

(1997) 05 NCDRC CK 0020

In the National Consumer Disputes Redressal Commission

LIC OF INDIA

APPELLANT

Vs

KANCHAN MURLIDHAR AKKALWAR

RESPONDENT

Date of Decision : 09-05-1997

Acts Referred:

Citation : 1997 2 CPC 123 : 1997 2 CPJ 40 : 1997 2 CPR 55

Hon'ble Judges : V.BALAKRISHNA ERADI , S.S.CHADHA , R.THAMARAJAKSHI , S.P.BAGLA , C.L.CHAUDHRY J.

Judgement

1. REVISION Petitions 701 and 702 of 1996 have been filed against the common order dated January 22, 1996 passed by the Maharashtra State Consumer Disputes Redressal Commission in Appeal Nos. 86 and 127 of 1995 preferred respectively by the complainant and the opposite party -LIC in the original complaint before the District Forum, Yavatmal. The opposite party, LIC in the complaint, is the Revision Petitioner in both the Revision Petitions.

2. FACTS of the case may be briefly narrated from the available records. The complainant applied to the opposite party for housing loan of Rs. 2,25,000/- for the purchase of a house at plot No. 44, SS No. 28/4 Z.P. Krishi Colony, Ramnagar, Yavatmal. The opposite party in their communication dated January 4, 1993 made an offer to advance a loan of Rs. 1,80,000/- subject to certain terms and conditions. For this purpose, as required by the opposite party the complainant took two LIC policies, one for Rs. 90,000/- and the other for Rs. 20,000/- for which a total premium of Rs. 3,956/- was paid besides the fee of Rs. 1,330/- as costs for valuation and legal advice. The complainant entered into an agreement for purchase of the house inclusive of plot from one, Mr. Nilawar for Rs. 2,40,000/- towards which she reportedly paid an advance of Rs. 25,000/- on 22.7.92. In respect of the house, the opposite party requested the complainant to take a fire policy for Rs. 2,00,000/- and this was also complied with. The term of the agreement with Mr. Nilawar was only upto 28.2.93 and since the opposite party did not disburse the loan by that time, she had to pay additional sum of Rs. 30,000/- to get the term extended upto 15.4.93. On 2.4.93, the opposite party called upon the complainant to obtain the release

deed from the Zilla Parishad Co-operative Society in respect of the plot she proposed to purchase with a certificate stating that the said plot is not mortgaged with them. The complainant got the certificate from the Maharashtra Government stating that Mr. Nilawar has repaid housing loan and interest thereon due to the Zilla Parishad Krishi Karamchari Sevakari Griha Nirman Sanstha and that there was nothing outstanding from him towards loan amount or by way of interest. Despite production of this certificate, the opposite party did not release the loan. The complainant cited the case of one Mr. Vaishempayam, an employee of the opposite party who was given the loan by the opposite party under similar circumstances. It was the contention of the complainant that she was made to take LIC policies and go through a number of formalities without finally getting the loan amount and that the disbursement of loan by the opposite party was arbitrary. The opposite party, while admitting that the complainant had to take out an insurance policy as a collateral security before the disbursement of loan as per normal procedure, contended that the loan offer letter of 4.1.93 made it clear that the actual disbursement of the loan was subject to the complainant satisfying the opposite party about the title to the property offered for mortgage, being good, marketable and free from all encumbrances. The opposite party further observed that they wanted proof from the complainant that the said property which was relieved to have been mortgaged against loan from the Government was released from the mortgage or reconveyed to the Housing Society or the earlier owner. It was the opposite party's contention that mere repayment of the loan by the earlier owner or the society is not sufficient but the property should have been released from the mortgage and freed from all encumbrances. The allegation of arbitrariness in the opposite party's action, based on reference to sanction of loan under similar circumstances was denied; the opposite party pointed out that even granting that there was some error in release of loan in the case cited, the principle of law and natural justice demand that errors should be avoided wherever and whenever these are noticed.

3. THE District Forum observed that while the grant of loan is within the discretion of the opposite party, the approach of the opposite party in the instant case was casual. The Forum held that there was deficiency of service on the part of the opposite party and directed the opposite party to pay a sum of Rs. 54,926/- towards compensation, refund of premium amount and travel expenses incurred by the complainant in obtaining the certificate from the Maharashtra Government at Bombay, besides Rs. 1500/- as costs. This order was appealed against by both the complainant and the opposite party before the Maharashtra State Commission. The State Commission made a brief order observing that in spite of the release letter from the State Government, the opposite party refused to disburse the loan and this conduct amounted to a sheer harassment by the opposite party. The State Commission in their common order directed the opposite party to release the loan within a period of four weeks from the date of the order failing which the opposite party had to pay Rs. 500/- per day as penalty to the complainant until compliance of the order. The State Commission

also directed the opposite party to pay Rs. 10,000/- against the amount of Rs. 30,000/- paid by the complainant to Mr. Nilawar for extending the term of sale agreement and Rs. 2,000/- towards stamp duty alongwith interest @ 18% per annum.

4. AGGRIEVED by this order of the State Commission/ the Revision Petition has been filed by the opposite party Insurance Company. The main grounds in the Revision Petition are that (i) the contract for loan had not come into existence between the parties as the formalities had not been complied with by the respondent -complainant (ii) Clause I(a) of the loan offer dated 4.1.93 clearly stipulates that the loan will be advanced subject to the respondent showing a good and marketable title (iii) the respondent -complainant failed to furnish the required no -encumbrance certificate and/or a certificate of release of an encumbrance from the concerned State Government and (iv) clause 15 of the loan offer letter provides that the Revision Petitioner reserves the right to refuse the loan either in whole or in part at any time without assigning any reason thereof. The Revision Petitioner contended that in the absence of the completion of formalities and non -submission of the documents, their action was clearly within the purview of the conditions governing sanction of loan. We have carefully gone through the records and heard the Counsel. Clause I(c) of the loan offer letter clearly states that the advance of the loan is subject to the property being free from encumbrances to the satisfaction of the Insurance Company and having a good and marketable title. At the same time it appears that the respondent -complainant had to go through a number of steps, although necessary, having financial implications and causing mental and physical stress to her and at the end of all of which she was told that the "No dues certificate" given by the Maharashtra Government in respect of the prospective seller of the property in question, was not the "release from mortgage" certificate that was wanted. The respondent -complainant perhaps also had in her mind the case of Mr. Vaishempayam who got the loan under similar circumstances. In the case, while there is a lot of publicity by the Insurance Company in regard to such welfare schemes it is also their responsibility to publicise the several preconditions which have to be fulfilled before facilities under these schemes become actually extendable. There is no denying that the management of the case of the complainant who is a salaried employee by the Revision Petitioner has resulted in mental stress and the purpose of her taking the policies has been defeated. In the facts and circumstances of the case, it cannot be held that there was no deficiency of service on the part of the Appellant. While we set aside the order of the State Commission, we modify the order of the District Forum and direct the Appellant to pay a sum of Rs. 4,926/- representing the premium paid and travel expenses incurred and Rs. 3,000/- by way of compensation. The Revision Petition is disposed of as above. No orders as to costs. Mr. Justice S.S. Chadha, Member

5. WITH great respect to other Members I am unable to subscribe to the conclusion that there was any deficiency in service on the part of the petitioner

herein. Clause 1 (a) of the Loan Offer Letter dated 4.1.93 clearly states that the loan is to be used for the specific purpose for which it has been sanctioned and "will be advanced subject to your making out a good and marketable title to the property and freedom of the property from encumbrances to the satisfaction of the Life Insurance Corporation of India". There is evidence on the record that the property in question was charged or mortgaged to the Government at the time of applying for a loan by registered document in favour of Maharashtra Government. By virtue of Section 100 read with Section 59 of the Transfer of Property Act a charge is equivalent to a mortgage and it could be effected only by a registered instrument except in the case of a mortgage by deposit of title deeds. The charge or mortgage created by a registered document in favour of the Maharashtra Government could not be redeemed of the housing loan with interest. In my view, a mortgage created by a registered document could not be extinguished except by another registered document as provided by Section 17(1)(b) of the Registration Act, 1908. The finding recorded by the District Forum and affirmed by the State Commission that there was deficiency in service on the part of the Revision Petitioner is manifestly unsustainable in law since admittedly there was non-compliance and non-fulfilment of the conditions precedent for the grant of loan and the action of the petitioners herein in refusing to disclose the loan was in terms of Clause 15 of the offer dated 4.1.93. I accept the Revision Petition, set aside the Orders of the District Forum and the State Commission and dismiss the complaint leaving the parties to bear their own costs throughout.

6. MR . Rajiv Nayar fairly offered to refund the premium of Rs. 1644/ - for getting policy No. 280117263 and a premium of Rs.319/ - for policy No. 820118296 i.e in all Rs. 1963/ -. Revision petition accepted.