IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1997] SGHC 101

Suit No 1721 of 1996

Between

Bhavani Stores Pte Ltd

… Plaintiff

And

The Oriental Insurance Co Ltd

… Defendant

GROUNDS OF DECISION

Version No 1: 29 Oct 2026 (23:45 hrs)

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Bhavani Stores Pte Ltd v The Oriental Insurance Co Ltd

[1997] SGHC 101

Suit No 1721 of 1996
Goh Joon Seng J
17 April 1997

1 **Judgment:**

2 **GROUNDS OF JUDGMENT**

3 1 The Plaintiff is a trading company incorporated in Singapore. The Defendant is an insurance company incorporated in India and having a registered office in Singapore.

4 2 By various policies of insurance issued at Dubai, United Arab Emirates < 'the policies' > , the Defendant as insurer agreed with the Plaintiff as the assured to insure a shipment of 5742.521 net metric tons of raw dried cashew nuts in bags < 'the shipment' > , on a voyage on the vessel MV Bahiana Reefer ('the vessel') from Bissau, Guinea Bissau to Tuticorin, India, including discharge at the port of Tuticorin. The endorsement to the policies stated: covering among other clauses Institute Cargo Clause(s) (A) ... Port Warehouse To Port Warehouse, with claims payable in India or Singapore ... . It was further provided that the 'insurance is subject to English law and practice.'

5 3 Upon discharge at the port of Tuticorin, the shipment was to be delivered to various consignees there.

6 4 In or about August 1995, the shipment was loaded on board the vessel and clean bills of lading were issued. The total tonnage of the shipment was 5,768.216 metric tons.

7 5 On or about 30 September 1995, the vessel reached the port of Tuticorin. The discharge of the shipment was effected by the vessel's agents. It is the Plaintiff's claim, in paragraph 6 of the Statement of Claim, that in the discharge the stevedores used hooks. As a result, the bags were torn and there was spillage of the contents therefrom. The spillage was swept up, re-bagged and delivered to the consignees.

8 6 Due to the spillage there was a shortfall of 408.135 metric tons in the shipment delivered to the consignees < 'the shortfall' > . The Plaintiff's sale of the cashew nuts to the consignees was based on landed weight. The total value of the shortfall is said to amount to US$536,803.45. Shortfall due to spillage is an insured peril. Under the policies the Defendant is liable to pay the Plaintiff the value of the shortfall less 1% of the value of all the bills of lading which amounts to US$76,261.75. The Plaintiff's claim thus works out at US$461,541.70. On the Defendant's failure to pay the sum claimed, the Plaintiff on 12 September 1996 commenced these proceedings claiming the said sum of US$461,541.70 plus interest and costs.

9 7 On being served with writ, the Defendant applied for an order that all proceedings be stayed on the ground that Singapore is not the appropriate forum for the trial of the action. The application was dismissed by the assistant

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registrar whose decision was affirmed by me. The Defendant has appealed to the Court of Appeal. I now give my reasons.

10 8 The writ was served on the Defendant at its registered office in Singapore. Accordingly jurisdiction has been founded as of right under s 16(1)(a) of the Supreme Court of Judicature Act (Cap 322) which reads:

11 The High Court shall have jurisdiction to hear and try any action in personam where -

12 (a) the defendant is served with a writ or other originating process - (i) in Singapore in the manner prescribed by Rules of Court. (ii) ... ...

13 9 The law on forum non conveniens in cases where jurisdiction is founded as of right is authoritatively stated by Lord Goff in the Spiliada < 1987 > 1 Lloyd's Report 1 at 9-12:

14 In cases where jurisdiction has been founded as of right, i.e. where in this country the defendant has been served with proceedings within the jurisdiction, the defendant may now apply to the Court to exercise its discretion to stay the proceedings on the ground which is usually called forum non conveniens. ... ... In my opinion, having regard to the authorities (including in particular the Scottish authorities), the law can at present be summarized as follows:

15 (1) The basic principle is that a stay will only be granted on the ground of forum non conveniens where the Court is satisfied that there is some other available forum, having competent jurisdiction, which is the appropriate forum

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for the trial of the action, i.e. in which the case may be tried more suitably for the interests of all the parties and the ends of justice.

16 (2) ... ... in general the burden of proof rests on the defendant to persuade the Court to exercise its discretion to grant a stay ... ... Furthermore, if the Court is satisfied that there is another available forum which is prima facie the appropriate forum for the trial of the action, the burden will then shift to the plaintiff to show that there are special circumstances by reason of which justice requires that the trial should nevertheless take place in this country.

17 (3) The question being whether there is some other forum which is the appropriate forum for the trial of the action, it is pertinent to ask whether the fact the plaintiff has, exhypothesi, founded jurisdiction as of right in accordance with the law of this country, of itself gives the plaintiff an advantage in the sense that the English Court will not lightly disturb jurisdiction so established.

18 ... ... In my opinion, the burden resting on the defendant is not just to show that England is not the natural or appropriate forum for the trial, but to establish that there is another available forum which is clearly or distinctly more appropriate than the English forum. In this way, proper regard is paid to the fact that jurisdiction has been founded in England as of right. ... ...

19 (4) Since the question is whether there exists some other forum which is clearly more appropriate for the trial of the action, the Court will look first to see what factors there are which point in the direction of another forum. ... ... I respectfully consider that it may be more desirable ... ... to adopt the expression used by my noble and learned friend, Lord Keith of Kinkel, in The Abidin Daver, < 1984 > 1 Lloyd's Rep. 339; < 1984 > 1 A.C. 398 at pp 346 and 415, when he referred to the -

20 ... Natural forum < - as being - > that with which the action had the most real and substantial connection.

21 So it is for connecting factors in this sense that the Court must first look; and these will include not only factors affecting convenience or expense (such as availability of witnesses), but also other factors such as the law governing the relevant transaction (as to which see Credit Chimique v James Scott Engineering Group Ltd., 1982 S.L.T. 131), and the places where the parties respectively reside or carry on business.

22 (5) If the Court concludes at that stage that there is no other available forum which is clearly more appropriate for the trial of the action, it will ordinarily refuse a stay; ... . (6) If however the Court concludes at that stage that there is some other available forum which prima facie is clearly more appropriate for the trial of the action, it will ordinarily grant a stay unless there are circumstances by reason of which justice requires that a stay should nevertheless not be granted. ...

23 10. The Spiliada was applied by the Court of Appeal in Brinkerhoff Maritime Drilling Corp & Anor v PT Airfast Services Indonesia < 1992 > 2 SLR 776. It was followed in Eng Liat Kiang v Eng Bak Hern < 1995 > 3 SLR 97 where at 105 L P Thean JA in delivering the judgment of the Court of Appeal stated:

24 The Spiliada has been considered and approved in Brinkerhoff and we can see no reason for departing from that authority. The underlying basis in this test is whether the local court is clearly an appropriate forum or not and whether there is another forum which is distinctly and clearly more appropriate.

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25 11 On the application of the principles enunciated in the Spiliada, where the plaintiffs have founded jurisdiction as of right, this is what Prakash J stated in Hooghly Mills Co Ltd v Seltron Pte Ltd < 1995 > 1 SLR 773 at 776:

26 ... The basic principle is that a stay will only be granted on the ground of forum non conveniens where the court is satisfied that another forum is the appropriate forum for the trial of the action. In this context 'appropriate' means that a trial in that forum will be more suitable for the interests of all the parties and the interests of justice.

27 Whilst initially the defendants have the burden of persuading the court to grant a stay, once the court is satisfied that there is another available forum which is, prima facie, the appropriate forum for the trial of the action, the burden shifts to the plaintiff to show the existence of special circumstances justifying a trial here. However, where the plaintiffs have, as in this case, founded jurisdiction here as of right in accordance with Singapore law, the defendant's burden is not just to show that Singapore is not the natural or appropriate forum for the trial but to establish that there is another available forum which is clearly or distinctly more appropriate than the Singapore court. In this connection, it is relevant to note that in the Spiliada case Lord Goff regarded the 'natural forum' as being that with which the action had the most real and substantial connection.

28 12 In determining which jurisdiction is the natural forum the connecting factors referred to by Lord Goff include the availability of witnesses, the governing law and the places where the parties reside or carry on their businesses.

29 13 Going by these connecting factors the Plaintiff is incorporated in Singapore where it has its principal place of business. The Defendant though no

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longer a licensed insurer in Singapore since 1 January 1988, has an office in Singapore which can service claims arising under its policies. It is also a shareholder of the India International Insurance Pte Ltd which has been a licensed insurer in Singapore since 1 January 1988. The claim herein is payable either in India or Singapore. The governing law is English law in either jurisdiction. The main connecting factor relied on by the Defendant in support of its application is thus the location of witnesses. In this connection, the Defendant in the affidavit of Subhash Chander Sikka contended that since all its material witnesses are in India, it would be severely prejudiced and disadvantaged if the claim is adjudicated in Singapore while the Plaintiff would not suffer any prejudice or disadvantage if the matter is adjudicated in India. The affidavit listed its witnesses and their respective evidence as follows:

30 the survey settling agent from the Defendants' Tuticorin office to verify the fact that no notification of loss and damage as aforesaid was given by the Plaintiffs to the Defendants as required by the terms of the policies;

31 a representative from the Central Industrial Security Force, Tuticorin who are in charge of the security at the Port of Tuticorin;

32 the stevedores at Tuticorin who were responsible for the discharge of the Cargo;

33 a representative from the police at Tuticorin 5To confirm that no loss, theft or pilferage of Cargo had been reported to them;

34 the Assistant Director of Export Inspection Agency at Cochin, to give evidence as to moisture loss in such cargo;

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35 a representative from Seascan to give evidence of the discharging operation at Tuticorin;

36 a representative from Messrs J B Boda to give evidence on moisture loss of such cargo;

37 a representative from Messrs Soni & Co to give evidence of the investigations carried out for and on behalf of the Defendants; and

38 a representative from Vilson's Shipping Private Limited to give evidence that the quantity of bags of Cargo per the cargo manifest as well as the 1082 bags of re-bagged spilled Cargo were delivered to the consignees.

39 14 Besides a general denial, the following however are substantially the issues raised by the Defendant in the affidavit of Subhash Chander Sikka and subsequently in its Defence:

40 (1) The Defendant contended that the Plaintiff had no insurable interest in the shipment. The Plaintiff's position is that the shipment was sold on the basis of its landed weight. The shipment therefore remained at the Plaintiff's risk until after completion of discharge. Therefore it had insurable interest in the shipment at the material time. This issue is thus a question of law.

41 (2) The alleged shortfall in landed weight, in particular that the shortfall was due to the use of hooks, was denied. The burden of proof that there was a shortfall (and the amount of the same) in landed weight due to the use of hooks is on the Plaintiff. The need for the Defendant to rebut the Plaintiff's evidence by itself is no reason to compel the Plaintiff to litigate in India. As there is no

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allegation that the shortfall was due to theft and pilferage, the witnesses on the security arrangement at the Port of Tuticorin are not required.

42 (3) The Defendant alleged that the shortfall in landed weight was due to loss of moisture content. The Assistant Director of Export Inspection Agency at Cochin and the representative from J B Boda did not examine the shipment. Any witness to that will have to testify as an expert. Such an expert may be procured in Singapore.

43 (4) The Defendant also raised the defence that the Plaintiff failed to give the requisite notice of loss to the Defendant in Tuticorin as stipulated in the policies. The burden of proof of compliance with the same rests with the Plaintiff. In any case, such notice, if any, would have been given in writing. Therefore whether such notice had been given is just as easily proved or disproved in Singapore as in India.

44 15 The Defendant had failed to discharge its burden of proof to my satisfaction that India is the more appropriate forum. Besides, this action has reached the stage where it may soon be heard. The delay that must be occasioned by staying this action and compelling the Plaintiff to file another action in India will not further the interest of the parties and the ends of justice.

45 16 Accordingly I dismissed the appeal with costs fixed at $3,500.

46 GOH JOON SENG

47 < JUDGE >

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Goh Joon Seng J

Lawrence Quahe for the plaintiffs
Danny Chua for the defendants

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