

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

SUIT NO.634 OF 2005

M/s. The Prag Bosmi Synthetic Ltd.Plaintiff

V/s.

The New India Assurance Co. Ltd.Defendant

Mr. Ajay Panicker a/w. Ms. Hemali Kurne i/b. Mr. Ajay Panicker for plaintiff.

Mr. Rahul Narichania, senior advocate a/w. Ms. Aditi Pawar i/b. Motiwalla and Co. for defendant.

CORAM : K.R.SHRIRAM,J

DATE : 11th AUGUST, 2017

P.C.:-

Name : Subhash Dattatray Kendole (PW-4)

Age : 51 years

Occupation : Service

Address : B-7, 204, Alok City, Silvassa.

on S.A.:

Examination in chief by Mr. Ajay Panicker, for plaintiff :

For the sake of convenience, the evidence is recorded in question and answer form.

Q.1 : Where were you working in the year 2002?

Ans. : I was working with Barmag India Private Limited.

Q.2 : In the year 2002 were you assigned any work by your employer in relation to a company Prag Bosmi Synthetic Ltd., plaintiff in this suit?

Ans. : Yes. Prag Bosmi was our customer. I was asked by company to go to Calcutta port to inspect certain machineries that were lying in the Calcutta port imported by plaintiff. The date, if I recollect, was 25th October, 2002 and I went to the port alongwith a

colleague, Mr. Anwar Sheikh, to inspect the machinery lying at Calcutta port. After we inspected the machine we prepared a report.

Mr. Panicker, counsel for plaintiff tenders a photocopy of the visit report of a visit dated 25th October, 2002 to the witness.

Q.3 : Is this the report that you had prepared?

Ans. : Yes. It bears my signature. It also contains the signature of my colleague, Mr. Anwar Sheikh, who had accompanied me for the site inspection. Mr. Sheikh signed the report in my presence. I have read the report and I confirm the contents of the same.

The site report is taken on record and marked **Exhibit P-30**.

Examination in chief closed.

Cross examination of PW-4 by Mr. Rahul Narichania, senior counsel for defendnat :

Q.1 : What is your educational qualification?

Ans. : My qualification is B.E. (Industrial Electronics). Mr. Anwar Sheikh was a Textile Engineer by qualification.

(Attention of the witness is drawn to report dated 25th October, 2002)

Q.2 : Can you tell what is the date on which this report was issued?

Ans. : The report was prepared on the same date of visit, i.e., 25th October, 2002 and we submitted it to our company on our return to Baroda where the company is based. When I say our company, I mean Barmag India Private Limited. The original of the report must be with Barmag India Private Limited. I am no more in their employment.

Q.3 : Would I be correct to say that you were, during your visit, asked to take technical inspection of the spinning line? Can you explain what the technical inspection was involved?

Ans. : Technical inspection means I was asked to inspect to find

out whether the spinning line as on the date of inspection was in accordance with the specifications given at the time of supply.

Q.4 : Did you have to open the machinery during the inspection?

Ans. : Yes, because it was necessary. Both Mr. Anwar Sheikh and I did the inspection work together.

Witness adds : It was necessary for both of us to do inspection because I am Electronic Engineer and Mr. Sheikh is a Textile Engineer and while taking inspection he would look from the angle of his expertise and I would look from the angle of my expertise.

Q.5 : Can you tell from the report which out of the six items would fall under your scope of expertise and which will fall under the expertise of Mr. Sheikh?

Ans. : Item nos.1, 2, 3 and 5 will come under my expertise and item nos.4 and 6 will come under the expertise of Mr. Sheikh.

Q.6 : Therefore, would I be correct to say that due to lack of expertise, in so far as item nos.4 and 6 are concerned, you cannot vouch whether the contents in those paragraphs are correct?

Ans. : I do not want to comment regarding item nos.4 and 6 because they were purely mechanical parts. At the same time, I can say I have seen those parts and they were in badly rusted condition.

Q.7 : In your report you have stated "Looking at conditions of majority and important parts of machine it may be advisable to go for new machine". Whose decision was this?

Ans. : It was a joint decision taken by me and Mr. Sheikh.

Q.8 : Shown paragraph beginning "the parts of machine were found lying.....". Did you have to inspect all components and machinery?

Ans. : Yes. Now I can say we took inspection of almost all components and machinery.

Q.9 : Since you have recommended that it would be advisable to go for a new machine, did you consider whether the machinery could be salvaged or if it could have some salvage value?

Ans. : I did not consider because I am purely a technical person and my assignment was to go, inspect the machine and report on its condition.

Q.10 : In the note of your report you have stated "All these observations are visual external observations without special tools/testing and thus without any obligation". Do you still maintain your answer that you inspected almost all components and machinery?

Ans. : Yes, it was visual inspection.

Q.11 : In order to ascertain whether machines were working, you required special tools and testing?

Ans. : Yes.

Q.12 : Without use of special tools and testing, you would not be able to ascertain whether the machine was in working condition?

Ans. : Yes.

Q.13 : Then on what basis did you say it was advisable to go for new machine?

Ans. : Only by visual inspection.

Q.14 : Did the visual inspection by you involve inspection of all components and machinery?

Ans. : Yes.

Q.15 : When you went to take inspection, all the machineries and components were unpacked by the customer?

Ans. : No, we asked them to unpack.

Q.16 : Would I be correct to say that the spinning line was lying at Calcutta port since 1993?

Ans. : Yes.

Q.17 : Would the machinery and component stand the test of time even though in packed condition since they were kept in the port since 1993 for almost 9 years?

Ans. : Packing was good because in Germany they had excellent packing.

Q.18 : But in your report you have stated that most of the wooden boxes (of packing) were completely decayed, lot of accumulation of wooden dust is found and some of the parts were found lying under these dust layers, machinery parts were in rusted condition etc. Then how do you reconcile this statement in your report with your last answer that the packing was in sound condition?

Ans. : In general, German manufacturer's packing is very good but with the passage of time, the packing can get decayed or damaged.

Q.19 : In the last paragraph you have used the expression “..... and thus without any obligations.” What do you mean by “thus without any obligations.”?

Ans. : If I recollect, it means without any responsibility.

Q.20 : Can you tell apart from you and Mr. Sheikh who else was present during your inspection?

Ans. : There were four other persons and their names are mentioned in the report as Mr. R. Chaubey, Mr. Ramchandran, Mr. Pranav Shah and Mr. Mathur. They were employees of Prag Bosmi.

Cross examination closed.

No re-examination.

Witness discharged.

Mr. Panicker, counsel for plaintiff states that they may have one more witness and requests for two weeks time to inform the Court whether they will lead further evidence or close the evidence.

Stand over to 1st September, 2017 for directions.

(K.R.SHRIRAM,J)