
(2002) 03 NCDRC CK 0066

In the National Consumer Disputes Redressal Commission

CANARA BANK

APPELLANT

Vs

Naresh Kumar Jain

RESPONDENT

Date of Decision : 06-03-2002

Acts Referred:

Citation : 2002 3 CPJ 13 : 2003 1 CLT 508 : 2003 1 CPR 103

Hon'ble Judges : D.P.Wadhwa , J.K.Mehra , B.K.Taimni J.

Final Decision : Revision Petition allowed

Judgement

1. THIS revision petition has been filed by the petitioner, Canara Bank against the order of the State Commission dismissing the appeal filed by the petitioner against the order of the District Forum allowing the complaint filed by the respondent.

2. FACTS relevant for us to appreciate the case are that the respondent had obtained Cash Credit limit of Rs. 30,000/- and as per the terms of agreement all goods stored in the shop and godown of the complainant stood hypothecated. The shop was getting insured by the petitioner Bank at the cost of the respondent. Bank did take an insurance policy for the period 30.5.1994 to 29.5.1994 in respect of shop at Main Bazar, Una, (HP). Complainant had taken an insurance policy for the shop as well as the godown which is surrendered on 6.7.1994. Loss on account of flood/heavy rains is reported on 7.7.1994. Claim preferred by the respondent Rs. 34,147/- is not accepted by the Insurance Company as the godown where the loss is alleged to have occurred is not covered by any insurance policy. Only shop is covered by the policy and since no loss is reported from the shop, it is a case of no claim. Respondent filed a complaint before the District Forum where the complainant alleging deficiency on the part of both, the Bank and the Insurance Company and praying for relief totalling Rs. 2.80 lakhs under various heads. The District Forum while exonerating the Insurance Company held the Bank liable for not taking policy for goods in the godowns and directed the petitioner Bank to indemnify the complainant by paying Rs. 34,147/- i.e. the claimed amount and Rs. 10,000/- as

compensation. Appeal filed before the State Commission was dismissed. It was argued by the learned Counsel for the petitioner that primary duty is of that of the complainant to take insurance policy for the hypothecated goods. It is true that the petitioner had been taking such insurance policy but it clearly related to the material/goods in the shop, and the same had been maintained for the year that the Bank had been taking the policy. At no stage was any effort made or objection taken by the respondent for non-inclusion of godown within the place to cover the insured goods. There is no evidence on record as to under what circumstances the respondent cancelled the policy taken by him for both the shop and godown ? Insurance cover is a contract primarily between the respondent and the Insurance Company. For any loss on account of floods, adequate and proper cover had to be taken by the insured. Petitioner Bank had to protect its interest which it did by insuring goods at the shop. It was also argued by him that it is relevant to note that Cash Credit limit was sanctioned in 1990 and recalled on 2.6.1992 and a suit of recovery was filed by the petitioner on 4.5.1993. Where is the question of deficiency on the part of the petitioner ? The orders of both the lower Forums are erroneous on points of fact and law and need to be set aside.

We have seen the material on record and heard the arguments and find that undisputed facts are that the respondent had taken a Cash Credit for Rs. 30,000/- against which goods in the shop were hypothecated for which as per terms of the agreement between the parties the petitioner Bank did take insurance policy cover. Perusal of policies for 1992-93 (valid 25.4.1992 to 24.4.1993) and renewed for 25.4.1993 to 24.4.1994 clearly spell out the policy cover for "Shop situated at above said address"; address given is M/s. Jain Radlos, Main Bazar, Una (HP). What we also see is that loan given in 1990 was recalled in June, 1992. The terms of the agreement including liability, if any, to take insurance cover also came to an end with the recall of the loan. It is also admitted that petitioner Bank has filed a recovery suit in May, 1993, thus, further obviating any responsibility of insurance cover to be taken by the petitioner. It is also admitted that the respondent/complainant himself took a policy allegedly both for godown and shop but surrendered it on 6.7.1994 allegedly at the insistence of the petitioner. We neither see the policy/cover note/proposed form for this policy nor any evidence to prove that it was surrendered at the insistence of the petitioner Bank. To our mind, it could not be a pure co-incidence that insurance policy taken by the respondent is surrendered by him on 6.7.1994 and loss occurs on 7.7.1994 and which the Surveyor, accompanied by the Bank Manager goes to assess the damage, they are not shown anything, on the ground, that, Surveyor must prove his credentials.

3. WE find that the petitioner Bank was under no obligation to take an insurance policy after recall of loan by the petitioner and after having filed a suit against the respondent. Onus lays clearly on the respondent to have a valid policy cover all the time which he did obtain and surrendered only to claim loss the next day. Thus, leaving him exposed to the risk of non-coverage by any policy it was for

him to ensure that there is a valid insurance policy covering the requisite risks and places under this policy Apex Court has held that it is the primary duty of the insured to ensure that his goods are covered by insurance policy all the time. It is the respondent/complainant who failed. Petitioner-Bank cannot be held liable for lapses on his part. WE are inclined to deduce that after recall of loan. Respondent is not even a consumer viz-a-viz petitioner. The State Commission repeatedly observed in their order that goods lying in the godown are not covered, yet go on to agree, summarily, with the order of the District Forum.

4. IN the light of above discussion, we are unable to sustain the order passed by District Forum, upheld by the State Commission, hence, set aside. Revision petition is allowed. No order as to costs. Revision Petition allowed.