(2002) 06 NCDRC CK 0014

In the National Consumer Disputes Redressal Commission

ABDUL RASHID BELIM APPELLANT

Vs

BRANCH MANAGER, BANK OF INDIA RESPONDENT

Date of Decision : 27-06-2002

Acts Referred:

Citation : 2003 3 CPJ 268

Hon'ble Judges : Ratan Prakash , Sushma Tanwar J.

Final Decision : Appeal allowed

Judgement

1. THIS appeal is directed against the order of the District Forum, Jodhpur in Complaint Case No. 1013/1993 dated 27.9.1994 whereby the complaint filed by the appellant has been dismissed mainly on the ground that the claim to the opposite parties was not made to the Assurance Company within time; the complaint has been filed after the period of limitation and that a civil suit instituted by the Bank of India is pending for recovery of its loan from the appellant.

2. FACTS relevant for disposal of this appeal in brief are that the appellant was granted on 1.4.1987 a loan of Rs. 35,000/- under the scheme of loan to the Educated Unemployed Persons in the year 1987 by the District Industries Centre, Jodhpur through the agency of respondent No. 1 (Bank of India). After receipt of loan, the appellant opened a shop under the name and title of M/s. Famous Furnitures, Jodhpur. This shop was got insured from the respondent No. 2, the New India Assurance Co. under the instructions of the appellant by the respondent Bank. The premia of the insurance were duly credited in the name of the appellant by the respondent Bank i.e. the premium for the year 1988 was paid on 1.8.1988; for the year 1989 on 10.7.1989; for the year 1990 on 30.7.1990; for the year 1991 on 9.7.1991, and for the year 1992 it was lastly paid on 9.7.1992. It is the case of the appellant that during the currency of the insurance of the shop which was insured with the respondent Assurance Company; communal riots took place in Jodhpur on 24.10.1990 and miscreants looted and burnt his shop whereby he suffered a loss of Rs. 46,150/-. It is

further the case of the appellant that since he resided in the heart of the city, where curfew was imposed and it continued till 1.11.1990; after a relaxation was given in curfew on 1.11.1990; he lodged a criminal report on the same day about the loss sustained by him at Police Station Udai Mandir, Jodhpur and simultaneously also informed the respondent Bank through a letter posted under ''Certificate of Posting'' (UPC) that his shop has been destroyed in the aforesaid incident. When he did not receive any reply, he reminded the Bank again on 6.11.1990 through a letter under Certificate of Posting giving the details of the losses sustained by him in the aforesaid incident. The appellant finding no response ultimately filed a complaint against the respondents before the District Forum on 21.10.1993 (date given on the Vakalatnama of the complainant) which in fact was registered by the District Forum on 3.11.1993; to claim a total amount of Rs. 46,150/- as stated earlier.

The opposite parties contested the complaint by filing separate replies. The stand of the Bank has been that the Bank was informed for the first time about the riots of 24.10.1990 on 26.8.1991 and after it sent an intimation to the New India Assurance Company on 30.8.1991, the New India Assurance Company replied to them that since the incident had taken place long ago and no information of such an incident was given within 24 hours of the incident or in case a curfew is imposed; after 7 days of the lifting of curfew; hence it is impossible to make any assessment of the damaged goods and accordingly they should not correspond with them in this matter in future. It has also been stated by the Bank that since the appellant had failed to pay back the loan; a civil suit was instituted against him in the Civil Court for realisation of Rs. 46,375/- against him and thus averred that the complaint be dismissed.

3. THE stand of the New India Assurance Company has simply been that since the complainant had not forwarded any claim for the loss suffered by him nor informed it, hence the Assurance Company is an unnecessary party and its name should be deleted from the array of the parties more particularly when the complainant has stated in the pleadings that a civil suit has been instituted against him, by the Bank. The learned District Forum after perusal of the pleadings and evidence produced by the parties held that the complainant has not been successful in proving that he informed the Bank about the aforesaid loss to him on 1.11.1990 and 6.11.1990. The Forum also held that for the first time the information of the incident was given by the complainant to the Bank on 26.8.1991. It further held that since the Bank had filed a civil suit against the complainant for realisation of its dues, the complaint is not maintainable. It further held that since the complainant had not tendered any claim to the Assurance Company within the time as required under the policy issued to insure the shop in question; and that it came to know about the incident of riots and loss to complainant only after 11 months that too through a letter of the Bank dated 30.8.1991; the complainant''s claim is not tenable against the Assurance Company. That the complaint itself has been filed beyond the period of limitation, hence the complaint deserves rejection and accordingly the District Forum

dismissed the claim/complaint of the appellant vide its order dated 27.9.1994 under challenge.

4. WE have given due thought and consideration to the arguments advanced on behalf of the appellant as also the respondents and have carefully gone through the material available on record. In this appeal, the following questions need determination : (1) Whether the complainant is barred by limitation ? (2) Whether the complaint is not entertainable because of the filing of a civil suit by the Bank against the complainant for recovery of its dues ? (3) Whether the Assurance Company also is not liable to pay any amounts to the complainant under the policy issued by it to insure shop in question of the complainant which was looted and burnt in the riots which took place on 24.10.1990 at Jodhpur.

The learned District Forum has held that the Bank was not informed about the incident of looting and burning of the complainant''s shop on 1.11.1990 and 6.11.1990. This finding of the Forum is perverse. The District Forum had rejected the ''Certificate of Posting'' produced by the complainant in support of the communications sent to the Bank on 1.11.1990 and 6.11.1990 merely on the ground that a simple production of ''Certificate of Posting'' does not establish that the aforesaid letters were received by the Bank. It is settled law that when a letter is duly addressed to a person and authenticated by a certificate of posting that it has been also duly posted, it would be presumed under the law that it has been delivered to the person to whom it has been addressed. The District Forum has relied upon a mere denial of the respondent Bank instead of relying upon the documents i.e. Certificates of Posting produced by the complainant evidencing the sending of the aforesaid letters to the Bank communicating the incident which took place on 24.10.1990 at Jodhpur wherein complainant''s shop was looted and burnt by the miscreants. We do not approve of the view taken by Forum. According to us, it is fully established that the complainant had duly informed the respondent Bank on 1.11.1990 and 6.11.1990 that his shop has been looted and burnt by the miscreants in the riots in Jodhpur on 24.10.1990. This is further evident by the newspaper cuttings which have been brought on record by the complainant; exhibiting that such an incident had taken place in Jodhpur on 24.10.1990. It is impossible that the Bank which is looted in the same city, did not come to know about the looting and burning of the shop of the complainant on 24.10.1990 when in the newspaper reports, there was a mention also about the damage done to the shop of the complainant. In this background, it is now to be assessed whether the complaint filed on 21.10.1993 is within limitation ? According to the respondent Bank, it for the first time wrote a letter to the Assurance Company on 30.8.1991 and received a reply from the Assurance Co. on 9.9.1991 and that thereafter the Bank informed the complainant about the reply received from the Assurance Company. The respondent Bank, however, in its reply has not indicated the date when it actually informed the complainant about the reply received from the Assurance Company. The truth, however, comes to light from the letter dated 14.2.1992 sent by Bank of India (respondent No. 1) to the appellant informing him about the reply received from Assurance Company and further demanding repayment of its loan. In other words, the communication of the Bank to the complainant about virtually refusing its liability and that of Assurance Company towards the complainant; would be deemed to have been communicated on or about 14.2.1992. The cause of action, therefore, arose not before 14.2.1992. The complaint admittedly has been filed on 21.10.1993 as is evident from the date endorsed on the list of the documents and Vakalatnama filed by the complainant along with his complaint. Thus, the complaint filed on 21.10.1993 by the complainant is well within limitation from the date of cause of action i.e. 14.2.1992. The first issue, therefore, is answered in favour of the appellant and against the respondents.

5. COMING now first to Q. No. 3, it has to be seen whether the Assurance Co. is liable to pay any sum to the complainant under the policy. The District Forum has held that since the complainant had not informed the Assurance Company nor had presented his claim to obtain the insurance money under the policy within time; hence the Assurance Company was within its rights to disallow the complainant''s claim as "No Claim". We are afraid that the reasoning given by the District Forum to disallow complainant''s claim against Assurance Company can be sustained. The reason is : the Assurance Company had not produced even the insurance policy issued in favour of the complainant''s shop nor has produced any document which discloses the terms and conditions on the basis of which the claim could be disallowed. In violation of any terms of the alleged policy not produced before the District Forum. The Assurance Company has taken the matter very lightly and without bringing on record any material whatsoever in respect of policy issued in favour of the complainant''s shop. The fact however, remains and admitted that the policy was obtained from respondent No. 2 through the agency of respondent Bank in relation to the shop of the complainant. Therefore, in our view, the mere denial of liability by the Assurance Company cannot be upheld. In our opinion, the Assurance Company is equally liable for the amount claimed by the complainant against both the opposite parties. This issue is also answered in the negative and in the favour of the complainant-appellant and against the respondents. Now so far as the plea and objection taken by the respondents about the filing of a civil suit by the Bank against the complainant to recover its dues is concerned, it is suffice to observe that the civil suit which has been filed by the Bank against the complainant is a suit under Order 37 of the Code of Civil Procedure wherein the Civil Court has to adopt the procedure to dispose of a suit in a summary manner. Under Order 37 of the CPC detailed enquiry and investigation in respect of any controversy raised between the parties cannot be examined. Moreover, the civil suit filed by the Bank is an independent action not related to the loss caused to the complainant due to looting and burning of his shop insured with the Assurance Company. Remedies which are available under the Consumer Protection Act, 1986 are in addition to and not in derogation to any remedy available under any other law as laid down under Section 3 of the Consumer Protection Act, 1986. In fact, the

issues raised in the complaint could have been decided by the District Forum without taking into consideration, the issues which were raised in the civil suit filed by the respondent Bank against the complainant. It is in these situations, that Hon''ble National Commission has held in the case of Mike''s (P) Ltd. v. State Bank of Bikaner and Jaipur, II (1995) CPJ 97 (NC), as under : "The next preliminary objection taken is that the Bank has already filed a suit and it is the consistent view of this Commission that when one party has gone to Court earlier than the filing of the complaint, the other party''s complaint should not be entertained. However, the suit filed by the Bank prior to the complaint is about recovery of its dues said to be outstanding against the complainant. The complainant in the present complaint is claiming damages and loss on account of the negligence and deficiency in the rendering of banking service which occurred to him. In the peculiar circumstances of the case, we have decided to adjudicate this complaint. A harassed consumer should not be allowed to suffer merely because the Bank has chosen to go to Court ?"

6. Similarly, Hon''ble SuPreme Court in the case of SatPal Mahindra v. Surindra Timber Stores, III (1999) CPJ 33 (SC)=IX (1999) SLT 449=JT 1999 (9) SC 79, has held that "the filing of the suit by the resPondent during the Pendency of the Proceedings before the Consumer Forum for a different tyPe of relief could not oust the jurisdiction of the Consumer Forum".

The aforesaid PrinciPles laid down by Hon''ble the SuPreme Court aPPly with full force in the Present case and the filing of the civil suit by the resPondent Bank against the comPlainant would not oust the right of the comPlainant to seek redressal of his grievances for the reliefs which can be exclusively granted by the Consumer Forum in accordance with Section 3 of the Consumer Protection Act, 1986. The objection, therefore, to the above effect raised on behalf of the resPondents is not tenable and is rejected. Issue No. 2, therefore, is also decided against the resPondents.

Consequently we are of the firm oPinion that the learned District Forum has not aPPreciated the evidence led before it in the ProPer PersPective nor has aPPlied the law correctly. The order of the learned District Forum under challenge is liable to be quashed and is hereby quashed. The aPPeal stands allowed and the comPlaint filed by the comPlainant against the resPondents stands allowed to the full extent of Rs. 46,150/- against both the resPondents. The aPPellant-comPlainant shall also be entitled to be Paid an interest @ 12% Per annum w.e.f. the date of filing of the comPlaint i.e. 21.10.1993 till actual Payment along with litigation costs of Rs. 2,500/- to be Paid equally by the resPondents. APPeal allowed.

