(2015) 07 NCDRC CK 0084

In the National Consumer Disputes Redressal Commission

Case No : 3655 of 2014

HIMACHAL GRAMIN BANK & ANR Vs M/S. AJUDHIA DASS & SONS? KASBA BAZAR

Date of Decision : 27-07-2015

Acts Referred:

Consumer Protection Act, 1986, Section 21, Section 19, Section 15, Section 17 - Jurisdiction of the National Commission - Appeals - Appeal - Jurisdiction

Citation : (2015) 07 NCDRC CK 0084

Hon'ble Judges : V.K. Jain, B.C. Gupta

Advocate : Rajesh Gupta, Sumit R. Sharan, Pooja Singh

Judgement

1. The complainant obtained a cash credit facility to the extent of Rs.2,00,000/- from Himachal Gramin Bank, petitioner in Revision Petition No.3655 of 2014 executing the requisite documents with the bank for this purpose. As per the terms of the agreement, the complainant/borrower was required to keep the stock which he had hypothecated with the bank insured against fire risk with an insurance company approved by the bank. The insurance policy was to be taken out either in the name of the bank or in the joint name of the bank and the borrower. The said policy along with the receipt of payment of premium was to be delivered to the bank. In the event of the borrower failing of demand being made by the bank to insure or deliver the policy, or receipt of premium, the bank was at liberty, though not bound to get the said stock insured at the risk, responsibility and cost of the borrower. The agreement further stipulated that in the event of the claim being not admitted by the insurance company for omission to insure or deficiency of insurance, the bank shall not be responsible and the ultimate liability of the borrower shall continue notwithstanding such non-admission.

2. A fire allegedly broke out in the shop of the complainant on 14.1.2007. The complainant informed the bank in this regard and requested them to approach the insurance company with which the stock was supposed to have been got

insured by it and pay the claim. It however, transpired that the said stock had not been got insured after 29.12.2006. Consequently, no claim became payable by the insurance company. A complaint was then filed before the District Forum, seeking a direction to the bank to compensate the complainant.

3. The complaint was resisted by the bank on the ground that as per the agreement it was the obligation of the complainant to get the stock insured and the bank was not under an obligation to

take an insurance cover in respect of the said stock. It was also stated in the reply that the complainant had not submitted the stock statement undertaking the value of the stock after December, 2005 and therefore the policy could not be got renewed.

4. The District Forum vide its order dated 18.02.2014 dismissed the complaint. Being aggrieved from the dismissal of the complaint, the complainant firm approached the concerned State Commission by way of an appeal. Vide impugned order dated 27.6.2014, the State Commission partly allowed the appeal and directed the bank to pay a sum of Rs.2,00,000/- to the complainant, alongwith interest @ 9% per annum from the date of filing of the complaint and compensation quantified at Rs.10,000/-. A sum of Rs.10,000/- was awarded to the complainant towards the cost of litigation. Being aggrieved, the complainant is before us by way of Revision Petition No.3895 of 2014. Since the complainant is dissatisfied with the quantum of compensation awarded to him, his case being that the value of the stock destroyed in the fire amounted to Rs.8,58,173.39, he has also filed a separate petition, challenging the order of the State Commission.

5. Clause 8 of the Hypothecation Agreement executed by the complainant with the bank reads as under: "The Borrowers shall submit daily stock report the Bank verified by them as correct. The Bank acts on the daily stock reports in determining the amount to be advanced or left outstanding against the Borrowers should the daily stock reports as aforesaid contain any mis-statement(of which Bank shall be the sole judge) or other be any shortage of security the Borrowers shall render themselves liable to legal action and the Bank shall be entitled to terminate this agreement and take possession of the security and sell the same without any notice to the Borrowers and realizes its dues and recover the balance of its claim from them".

The case of the petitioner bank is that the complainant having not submitted any stock statement in time after 2005, the bank could not have got the hypothecated stock insured before the insurance policy expired on 28.12.2006. This is also the case of the bank that for the earlier period the insurance policy was got renewed only after the complainant had submitted the stock statement and their stock in trade was inspected. According to the bank without submission of the requisite stock statement, they could not have carried out inspection of the hypothecated stock and could not have got the insurance policy renewed after 28.12.2006. The case of the complainant in this regard is that the bank did not ask them to submit the said stock statement. As would be seen from a perusal of the Clause 8 of the Hypothecation Agreement, it was for the complainant to submit the stock statement to the bank on a regular basis and no obligation was casts upon the bank to call for such a statement from the complainant. Obviously the bank will have to satisfy not only itself but also the insurance company, before taking the insurance cover that sufficient insurable stock was available in the premises of the insured. The complainant having defaulted in submission of the stock statement, it cannot hold the bank liable for not getting the insurance policy renewed after 28.12.2006.

6. Clause 7 of the Hypothecation Agreement inter-alia reads as under:

"Should be Borrowers fail on demand being made by the Bank to insure or to deliver the policies or receipts for premia as aforesaid the bank shall be at liberty but not bound to effect such insurance at the risk, responsibility and the cost of the Borrowers in such insurance companies as the Bank in its absolute and unfettered discretion thinks fit and to an extent of the full market value of the security of which the Bank shall be the sole judge. Provided however, that in the event of so insuring the security the Bank shall not be considered responsible or liable for the non-admission of the claims of the Bank or their non-payment wholly or partly by such insurance company for the omission to insure or deficiency of insurance and the ultimate liability of the Borrowers of the Bank shall continue not withstanding such failure or non-admission as aforesaid".

It would thus be seen that the complainant specifically agreed with the bank that even if the bank does not take the insurance policy, it will not be held liable by him, in case, the claim is rejected by the insurance company. In the present case the claim having been rejected on the ground that the insurance policy had expired prior to the loss, the above referred part of Clause 7 of the Hypothecation Agreement comes into play and consequently the bank cannot be held liable for the alleged omission to get the insurance policy renewed after 28.12.2006.

7. For the reasons stated herein above, we find no deficiency on the part of the bank in rendering service to the complainant. The Revision Petition No.3655 of 2014 filed by the Himachal Gramin Bank is therefore allowed, whereas Revision Petition No.3895 of 2014 filed by the complainant is dismissed. As a result the complaint stands dismissed. No order as to costs.