently, the surveyor appointed by the Respondent issued its final report concluding that the Appellant was in wilful breach of the condition.

- 3.8 Aggrieved by the repudiation of the insurance claim, the Appellant herein filed a consumer complaint under Section 21 of COPRA before the NCDRC. Vide Impugned Order dated 13.04.2021, the NCDRC dismissed the complaint on the ground that the Appellant suppressed material facts by not disclosing all its plans to the Respondent, and did not conduct itself in good faith.

4. Submissions by the Appellant

- 4.1 Mr. Huzefa Ahmadi, learned Sr. Counsel for the Appellant has strongly urged before us that the conclusion drawn by the NCDRC is contrary to law and prays for the same to be set aside.
- 4.2 The primary contention of the Appellant is that the Respondent knew or should have known that the policy period covers the foul period, and therefore the policy cannot stand repudiated on this ground.
- 4.3 That the special condition contained in the insurance contract was non-material as the Respondent was aware that the voyage was to be undertaken in foul

weather. Further, in the event that the special condition is to be taken into account, there has been an implied waiver of the same at the time of entering into the contract as the period of 1 month for which the insurance cover was availed of, covers the foul weather period as well, and the Respondent was aware that the Vessel would be travelling from Mumbai to Kolkata through Kerala, where the monsoon sets in on June 1st.

4.4 That the Court must apply the common law rule of *verba chartarum fortius accipiuntur contra proferentem* or simply put ‘*Contra Proferentum*’ against the Respondent as the phrase is ambiguous on account of extrinsic evidence of surrounding circumstances (Reliance placed on ***General Assurance Society Ltd. v. Chandumull Jain & Anr.* (1966) 3 SCR 500; *Industrial Promotion and Investment Corporation of Orissa Ltd. v. New India Assurance Company Ltd. & Anr.* (2016) 15 SCC 315; *Dawsons Ltd. v. Bonnin* [1992] 2 A.C. 413.**

4.5 The Appellant has also submitted that the Respondent failed its duty to conduct reasonable

due diligence as it provided the policy knowing the circumstances.

- 4.6 That if the special condition is treated as a condition precedent, it would result in *absurd consequences* as any claim made would fall foul of the special condition (Reliance placed on *Ramji Karamsi v. The Unique Motor and General Insurance Co. Ltd.* AIR 1951 Bom 347).

5. Submissions by the Respondent

- 5.1 Mr. Devadatt Kamat, learned Sr. Counsel for the Respondent has placed strong reliance on the Impugned Order as a well-reasoned, valid and legal order which ought not to be interfered with.
- 5.2 That the Appellant has breached the special condition by setting sail after monsoon had set in. Clause 3.1.2 of the Insurance Contract was also breached by the Appellant inasmuch as it breached the conditions imposed by the IRS, by sailing in waters where the height of the wave is more than 2 metres.
- 5.3 The counsel for the Respondent submits that the special condition is determinable and precise, which dispels all arguments regarding its ambiguity and in-

turn the applicability of the rule of *Contra Proferentum*.

- 5.4 That the Appellant has committed forgery and fabricated the policy it submitted to the authorities as no amendment to the special condition has been carried out between the parties.
- 5.5 That as per the DGS Notice No. 03/2008, the foul weather season starts on 1st June, and the policy was valid from 16.05.2013 to 15.06.2013.
- 5.6 That no statement was made in the application by the Appellant regarding its intention to set sail in the foul season.
- 5.7 The Respondent has also placed reliance on the judgements of this Court, namely, *Sea Lark Fisheries v. United India Insurance Co. & Anr.* (2008) 4 SCC 131; *Deokar Exports (P) Ltd. v New India Assurance Co. Ltd.* (2008) 14 SCC 598; *Contship Container Lines Ltd. v. D.K. Lall & Ors.* (2010) 4 SCC 256; *Rajankumar & Brothers (Impex) v. Oriental Insurance Co. Ltd.* (2020) 4 SCC 364; and *Hind Offshore (P) Ltd. v. Iffco-Tokio General Insurance Co. Ltd.* (2023) 9 SCC 407.

Discussion and Analysis

6. We have given our careful consideration to the submissions made on both sides of the bar, and perused the materials provided. The only question which falls for our consideration is, *whether, the special condition stands breached justifying the de facto repudiation of the Appellant's claim by the Respondent.*

7. At this juncture, it would be appropriate to consider the conditions in the proposal, upon which the Respondent relies to repudiate the claim of the Appellant. Firstly, the 'Special Conditions' in the 'Policy Schedule for Voyage Insurance' provides that:

*"Subject to 1) institute voyage clause 01.08.1989
2) express 1% of S.I. with the warranty that the voyage should commence & complete before monsoon sets in."*

8. Under 'Voyage Details' the Appellant mentions the voyage to be undertaken from "*Mumbai to Kolkata*". 'Special Warranties' stipulates as under:

"Vessel to depart in local weather condition not exceeding Beaufort Scale No. 4 & favourable synoptic meteorological situation. The master to exercise his discretion to alter course & speed or to enter port of refuge/shelter in case of adverse weather sea conditions/weather warings emergency/navigational hazard. The relevant national & international regulations regarding lights, ags & shapes should be complied with."

9. Further, Clause 3 of the Insurance Contract provides:

“3. CLASSIFICATION

3.1 It is the duty of the Assured, Owners and Managers at the inception of and throughout the period of this insurance to ensure that

3.1.1 the vessel is classed with a Classification Society agreed by the Underwriters and that her class within that Society is maintained,

3.1.2 any recommendations requirements or restrictions imposed by the vessel’s Classification Society which relate to the vessel’s seaworthiness or to her maintenance in a seaworthy condition are complied with by the dates required by that Society.

3.2 In the event of any breach of the duties set out in Clause 3.1 above, unless the Underwriters agree to the contrary in writing, they will be discharged from liability under this insurance as from the date of the breach provided that if the vessel is at sea at such date the Underwriters’ discharge from liability is deferred until arrival at her next port.”

(emphasis supplied)

10. The Respondent has relied upon Clause 3.1.2 and the breach of the special condition contained in the policy to justify the repudiation of the Insurance Contract.

11. It is trite to state that the interpretation of the Insurance Contract falls upon the same principles as the interpretation of any contract, except that there exists a requirement of *uberrima fides*, i.e. good faith on part of the assured. It is therefore well-

settled that the policy and all the terms therein ought to be construed strictly, to the extent possible.

12. We now proceed to interpret the phrase “*before monsoon sets in*” as contained in the ‘Special Conditions’ under the policy. A literal interpretation reflects that this phrase refers to an event occurring before monsoon *commences* or *begins*. In order to assist us further, both parties have relied on a circular dated 25.04.2008 published by the DGS (hereinafter “**the DGS Circular**”) delineating the foul weather period. The same is reproduced below:

“3.1 During the period of foul weather, being 1st June till 31st August in the Arabian Sea along the West Coast and 1st May till November in the Bay of Bengal along the East Coast of the Indian Peninsula.”

Accordingly, foul weather first arrives in the East Coast on 1st May and thereafter on the West Coast on 1st June. The correct interpretation of the phrase would then entail that the requisite event is to occur before the 1st of May or the 1st of June respectively, depending on the coast.

13. We straightaway deal with the argument of the Appellant that the special condition is ambiguous leading to it being construed *contra proferentum*. The common law rule of interpreting the clause against the maker of the contract in case of ambiguity has been well adopted into the Indian legal

framework. In the case of ***Chandumull Jain (supra)***, the Supreme Court observed:

“11. ...In other respects there is no difference between a contract of insurance and any other contract except that in a contract of insurance there is a requirement of uberrima fides i.e., good faith on the part of the assured and the contract is likely to be construed contra proferentem that is against the company in case of ambiguity or doubt.”

14. It is the case of ***New India Assurance (2016) (supra)*** that expounded on the principle and rejected its application in the facts of that case. The relevant portion is extracted below:

“10. We proceed to deal with the submission made by counsel for the Appellant regarding the rule of contra proferentem. The Common Law rule of construction “verba chartarum fortius accipiuntur contra proferentem” means that ambiguity in the wording of the policy is to be resolved against the party who prepared it. MacGillivray on Insurance Law deals with the rule of contra proferentem as follows:

“The contra proferentem rule of construction arises only where there is a wording employed by those drafting the clause which leaves the court unable to decide by ordinary principles of interpretation which of two meanings is the right one. One must not use the rule to create the ambiguity – one must find the ambiguity first. The words should receive their ordinary and natural meaning unless that is displaced by a

real ambiguity either appearing on the face of the policy or, possibly, by extrinsic evidence of surrounding circumstances.”

II. *Colinvaux’s Law of Insurance propounds the contra proferentem rule as under:*

“Quite apart from contradictory clauses in policies, ambiguities are common in them and it is often very uncertain what the parties to them mean. In such cases the rule is that the policy, being drafted in language chosen by the insurers, must be taken most strongly against them. It is construed contra proferentes, against those who offer it. In a doubtful case the turn of the scale ought to be given against the speaker, because he has not clearly and fully expressed himself. Nothing is easier than for the insurers to express themselves in plain terms. The assured cannot put his own meaning upon a policy, but, where it is ambiguous, it is to be construed in the sense in which he might reasonably have understood it. If the insurers wish to escape liability under given circumstances, they must use words admitting of no possible doubt.

But a clause is only to be contra proferentes in cases of real ambiguity. One must not use the rule to create an ambiguity. One must find the ambiguity first. Even where a clause by itself is ambiguous if, by looking at the whole policy, its meaning becomes

clear, there is no room for the application of the doctrine. So also where if one meaning is given to a clause, the rest of the policy becomes clear, the policy should be construed accordingly.”

(emphasis supplied)

15. As per the aforementioned rule, we are unable to find that the special condition contained in the policy is ambiguous *per se*. As demonstrated above, the policy can be construed literally, wherein the special condition envisages the voyage to be started and completed before the monsoon/foul weather season commences. The Appellant has attempted to introduce ambiguity in the condition by bringing in external factors and considerations, which is impermissible under the rule of *contra proferentum*. The said rule only applies to cases of real ambiguity, where the clause by itself is ambiguous irrespective of any external considerations. Accordingly, we find no ambiguity in the *text* of the policy itself. However, the rejection of the applicability of the rule of *contra proferentum* does not prejudice the case of the Appellant on the counts of validity and materiality of the condition itself.

16. Mr. Kamat has placed before us the proposal form filled by the Appellant, to submit that no statement was made therein regarding its intention to set sail in the foul season. It is argued that in response to the question stating “*Will the vessel be laid up*

during the South West or North East Monsoon? If so, please state (a) where she will be laid up; and (b) period for which she will laid up”, the Appellant has answered “At Kolkata Harbour”. It is then to be concluded that during the foul season, the Vessel will be laid up and not undertake the voyage. Accordingly, it is submitted that the doctrine of *uberrima fides* has been compromised on account of the Appellant’s conduct.

17. In response, Mr. Ahmadi has stated that in the proposal form it is mentioned that “*the insurance is required to undertake delivery voyage from Ghodbunder Jetty to Kolkata harbour*” and the insurance period is from 16.05.2013 to 15.06.2013.

18. There is no doubt that the policy was taken for a period of one month (16.05.2013 to 15.06.2013) to cover the voyage from Mumbai to Kolkata. Further, as per the DGS Circular, foul weather commences on 1st May itself on the East Coast. The Respondent’s contention that they had no knowledge of the voyage and that they believed that the Vessel would be laid up at the Kolkata harbour during the foul season is unacceptable and is to be rejected. The Appellant had mentioned in the form that the purpose of insurance is to undertake the voyage from Ghodbunder Jetty in Mumbai to Kolkata harbour. The only logical conclusion of the information provided is that the insurance was availed to cover the foul weather period along the west and east coast. Even if the voyage was undertaken

immediately, i.e. on 16.05.2013, the Vessel would have arrived at the Kolkata harbour in the first week of June 2013, i.e. *after* the commencement of foul weather season on the east coast. There is absolutely no permutation and combination in which the Appellant could have fulfilled this condition under the policy, given its voyage from Mumbai (west coast) to Kolkata (east coast) via several coastal States. Further, the special condition necessitates that the voyage commences and is *completed* before monsoon sets in. If the condition is to be interpreted strictly, then the assured would be unable to make a claim in case of a marine accident where the vessel is unable to complete its voyage due to a peril, rendering the special condition impossible to comply with. Ultimately, the assured would be without any remedy under the insurance. This amounts to an absurdity, vitiating the very purpose behind an insurance contract. As a result, we hold that the special condition cannot be treated as a condition precedent to waive any liability under the policy. It has been impliedly waived by the parties due to its non-material nature. It is probably a term used in all contracts by the Respondent as a part of its standard form, and it failed to exclude the same from the policy availed of by the Appellant.

19. In a similar case, the policy required the assured to prove the claim within forty days from the date of the policy itself. The Court, in ***Ramji Karamsi (supra)*** allowed the claim of the

assured to stand despite the breach of the condition therein by observing that the term was not a condition precedent to the plaintiff being entitled to maintain his claim. The Court opined:

“28... But the term of the policy which has been relied upon by the defendants would mean that the claim must be formally made and proved by the assured within 40 days thereof, i.e., the policy which would, taking the date of the policy as 21-4-1943, bring this period of 40 days up to 31-5-1943. Even though the loss be incurred on 3-6-1943, the assured would be without a remedy, because he would not have formally submitted and proved his claim by 31-5-1943, which he ought to have done if his claim was to be a good claim, having regard to this term of the policy. A more absurd result could not possibly be conceived. It could never be intended by any men in their senses that when the risk of the policy was to run right up to 4-6-1943, and the loss which occurred on or before that date would be considered by the insurance company, the insurance company would be relieved of all liability because on a strict interpretation of this term which is relied upon by them and submitted by them to be a condition precedent, the assured could in no event make the claim before 31-5-1943. I decline to entertain any further discussion on this point...”

20. In view of our findings, the Respondent is not entitled to repudiate the claim of the Appellant on the ground of breach of the special condition. We are cognisant of the fact that the Respondent has raised several other objections, including allegations of forgery and breach of other conditions, which may

affect the sum awarded. However, the same would have to be looked into on its own merits and proved before the NCDRC.

21. Accordingly, the appeal is allowed and the impugned order dated 13.04.2021 passed by the NCDRC is set aside. The matter is remanded to the NCDRC with a direction to determine the extent of the insured sum liable to be paid by the Respondent to the Appellant. Since the parties are represented by their respective counsel, they shall appear before NCDRC on 29.04.2025, without expecting separate notices from NCDRC. The matter may be considered expeditiously by NCDRC as the claim was made by the Appellant herein in the year 2013.

22. Parties to bear their own costs. Pending applications, if any, shall stand disposed of.

.....J.
[B. V. NAGARATHNA]

.....J.
[SATISH CHANDRA SHARMA]

NEW DELHI
APRIL 07, 2025