

:: ORDER BELOW EX-1 IN Spl.C.S. No.42 OF 2000 ::

1. Short fact of the suit :-

The plaintiff is a company registered under the provision of Indian Companies Act. The plaintiff is engaged in the business of import and export of various items. The defendant is a Government company duly registered under the provisions of Indian Companies Act. Defendant is engaged in the business of risk insurance and is operating through out India and abroad.

2. Plaintiff is engaged in the business of export and import by sea and air. That in order to secure and insure cargo being imported /exported the plaintiff has obtained a marine cargo open cover bearing No. 141503/21/98/002 dated 11.09.1998 for the period from 13.09.97 to 12.09.98. The said policy was containing the location clause limiting the amount Rs. 25 Crores.

3. On 09.06.98 a devastating cyclone struck at Kandla Port. The entire shipment of CD-ROMS was destroyed, as the goods were insured under the terms and conditions of open cover note from the date of dispatch from Gaziabad, the plaintiff was entitled to recover the loss of damages from the defendant. Therefore, immediately after the cyclone, the plaintiff lodged a claim for entire quantity of goods valued at Rs. 38,87,00,000/- with defendant vide letter dated 13.06.98 and claim bill No.3 dated 17.08.98 for aggregate amount of Rs. 38,87,000,00/- were

submitted to defendant.

4. The defendant has wrongfully reputed the claim of plaintiff on 02.05.2000. The act and omissions on part of the defendant are arbitrary in nature and in gross violation of commercial transactions. Defendant is a "STATE" under the Art.12 of the Constitution of India and it has no liberty to indulge in to arbitrary actions and omissions which may be injuries to common public. In the present case, the defendant was duty bound to honour the claim of the plaintiff and settle it in a reasonable time instead of indulging into perverse interpretation of rules and regulations under the wrong premises in the account hold and maintained by defendant and deny the plaintiff its legitimate due amounts. Therefore, the plaintiff has filed the present case to recover a sum of Rs.52,87,00,000/- or any lessor / higher amount which the court may deem fit.

5. After filing this Suit, Court has verified and registered, Court had issued summons to the defendant. Defendant was appeared and he has submitted reply at Ex-16 on 16.10.2000 of this Suit. Defendant had denied controvert the allegations made in the suit by the plaintiff. Hence, Court had framed issue at Ex-37 on 25.01.2001.

6. Plaintiff has submitted chief examination on affidavit at Ex-46 on 25.09.2002. Plaintiff has submitted another chief examination at Ex-124 on 30.04.2007. Hon'ble Gujarat High Court was directed to this

Court to proceed expeditiously this suit and disposed within 12 months in CRA No.554/2001 on 29.10.2002 of plaintiff application.

7. This suit is transferred to this Court as per the order of Hon'ble District Judge Saheb in 2014. This Court had issued notice to both the parties and to try and proceed expeditiously, but plaintiff was not remained present before the Court for cross examination. This Court has granted number of adjournments application of plaintiff to remain present before the Court and give oral evidence but plaintiff failed to remain present before the Court to give evidence.

8. After number of adjournment, plaintiff had not given evidence. Today, plaintiff and his Ld. Advocate are absent, even plaintiff has not given adjournment application. Hence, this Court has no way except to announce order as per Civil Procedure Code, Order 17, Rule-2.

Hence, I pass order as under :-

:: ORDER ::

This Suit is dismissed.

It is hereby directed to the plaintiff to pay cost to the defendant.

Order is pronounced in open Court on 03.01.2015.

[PRAVINKUMAR HARISHCHANDRA SHARMA]

Date:03.01.2015.

5th Additional Senior Civil Judge
Gandhidham-Kutch (GJ00701).