IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(CIVIL APPELLATE JURISDICTION)

Present:
Mr. Justice S M Kuddus Zaman
And
Ms. Justice Tamanna Rahman Khalidi

FIRST APPEAL No.719 of 2019

Cosmos Sea Foods Limited

....Appellant

-Versus-

Sonar Bangla Insurance and others

.... Respondents

Mr. Montu Chandra Ghosh, Advocate

…. For the appellant.

Mr. A. S. M. Mokter Kabir Khan, Advocate with

Mr. Md. Mostasim Billah Parvez, Advocate

Mr. Mehedi Hasan (Sajal), Advocate

….. For the respondent No.1.

Mr. Md. Abdur Rahman, Advocate with

Ms. Farzana Afrin, Advocate

....For the respondent No.2.

Heard on 11.08.2026 and 19.08.2026.
Judgment on 07.09.2026 and 08.09.2026.

S M Kuddus Zaman, J:

This First Appeal is directed against the judgment and decree dated 07.08.2019 passed by the learned Joint District Judge, 1st Court, Khulna in Money Suit No.01 of 2015 dismissing the suit.

Facts in short are that appellant as plaintiff filed above Money Suit for Taka 16 crore from defendant Nos.1 and 2 alleging that the

plaintiff processes and exports frozen shrimps and for above business he obtained loan from defendant No.3. As a requirement of above loan plaintiff obtained two insurance policies from defendant Nos.1 and 2. The first Insurance Policy No.SBI/HO/KLN/FP-195/11/2012.(Dec) In Lieu of C/NOTE No.SBI/KLN/FC-167/10/2012.(Dec) with validity from 02.10.2012 to 02.10.2013 was for covering risks of fire, lighting and flood for the factory building and machineries. The second Insurance Policy No.SBI/HO/KLN/FP-194/11/2012. (Dec) In Lieu of C/Note No.SBI/KLN/FC-166/10/2012. (Dec) with validity from 02.10.2012 to 02.10.2013 was for shrimps stock in the cold storage covering risks of fire, lighting and flood. On 20.06.2013 at 10.00 P.M. fire broke out in the electric control panel board of above building which spread into the machine room and damaged electric line and ammonia gas supply pipe line. The employees of the plaintiff and the local people doused the fire before arrival of the fire brigade. Above employees and local people smelt ammonia gas which was coming out of the leaked ammonia gas pipe line. The fire service came in to mitigate the emission of ammonia gas huge water into the cold storage. The plaintiff or his employees could not enter into the factory or the cold storage for about a week and by this time entire shrimp stock was damaged. Two surveyors, namely, Midland Survey and Inspection Co. and Lima Claims entered inside the cold storage and found that total stock of shrimp was damaged but being unduly influenced by defendant No.1 they failed to recommend

any amount of money for above loss. On the recommendation of the Environmental Department and above surveyors the plaintiff dumped the damaged shrimp stock in the ground.

Defendant Nos.1-3 contested above suit by filing two separate written statements. Defendant Nos.1 and 2 stated that the plaintiff obtained two insurance policies from above defendants. Insurance Policy No.SBI/HO/KLN/FP-194/11/2012. (Dec) In Lieu of C/Note No.SBI/KLN/FC-166/10/2012. (Dec) dated 02.10.2012 was for covering fire, lighting and flood risks for the factory building and machineries and the defendants have paid the claim under above insurance policy. The plaintiff also obtained Insurance Policy No.SBI/HO/KLN/FP-194/11/2012. (Dec) In Lieu of C/Note No.SBI/KLN/FC-166/10/2012. (Dec) for covering fire, lighting and flood risks for the frozen shrimp stock in the cold storage. The claim of the plaintiff for damaged frozen shrimps stock is outside of the purview and ambit of the terms and conditions of above insurance policy and the plaintiff is not entitled to get money for above claim. The plaintiff cannot lay the blames on the defendants for his own negligence, faults, and defects and for violation of the terms and conditions of above policy. On conclusion of joint survey the survey team found that the insured shrimp stock was covered for fire, lighting and flood risks but the loss of above shrimp stock was caused by the water thrown by the fire brigade. The

proximate cause of above damage being not fire the defendant is not liable to satisfy the claim.

In the written statement defendant No.3 stated that the plaintiff obtained loan for above plant by mortgaging the land, building machinery and shrimp stock and if the plaintiff gets money under above insurance policy from defendant Nos.1 and 2 that money would be adjusted against above loan.

At trial plaintiff and defendants examined one witness each. Documents of the plaintiff were marked as Exhibit Nos.1-26 series and those of the defendants were marked as Exhibit Nos."Ka" to "Eyo".

The learned Joint District Judge dismissed the suit.

Being aggrieved by and dissatisfied with above judgment and decree of the trial Court above plaintiff as appellant moved to this Court and preferred this First Appeal.

Mr. Montu Chandra Ghosh, learned Advocate for the appellant submits that the plaintiff in good faith obtained two insurance policies from defendant Nos.1 and 2. Insurance Policy No. SBI/HO/KLN/FP-195/11/2012.(Dec) In Lieu of C/NOTE No.SBI/KLN/FC-167/10/2012.(Dec) was purchased to insure the plant building and machineries and by Policy No.SBI/HO/KLN/FP-194/11/2012. (Dec) In Lieu of C/Note No.SBI/KLN/FC-166/10/2012. (Dec) total frozen shrimp stock of the cold storage was insured. In both above insurance policies the risks of fire, lighting and flood were covered. It is not

disputed that the cause of fire in the electric panel board was accidental and originated from electric short circuit. The defendants have accepted the claims of the plaintiff under Insurance Policy No.SBI/HO/KLN/FP-195/11/2012.(Dec) In Lieu of C/NOTE No.SBI/KLN/FC-167/10/2012.(Dec) for damage of factory building and machineries by above fire and made payment. It is not disputed that in the cold storage 29,360 cartoon of frozen shrimp were stored nd above total stock was destroyed and dumped in the ground. Total stock of frozen shrimp was damaged due to leak of ammonia pipe line by fire and subsequent throwing of water by the fire brigade and above causes have been admitted by the joint surveyors in their report dated 24.04.2014. The plaintiff did not have any negligence or incompetence in the maintenance of above plant. Since the insured shrimps stock was damaged due to fire caused by electric short circuit above loss was covered by above insurance policy and defendant Nos.1 and 2 were bound to satisfy the claim. The learned Joint District Judge totally failed to appreciate above facts and circumstances of the case and evidence on record and most illegally dismissed above suit which is not tenable in law.

Mr. A. S. M. Mokter Kabir Khan, learned Advocate for respondent No.1 submits that the appellant obtained one insurance policy for the plant building and machinery and another policy for the whole stock of frozen shrimp to fulfill the condition for loan advanced

by defendant No.3. While obtaining above insurance policies the appellant did not make full discloser as to his business and relevant issues. The paid up capital of the plaintiff was Taka 1 crore and authorized capital was Taka 5 crore but he was doing business of more than Taka 20 crore and obtained insurance coverage for frozen shrimp stock for Taka 16 crore. Fire broke out on 20.06.2023 at 10.00 A.M. due to short circuit in the electric panel board which was situated on the outer part of the building. Above fire was doused by the employees and local people immediately. Since frozen shrimp stock was inside the cold storage the plaintiff should have made immediate endeavor for restoration of electricity and ammonia gas supply to the cold storage. But the plaintiff did not make any such endeavor and it was only at 6.00 P.M. on the next day when local people complained of smelling ammonia gas the plaintiff called in the Fire Service department. The plaintiff or his employees did not make any logical endeavor for finding out leakage and repair of gas pipe line to stop emission of ammonia gas and protect the frozen shrimp stock. Instead the plaintiff facilitated fire service brigade to pump huge water inside the cold storage and on the frozen shrimps causing serious damage. There is no claim that above fire spread to the cold storage or frozen shrimp stock. Ammonia gas entered into the cold storage due to leak in the gas pipe lines outside of the cold storage. The method applied for removing ammonia gas from inside the cold storage was unscientific,

unprofessional and unacceptable. On conclusion of joint survey the surveyors rightly reported that they did not find any burnt shrimp nor found any existence of fire inside the cold storage and the shrimps was rotten due to throwing of huge water by the Fire Service Department. Above findings of the surveyors have been corroborated by the statements made in the plaint and the evidence of PW1. It is not disputed that the plaintiff obtained above Insurance Policy to protect above frozen shrimp stock from fire, lighting and flood. Since the plant building and machinery was burnt by fire caused by short circuit in the electrical pane the defendant has paid above claim. But the damage or loss of frozen shrimp having not caused by fire or flood or lighting. The surveyors report rightly pointed out that the cause of damage of above shrimp stock was water which was not covered by Insurance Policy No.SBI/HO/KLN/FP-194/11/2012. (Dec) In Lieu of C/Note No.SBI/KLN/FC-166/10/2012. (Dec) and the defendant was not liable to pay above claim. On consideration of above facts and circumstances of the case and evidence on record the learned Joint District Judge rightly dismissed above suit which calls for no interference.

Mr. Abdur Rahman, learned Advocate for respondent No.2 adopted above submissions of the learned Advocate for respondent No.1.

We have considered the submissions of the learned Advocate for the respective parties and carefully examined all materials on record including the impugned judgment and decree dated 07.08.2019.

It is admitted that the plaintiff is an exporter of frozen shrimps and he obtained loan from defendant No.3 for above business and to fulfill the conditions of the loan sanction letter the plaintiff purchased two insurance policy from defendant No.1 and Insurance Policy No. SBI/HO/KLN/FP-195/11/2012.(Dec) In Lieu of C/NOTE NO.SBI/KLN/FC-167/10/2012.(Dec) was for coverage of fire, lighting or flood risks of the factory building and machineries and Insurance Policy No.SBI/HO/KLN/FP-194/11/2012.(Dec) In Lieu of C/Note No.SBI/KLN/FC-166/10/2012.(Dec) was to cover the fire, lighting and flood risks of whole frozen shrimp stock in the cold storage. It is also admitted that on 20.06.2013 at 10 P.M. fire broke out in the electric panel board due to electric short circuit which burnt the electrical line and caused leak in the ammonia gas supply pipe and at above time 29,360 cartoon frozen shrimps were stored in the cold storage.

It is also admitted that the claim the plaintiff under Insurance Policy No.SBI/HO/KLN/FP-195/11/2012.(Dec) In Lieu of C/NOTE NO.SBI/KLN/FC-167/10/2012.(Dec) for damage of factory building and machineries by above fire was accepted by defendant No.1 and fully paid. But the defendant refused to accept and satisfy the claim of the plaintiff for damage of frozen shrimp stock under Insurance Policy

No. SBI/HO/KLN/FP-194/11/2012.(Dec) In Lieu of C/Note No.SBI/KLN/FC-166/10/2012.(Dec) on the basis of joint surveyor report which stated that above shrimps stock was rotten due to pumping of water by the fire brigade and not burnt by fire.

It has been stated in the plaint and in the evidence of PW1 Md. Monir Hossain that fire broke out on 20.06.2013 at 10.00 P.M. which was doused within a short period of time and emission of ammonia was detected at 6.00 A.M. on 21.06.2013. During the period between 10.30 P.M. of 21.06.2013 to 6 A. M. of 22.06.2013 the plaintiff did not make any endeavor to restore electricity or to find out the leak in the ammonia pipe and repair the same. Since a valuable stock of shrimp was inside the cold storage it was imperative upon the plaintiff to assess the damage and undertake appropriate steps to protect and rescue frozen shrimp. But there is nothing on record to show that any such endeavor was made by the plaintiff.

There is no allegation that above fire spread into the cold storage or damaged any equipment inside the cold storage. The leakage of ammonia pipe line occurred outside of the cold storage and in cross examination PW1 stated that the ammonia pipe of 1 inch breath which receives gas from the cylinder and supplies through different points to the cold storage suffered leakage. It is not understandable as to why the plaintiff as a responsible owner did not try to repair leakage of the

ammonia gas pipe during the period from 10.00 P.M. of 20.06.2013 to 6.00 A.M. of 21.06.2013.

The plaintiff remained idle until complaint of emission of ammonia gas by the local people. The plaintiff asked fire brigade to remove ammonia gas but he did not make any endeavor to find out the cause of emission of ammonia gas and repair the same. The fire service attempted to eliminate ammonia gas by spreading of water. It is not understandable as to how without repair of leakage in the gas pipe line or stopping supply of gas emission of gas would be stopped by spreading water.

There is no allegation in the plant or in the evidence of PW1 that above fire spread into the cold storage where the frozen shrimp stock was kept. It appears that ammonia gas emission occurred in the other part of the plant building and entered into the cold storage. The pumping of huge quantity of water to stop emission of ammonia gas cannot be justified in any way. In his evidence PW1 stated that all shrimps in the cold storage was rotten he did not claim that shrimp stock was burnt by fire. If above shrimp stock was not directly burnt by fire but the ultimate cause of its destruction was fire even then the claim of the appellant could fall under above insurance policy. In the evidence of PW1 Md. Monir Hossain and statement in the plant it has been alleged that fire service threw huge quantity of water on the shrimp cartoons to eliminate ammonia gas. Ammonia gas does not

include in the definition of fire. In the absence of claim that fire brigade threw water inside the cold storage to put off fire we are unable to accept the submissions of the learned Advocate for the appellant that the cause of damage of the shrimp stock was fire.

The plaintiff by letters dated 21.06.2013 and 29.06.2013 addressed to the defendant No.1 (Exhibit Nos.4 and 6) stated that the emission of ammonia gas was detected in the midnight of 21.06.2013 and at 6.30 A.M. foremen Monir entered into the production room and found strong smell of ammonia gas. No technician or skill person was immediately called in to repair above damage and stop emission of ammonia gas and protect valuable shrimp stock.

It is true that the plaintiff did not file any objection against the joint survey report conducted by Midland Survey and Inspection Co. and Lima Claims Surveyors to the Insurance Development and Regulatory Authority. But that does not disentitle the plaintiff from challenging the legality and accuracy of above survey report in the Civil Court.

The learned Advocate for the respondent has raised allegation of concealment of material facts by the plaintiff at the time of purchasing of insurance policy. PW1 Monir has stated that the paid up capital and authorized capital of his company was Taka 20,00,000/- and Taka 1 crore respectively but he was running business of more than Taka 20 crore and obtained insurance policy of Taka 16 crore. In the written

statement defendant No.1 did not make any specific allegation as to concealment of material facts nor mentioned the amount of paid up and authorized capital of the plaintiff. The defendant did not produce any document to prove the paid up and authorized capital of the plaintiff. Any fact refers to a document should be proved by production of the document and in a civil suit no evidence can be adduced outside of the pleadings. Moreover, the defendant has already paid the claim of the plaintiff under Insurance Policy No.SBI/HO/KLN/FP-195/11/2012.(Dec) In Lieu of C/NOTE No.SBI/KLN/FC-167/10/2012.(Dec) for damage of building and machinery by fire. In above view of the materials on recorded we are unable to accept above submissions of the learned Advocate for the respondent that above insurance policy was vitiated by concealment of material facts or fraud.

As mentioned above the plaintiff has stated in the plaint, in his evidence as PW1 and in his letters to the defendant (Exhibit Nos.3 and 6) that due to throwing of huge water in the cold storage a good quantity of shrimp washed away into the Rupsa river and the rest was rotten. There is no allegation that above shrimp stock was burnt by fire and above water was thrown to put off fire.

On consideration of above facts and circumstances of the case and evidence on record we are unable to find any illegality or irregularity in the impugned judgment and decree passed by the learned Joint District

Judge nor we find any substance in this First Appeal which is liable to be dismissed.

In the result, this First Appeal is dismissed.

However, there will be no order as to cost.

Send down the lower Court's record immediately.

Tamanna Rahman Khalidi , J:

I agree.

MD. MASUDUR RAHMAN
BENCH OFFICER