

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

SUIT NO.634 OF 2005

The Prag Bosimi Synthetics Ltd.

.. Plaintiff

Vs.

The New India Assurance Co. Ltd.

.. Defendant

Mr. Sagar Ghogare, with Mr. Ajay Panicker, for the Plaintiff.

Mr. Rahul Narichania, Sr. Advocate, with Mr. D.N. Motiwalla, Ms. Sneha B. Pandey and Ms. Annamaria Gonsalves, for the Defendant.

CORAM : A. K. MENON, J.

DATE : 16TH DECEMBER, 2021.

P.C. :

1. Heard learned counsel for the parties. The witness – Zulfikar F. Fakhri (DW-2) is present in court.

2. In support of the plaintiff's case, the affidavit dated 28th September 2018 has been filed in the registry; however several portions of the affidavit contain quotations from letters which are already marked to be read in evidence. Mr. Ghogare objects to inclusion of those paragraphs. Accordingly, the objections having been considered, I am of the view that several paragraphs in the affidavit-of-evidence of Mr. Zulfikar F. Fakhri dated 28th September 2018 are required to be excluded, which are described below :-

- (i) Paragraph 7 in its entirety, from page 4 to the end of para 7 on page 13, bracketed in red ink under the

heading "Avoidance of Delay", shall be excluded from the deposition.

- (ii) Likewise, in paragraph 25, since the facsimile message dated 9th April 1999 forming subject matter of paragraph 25 has not been admitted in evidence, the deposition in paragraph 25 shall be discarded in its entirety.
- (iii) In paragraph 48 on page 37, the portion bracketed in red from the second sentence starting with *"In the said letter the plaintiffs have further stated"* till the end of the quotation at page 38 *".....Freight charges works out to Rs.1,34,82,000/-"* shall stand deleted.
- (iv) In paragraph 54 on page 40, the contents of the paragraph from the first sentence *"I say that the Defendants by their letter dated 21/12/2001"* till the end of page 41 with the quotation *"..... we regret the loss cannot be considered under the policy, which kindly note."* shall stand deleted.
- (v) In paragraph 55 on page 42, the portion bracketed in red from the second sentence starting with *"The Plaintiffs stated as under :"* till the end of the

quotation “..... *there is no point in continuing with MCE Policy No.52016*” shall stand deleted.

(vi) In paragraph 56 on page 43, the entire quoted portion bracketed in red shall stand deleted.

(vii) In paragraph 58 on page 45, from the second sentence starting with “*The Plaintiffs further stated as under*” till the end of the quotation “..... *local contractor nominated by Kolkata Port....*” shall stand deleted.

3. Mr. Zulfikar F. Fakhri (DW-2) has today tendered his affidavit in lieu of examination-in-chief dated 28th September 2018. He affirms the contents thereof as true and correct to his own knowledge. His deposition, to the exclusion of the portions bracketed in red, is taken on record and marked as “**Exhibit D-1/54**”.

4. Mr. Narichania closes examination-in-chief. Cross-examination is being conducted by Mr. Ghogare.

5. S.O. to 12th January 2022 at 2:30 p.m. for further cross-examination of Mr. Zulfikar F. Fakhri (DW-2).

(A.K. MENON, J.)