

(2014) 11 J&K CK 0033

In the Jammu And Kashmir High Court

Case No : LPAOW No. 25 Of 2002 and CMA No. 32 Of 2002

Citizen's Cooperative Bank Ltd.

APPELLANT

Vs

JandK State Consumer Prot. Comm.

RESPONDENT

Date of Decision : 26-11-2014

Acts Referred:

Citation : (2015) 1 JKJ 229

Hon'ble Judges : M.M. Kumar, CJ;Tashi Rabstan, J

Bench : Division Bench

Advocate : S. Kakkar, Advocate, for the Appellant; R.S. Jamwal, for the Respondent

Final Decision : Dismissed

Judgement

M.M. Kumar, C.J.â?"This appeal under clause 12 of Letters Patent is directed against judgment and order dated 09.11.2001 rendered by learned

Writ Court dismissing OWP No. 525/2000 filed by the appellant. The learned Writ Court after going through the material on record has

concluded that the view expressed by the Divisional Forum and sustained by the State Commission do not warrant interference because those

were pure finding of facts. The complainant-respondent (borrower) had set up a poultry unit and availed the facility of loan. There was a

hypothecation deed executed between the parties. According to the learned Writ Court, the appellant-Bank had debited the account of the

respondent-complainant and then it obtained a defective insurance cover. Therefore, the appellant-bank could not escape the liability. A reference

to order dated 05.12.1988 passed by the Divisional Forum would reveal that hypothecation agreement was entered into between the appellant-

Bank and the respondent-complainant. Then an insurance policy covering the risk of fire alone was taken at the instance of the appellant-bank. The policy did not cover the risk of damage caused to the poultry by any other natural calamity including thunderstorm etc. As the hypothecated poultry suffered damages on account of thunderstorm, the insurance company did not own any liability because the risk emerging from thunderstorm was not covered by the insurance policy. The question then arose, who is to borne the liability. The findings recorded by the Divisional Forum is that although it was the primary duty of the respondent-complainant to get the poultry insured against all the possible risks, the appellant-bank was also not absolved of the same as the property of the respondent-complainant stood hypothecated with the appellant-bank. The bank in order to safeguard its interest, had also option to insure the property of the respondent-complainant (loanee) which was, in-fact, done by the appellant-bank on its own without obtaining the consent of the respondent-complainant. An assurance was given by the appellant-bank to the complainant that insurance had been taken as per the practice and the complainant-respondent was not to worry. The findings further are that the premium amount of Rs. 475 has been debited in the name of the respondent-complainant as reflected in the statement of accounts and the insurance policy came into operation on 19.03.1997. Had the respondent-complainant got the property, insured on its own as per the statements made by the appellant-bank before the Courts below, then the respondent-complainant would have paid the premium himself. There was no occasion for debiting the premium amount to the account of the respondent-complainant as reflected in the statement of accounts.

2. Mr. Kakkar, learned counsel for the appellant-bank has argued that the matter is covered in favour of the bank by a judgment of Punjab and Haryana High Court rendered in the case of Haryana Pesticides and Others Vs. The Bank of Rajasthan Ltd. and Another, . He has placed reliance on the observations made in paras 12 and 13 of the said judgment and argued that the respondent-complainant has the primary duty to get the hypothecated goods insured. It is appropriate to mention that in that case, neither bank has gone for insurance on behalf of the borrower nor the borrower himself had entered into any insurance contract.. A simple question before the Court in that case was that in the absence of entering into

any insurance contract, who would bear the loss. It was in the aforesaid facts and circumstances the findings were recorded holding that it was the duty of the borrower to get the insurance cover. However, in the present case, on the date of hypothecation agreement, premium amount for insurance cover was deducted from the account of the borrower and defective insurance cover was obtained by the bank at its own end. The question would be entirely different in the present case than the one raised in the case of Haryana Pesticides' case (*supra*). On facts and law both the cases are different.

3. It is well settled that the appellant-bank was required to act as a bailee which implies that it was under a duty to take as much care of the property pledged to it as it would have taken of its own goods. In all cases of bailment a bailee is bound to take as much care of goods bailed to him as a man of ordinary prudence would, under similar circumstances, take of his own goods (see S. 151 of the Contract Act). The findings of the Divisional Forum are clear that the appellant-bank has secured an insurance cover which was defective and exposed the poultry of the borrower to unnecessary risk which the insurance cover failed to account for. The liability obviously lies on the appellant-bank. The appeal is wholly without merit and is dismissed.