

Witness duly sworn on 15.09.2022

Cross Examination by Sri.PBR, Advocate, for Defendant No.1

It is true to suggest that, Zubair Ahammed has not executed GPA prior to execution of Ex.P.1. It is true to suggest that, one of the partner Zubair Ahammed has only executed GPA in my favour. Zubair Ahammed is suffering from Psoriasis. We have medical records to substantiate the same. Zubair Ahammed gave instruction to advocate to prepare the plaint.

2. It is true to suggest that, NMPT area is restricted area and general public including defendant No.1 are not allowed inside. Witness further volunteers that, based on the pass availed by the NMPT, agents can enter NMPT area. It is true to suggest that, transportation, custom clearance, warfage and weighing done by C and F agent. It is true to suggest that, Ex.P.18 is the agreement entered into between plaintiff and defendant No.1 in that regard.

3. It is true to suggest that, rate slab for different services was mentioned in Ex.P.18. Ground rent, berth etc are to be paid by defendant No.1 as per the statutory fee fixed by the NMPT. Witness further volunteers, that was incorporated in Ex.P.18. It is true to suggest that, transportation of fly ash from UPCL to godown in Baikampady was entrusted to plaintiff. It is true to suggest that, transportation of fly ash from godown situated in Baikampady to UPCL was also entrusted to plaintiff.

4. It is incorrect to suggest that, stevedoring charges includes transportation and storage. Witness further volunteers, stevedoring includes only loading of material to the ship. It is true to suggest that, it is our duty to transport goods without damage

from UPCL to Baikampady. There was a contract between plaintiff and defendant No.1 to provide godown to stock the goods for the period of 1 month.

5. It is true to suggest that, arrival of the ship, quantity of goods to be exported and time of arrival of ship was intimated to the C and F agent in advance. After berthing of the ship, custom clearance has to be obtained by the C and F agent.

Question: Without knowing the arrival date of the ship, it is not necessary to transport goods inside NMPT area?

Answer: It depends on the client. Client may transport goods earlier to arrival of ship inside the NMPT area.

6. It is true to suggest that, plaintiff transported goods inside the NMPT area. It is true to suggest that, plaintiff applied for the allotment of yard. Witness further volunteers, there are 4 types of areas available inside the port. 1) Transit shed, it is given for 21 days without charging any tariff for export of cargo 2) Covered shed, it is chargeable 3) Paved area, it is a concertized area 3)Unpaved area, it is without concrete and without cover. Based on the requirement of the client, we avail area from NMPT and provide the same to our client.

7. It is true to suggest that, NMPT allotted land to the plaintiff. Witness further volunteers, as C and F agent, port authority allotted land in favour of plaintiff. It is true to suggest that, port authority levying tariff based on type of area allotted to the C and F agent. It is incorrect to suggest that, as per the agreement plaintiff was bound to store or keep fly ash inside the

covered area. It is true to suggest that, covered area is available inside the NMPT premises.

8. It is incorrect to suggest that, at no point of time defendant No.1 authorized plaintiff for transportation of goods from Baikampady godown to NMPT premises and store the fly ash in the open place. It is true to suggest that, plaintiff has to follow terms and conditions incorporated in Ex.P.10. It is incorrect to suggest that, we did not adhere to the terms and conditions mentioned in Ex.P.10. It is incorrect to suggest that, we recklessly stored fly ash inside the NMPT area.

9. We stored fly ash in high place of unpaved area as per the instructions of defendant No.1. I am not sure whether height of the store cargo was 12 feet and more. It is incorrect to suggest that, baggage was also the duty of the C and F agent as per the agreement. It is incorrect to suggest that, without authorization or instructions from the defendant No.1, we have dumped fly ash in the open area.

10. It is incorrect to suggest that, it is the duty of the C and F agent to cover the stacking with tarp to make it air tight and water tight to protect fly ash. It is incorrect to suggest that, due to improper packing, uncovering with tarp and improper stacking, on 29.05.2018 due to rain defendant No.1 incurred loss of 1,300 bags of fly ash. It is incorrect to suggest that, loss was only due to negligent act of plaintiff. It is incorrect to suggest that, as per Ex.P.27 and 40 we were liable to pay ground rent to NMPT. It is true to suggest that, statement of account includes ground rent.

Question: There was no contractual obligation on defendant No.1 to remove damaged goods from NMPT area?

Answer: We received legal notice and letter from Defendant No.1 about the insurance coverage of damaged goods. Witness further volunteers, only with the consent of the client, we can remove goods from the NMPT area as the said area comes under control of customs.

11. It is incorrect to suggest that, as the defendant No.1 incurred loss of 1,300 bags of fly ash, defendant No.1 is not liable to pay suit claim. It is incorrect to suggest that, defendant No.1 is not liable to pay interest as prayed. It is incorrect to suggest that, Zubair Ahammed intentionally evading his appearance before the court in order to suppress the truth. It is incorrect to suggest that, I am not competent person to depose on behalf of plaintiff firm. It is incorrect to suggest that, I am deposing falsely before the court.

Re-Examination: Nil

(Typed to my dictation in the open court.)

R.O.I. & A.C.,

**I Addl. District & Sessions Judge,
Mangaluru, D.K.**