IN THE SUPREME COURT

OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

Ceylinco Insurance Company Ltd
Presently known as
Ceylinco Insurance PLC
4th Floor, Ceylinco House
69, Janadipathi Mawatha
Colombo 01.
Defendant-Respondent-Appellant

Vs.

S.C.Appeal No.23/2010

SC/HC/CALA No.240/2009

NCP/HCCA/ARP Case No.154/2007

D.C.Anuradhapura Case No.18572/M

G.G.N.L.M.Razik
Ranatunga Rice Mill
Pothanegama
Anuradhapura
Plaintiff-Appellant-Respondent

BEFORE : **PRIYASATH DEP P.C, J**
UPALY ABERATHNE, J.
K.T.CHITRASIRI,J.

COUNSEL : I.S.de Silva with Suren de Silva
for the Defendant-Respondent-Appellant
Faiz Musthapa P.C, with Kamran Aziz
for the Plaintiff-Appellant-Respondent

ARGUED ON : **18.01.2016**

WRITTEN SUBMISSIONS ON : 18.02.2016 by the Plaintiff-Appellant-Respondent
25.02.2016 by the Defendant-Respondent-Appellant

DECIDED ON : **16.05.2016**

CHITRASIRI, J.

Plaintiff-appellant-respondent (hereinafter referred to as the plaintiff) instituted this action against the defendant-respondent-appellant (hereinafter referred to as the defendant) by the plaint dated 02.11.2001 seeking inter alia the following substantive reliefs:

(a) A declaration, declaring that the defendant is liable to pay damages in a sum of Rs.19,900,000.00 to the plaintiff, in terms of the Agreements marked P1 and P2 filed with the plaint, consequent to the destruction caused to the plaintiff's paddy stores in Anuradhapura;

(b) A judgment directing the defendant to pay the said amount of money to the plaintiff, in terms of the said Agreements marked P1 and P2;

(c) A declaration that the defendant has acted in breach of the said Agreements, by failing and/or refusing to pay compensation in the aforesaid sum of money to the plaintiff;

(d) A judgment and a Decree in a sum of Rs.5,000,000.00 in favour of the plaintiff, as damages on the basis that the defendant had violated the terms and conditions of the said Agreements.

Defendant filed its answer dated 18.10.2002 having taken up several preliminary objections which are mentioned in paragraph 2 of the said answer. When the case was taken up for trial on 03.02.2013, learned District Judge without proceeding to record evidence, has decided to ascertain the possibility of answering the issues raised on those

preliminary objections, in terms of Section 147 of the Civil Procedure Code. The said issues bear the Nos.13 and 14 and it reads thus:

> **13**. උත්තරයේ 'ආ' ඡේදයේ සඳහන් පරිදි පැ1, පැ2, පැ3 ලේඛණ අනුව පැමිණිලිකරු නියමිත කාලය තුල නඩු පවරා නොමැත්තේද?
>
> 14. එසේනම් මෙම නඩුව කාලාවරෝධී වී ඇත්ද?

Those issues had been raised to ascertain whether or not the plaintiff's action is prescribed. Learned District Judge having interpreted the clause 21 in the agreement marked P1 filed with plaint; in a two page judgment, decided that the cause of action of the plaintiff is prescribed. Accordingly, he dismissed the plaint.

Learned District Judge came to the conclusion that the plaintiff has failed to file action within a period of one year as required by clause 21 of the agreement marked P1. The said Clause 21 in the agreement reads thus:

> *"In no case whatever shall the Company be liable for any loss of damage after the expiration of twelve months from the happening of the loss or damage unless the claim is the subject of pending action or arbitration".*

In that judgment, learned District Judge has stated that the action had been instituted in the month of November 2001 whilst the damage

caused to the paddy stores upon which the cause of action alleged to have arisen, had been on the 29.07.2000. Accordingly, he has decided that the plaintiff cannot have and maintained this action in terms of the Clause 21 of the Agreement marked P1 (vide at page 17 in the appeal brief).

Being aggrieved by the aforesaid decision, plaintiff lodged an appeal in the Civil Appellate High Court of the North Central Province, Holden at Anuradhapura. Learned High Court Judge has written an exhaustive judgment having looked at various issues concerning law and finally, he allowed the appeal having set aside the judgment of the learned District Judge. His decision was that it is incorrect to rely only on clause 21 of the agreement P1 when determining the question of prescription since there is another clause, namely clause 14 is found in the same agreement which has connection to that issue of prescription. It is evident by the following paragraph found in his judgment.

> *"In this context, the pertinent question is: Is clause 21 a reasonable time limitation clause in view of clause 14 of the policy? In this regard we have to consider the question of whether clause 21 will apply to all circumstances or should it be read in reference to clause 14. We are of the view that the time limitation period in clause 21should be given effect to, so long as it does not affect any other policy term affecting the time period within which an action could be filed."*

Accordingly, having considered the matters contained in the aforesaid clause 14, learned High Court Judge answered the issues 13 and 14 in the negative and determined the issue of prescription in favour of the plaintiff. In doing so, he has extensively considered the law pertaining to various questions of law in his 37 page judgment. Finally, he came to the conclusion that the action is not prescribed in view of the matters contained in clause 14 of the agreement marked P1. Consequently, learned High Court Judge made order directing the Original Court Judge to proceed with the trial and then to answer the remaining issues leaving out the issues bearing Nos.13 and 14 which he has answered reversing the decision of the learned trial judge.

Admittedly, learned District Judge has failed to look at the said clause 14 in the agreement. He had only relied upon clause 21 therein and decided that the action had been prescribed. Learned High Court Judge has reversed the said decision of the trial judge. Accordingly, I will now turn to look at the judgment of the learned High Court Judge against which this appeal is lodged. In that judgment, he has stated that the clause 21 in the agreement upon which the learned District Judge has relied upon to dismiss the action should be read with clause 14 in the agreement and then only the issue of prescription should be determined. The said clause 14 reads thus:

" If the claim be in any respect fraudulent, or if any false declaration be made or used in support thereof, or if any fraudulent means or devices are used by the insured or any one acting on his behalf to obtain any benefit under this Policy or if the loss or damage be occasioned by the willful act, or with the connivance of the insured, or if the claim be made and rejected an action or ***suit be not commenced within three months after such rejection*** *or (in case of an arbitration taking place in pursuance of the 19th condition of this Policy) within three months after the arbitrator or arbitrators or umpires shall have made their award,* ***all benefit under this Policy shall be forfeited.****"* *[emphasis added]*

Learned High Court Judge, has stated that the prescription period referred to in clause 21 shall not apply to this case since another clause namely, the aforesaid clause 14 in the same agreement also is relevant in determining the period within which an action or suit be commenced. However, having looked at the matters contained in clause 14, he has concluded that it is impossible for the insured to institute legal action within a period of 3 months as required by that clause 14, in the absence of a letter of rejection of the claim made by the insured.

I too agree with the position that the question of prescription that is to be decided in this instance could be determined only after carefully examining and analyzing all the terms and conditions found in the agreement put in suit without restricting it to one single clause in that agreement. No specific condition too, is found therein to give priority to one clause over the other. This position is supported by the matters referred to in paragraph 621 in **"The Law of Contracts" (Vol.2) by C.G.Weeramantry [at page 620]** It reads as follows:

> *"Clauses in a document must be interpreted in accordance with other clauses contained in the same document whether they precede or follow it.* ***[Pothier's sixth rule]*** *This rule has been adopted in South Africa* ***[Hayne & Co Vs. Kaffrarian Steam Mill Co. Ltd. 1914 A D 363]*** *and in England.* ***[Halsbury 3rd EditionVol 11 at 389]*** *A person construing a document must have regard to the entirety of it and not merely to a part, for "to pronounce on the meaning of a detached part or extract from an instrument if relating to the same subject, is contrary to safe principles of correct interpretation."*

Therefore, it is incorrect to disregard totally, the matters referred to in clause 14 and to decide the case only on the matters referred to in clause 21 in the agreement P1. It is how; the learned District Judge has decided the issue. In the circumstances, I do not see any wrong in the manner in which the learned High Court Judge has looked at the terms and conditions found in the agreement P1.

Then the question arises as to the correctness of the decision that the learned High Court Judge has arrived at on the question of prescription having relied upon the clause 14 of the agreement. His decision to answer the issue of prescription in favour of the plaintiff is purely on his reliance to the matters contained in clause 14 of the agreement. Hence, I will now refer to the matters contained in clause 14 of the agreement which is being reproduced hereinbefore in this judgment, in order to ascertain the correctness of the impugned decision.

Upon a plain reading of the aforesaid clause 14, it is seen that the benefits under the agreement are to be forfeited if and when the matters referred to in the aforesaid clause 14 such as fraud etc. are in existence. In this instance, learned High Court Judge has examined whether there had been a rejection of the claim by the insurer in order to forfeit the benefits under the agreement. Thereafter he has proceeded to ascertain whether the facts and circumstances of this case fall within the ambit of clause 14 of the agreement.

In the process learned High Court Judge, without affording the parties an opportunity to establish the facts concerning the said rejection of the claim has concluded that there was no intimation of the rejection of the claim to the insured. Accordingly, he was of the opinion that the forfeiture referred to in clause 14 of the agreement will not apply in this instance without such a notification being sent by the insurer.

Needless to say, matters such as rejection of the claim and notifying the same by the insurer are to be determined only after allowing the parties to establish those facts having allowed them to call witnesses to give evidence. Particularly, the issue of applicability of clause 14 over clause 21 is a matter that is to be determined after considering not only the evidence but also the submissions of the parties to the action. If an opportunity was given for the parties to adduce evidence, then the veracity of the matters referred to in clause 14 could have been ascertained in the correct manner.

Learned High Court Judge has failed to think on those lines and also has failed to allow the parties even to make submissions on the matters contained in clause 14. Indeed, he on his own has considered the issue at the time of writing the judgment. Basically it amounts to violation of the rules of natural justice. Therefore, it is clear that the manner in which the decision as to the question of prescription arrived at, by the learned High Court Judge relying on clause 14 in the agreement, is erroneous. Such a decision cannot be allowed to stand. Accordingly, it is my opinion that both the learned Judges have misdirected themselves when they decided on the question of prescription raised in this instance.

In the circumstances, I set aside the findings of the learned High Court Judge as well as of the learned District Judge. In view of the above findings learned District Judge is directed to proceed with trial and to

deliver judgment according to law, answering all the issues raised at the trial court after allowing the parties to adduce evidence. No costs.

Appeal allowed.

JUDGE OF THE SUPREME COURT

PRIYASATH DEP P.C, J .

I agree

JUDGE OF THE SUPREME COURT

UPALY ABEYRATHNE, J.

I agree

JUDGE OF THE SUPREME COURT