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(1993) 10 NCDRC CK 0004

In the National Consumer Disputes Redressal Commission

ADARSH ASSOCIATES S.B.ENTERPRISES — APPELLANT

Vs

S.B.ENTERPRISES — RESPONDENT

Date of Decision : 07-10-1993

Acts Referred:

Citation : 1993 0 NCDRC 36 : 1994 1 CLT 474 : 1994 1 CPC 262 : 1994 1 CPJ 16 : 1994 1 CPR 697 : 1994 2 CTJ 121

Hon'ble Judges : J.

Judgement

1. THIS is an unusual case. There is no consumer dispute. The appellant M/s. Adarsh Associates was appointed by the National Insurance Co. as Insurance Surveyors to survey and assess the fire claim of Respondent No. 1 M/s. S.B. Enterprises on 30th October, 1989 under the fire insurance policy taken by the Respondent.

2. AS there was delay in the settlement of the claim by the insurer, the insured respondent moved a complaint before the State Commission of Delhi which passed an order on the 6th April, 1992 in case No. C-81/90 : M/s. S.B. Enterprises v. National Insurance Co. Ltd. and M/s. Adarsh Associates. In the course of its order, the State Commission has observed that the surveyor insisted that the complainant should get the balance sheets audited from the inception of the business from a chartered accountant, the business having been established as far back as 1978 whereas the fire took place on 29th/30th October, 1989. The surveyor was appointed on 30th October, 1989. The State Commission observed that no law or statutory rule had been brought to its notice under which the complainant M/s. S.B. Enterprise could be asked to submit the balance sheet duly audited by a Chartered Accountant. It further pointed out that the complainant had been filing the return with the Income Tax Department and the same had been accepted by them. The surveyor had submitted an interim report on 3rd October, 1990 because according to him he did not get all the information or data from the Enterprise. The State Commission felt that if the surveyor had to submit an interim report he should have done so within a month or so from the date on which the matter was referred to him. It appeared to the State

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Commission that the conduct of the surveyor had not been above board. The complainant had levelled many allegations before the State Commission against the surveyor. In the light of this the State Commission observed ".. in the present case the conduct of the surveyor does not inspire confidence. The Corporation (Insurance Co.) should also inquire into the conduct of the surveyor and if he is found guilty, it should take appropriate action against him. It is desirable that the Corporation should entrust the work to such surveyors whose integrity is above board." The surveyor M/s. Adarsh Associates has come in appeal against these observations of the State Commission. The appellant M/s. Adarsh Associates has claimed that he is a qualified Engineer holding the degree of B.E. (Mechanical), he is a qualified Licentiate (Fire) from the Federation of Insurance Institute, Bombay and is an approved Loss Assessor duly licenced by the Ministry of Finance. He thus claims to be an expert insurance surveyor, loss assessor and industrial valuer with vast experience. He is on the panel of the 4 Insurance Companies for assessing loss of unlimited amounts and claims that he is known for his integrity and proficiency in this field.

3. THE appellant states that he had asked for certain relevant and important information/data from the insured M/s. S.B. Enterprises for the purpose of assessing the loss caused by fire and since it failed to do so, he had no option but to issue an interim report. He also added that the documents submitted by the insured M/s. S.B. Enterprises were found to be fabricated. He has, therefore, challenged the adverse remarks made against him by the State Commission in its order under appeal and has also sought to set aside the direction to the Insurance Co. to institute an inquiry into the conduct of the appellant.

4. WE have gone through the appeal and heard the appellant. The position as it emerges is as under : 1. In his first letter of 2nd November, 1989 the appellant had asked the insured, M/s. S.B. Enterprises to furnish, inter alia, the following information : (i) Details of capitalisation in respect of plant and machinery since the inception of the factory; (ii) The manufacturing-cum-trading account for the last year as well as the trading account for the period 1.4.1989 upto the date of loss (October, 1989). 2. In its reply dated the 18th November, 1989 the insured furnished, inter alia : (i) statement of capitalisation; (ii) balance sheet of three years and "the other balance sheet" upto 29.10.1989. 3. In his letter of 24th November, 1989 the surveyor stated that he had requested the insured, S.B. Enterprises to furnish manufacturing and trading account of the previous three years and for the period from 1.4.1989 to 29th October, 1989 duly certified by his chartered accountant. He also pointed out that the insured had submitted trading account and the trial balance for the last one year without their being certified by the Chartered Accountant.

5. HE also indicated his intention to examine the books and the records of fixed assets in connection with the capitalisation of plant and machinery since the inception of the factory.

6. IN his letter of 1st November, 1990 the insured furnished self-certified balance

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sheets simultaneously stating that he had requested his Chartered Accountant to certify the balance sheets. (i) From the above statement of facts it will be evident that on 2nd of November, 1989, the surveyor had only asked for manufacturing-cum-trading accounts. He had not directed that they should he duly audited and certified accounts. (ii) As stated in the order of the State Commission, the firm was established in 1978, whereas the fire took place in 1989. To us it seems to be a tall order to ask for details of capitalisation in respect of plant and machinery since the inception of the factory. Besides, we are not quite clear as to the precise relevance of the data regarding capitalisation of plant and machinery for determination of the loss by fire. It might he relevant if the value of the plant and equipment as shown in the books of accounts had been manipulated and inflated shortly before the fire took place. Otherwise, the balance sheets of the previous three years should suffice for ascertaining the loss sustained by the insured under the policy of insurance. It is quite relevant on the part of the insured to maintain that these balance sheets had been admitted by the Income Tax authorities while assessing him to income tax.

In the light of the above it would appear that the surveyor had not asked for certified copies of the balance sheets etc. in his first communication of 2nd November, 1989 and this was added subsequently. There is also some substance in the point made by the insured that his balance sheets, which the surveyor wanted to be certified by the Chartered Accountant, had already been admitted by the Income Tax authorities.

7. AT the same time in the statement attached to the order of the State Commission it has been pointed out that at least in respect of two claims for repair of machinery Rs. 22,500/- and Rs. 3,530/- the bills appeared to be fabricated by the insured. Obviously, therefore, the surveyor is entitled to see that the insured does submit acceptable data for assessing the loss and the same is not dubious.

8. IN the light of the above, we feel that the surveyor may have been overzealous and at worst made an error of judgment in seeking excessive information and documents. But we cannot make that as the basis for the observation made by the State Commission that in the present case the conduct of the surveyor does not inspire confidence; we are also of opinion that the direction given by the State Commission to the Insurance Company to hold an inquiry into the conduct of the surveyor and to take appropriate action against him was not warranted and the adverse remarks made in the order as against the surveyor that his integrity was not beyond doubt were equally uncalled for. It is also doubtful whether the Insurance Co. has any power to take any such action against the surveyor. In the circumstances we hereby order that the impugned adverse observations made against the integrity and conduct of the appellant and the directions incorporated in the Order of the State Commission to the Insurance Co. to hold an inquiry into the conduct of the surveyor and to take appropriate action against him shall stand set aside and deleted.

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