(2002) 01 NCDRC CK 0013

In the National Consumer Disputes Redressal Commission

MANAGER, TAMILNADU MERCANTILE BANK LTD. APPELLANT

Vs

A.X.BESKI RESPONDENT

Date of Decision : 17-01-2002

Acts Referred:

Citation : 2003 3 CPJ 145

Hon'ble Judges : M.S.Janarthanam , Kayal Dinakaran J.

Final Decision : Appeal dismissed

Judgement

1. THE one and only point that crops up for consideration in this action on the facts and in the circumstances of the case is as to whether the order dated 6.8.1998 of the District Consumer Disputes Redressal Forum, Tuticorin in O.P. No. 22/1998 mulcting liability upon the appellant/1st opposite party Tamilnadu Mercantile Bank Ltd. to pay to the 1st respondent/complainant a sum of Rs. 19,447/- representing loss caused to the stock in trade stored as a consequence of the fire accident in the business premises which was hypothecated with and insured by the appellant/1st opposite party Tamilnadu Mercantile Bank Ltd. is sustainable in law. In answering the question so posed, we may advert to only such a those essential facts as are absolutely necessary for arriving at a just decision.

2. THERE is no pale of controversy that the 1st respondent/complainant availed of a loan to the tune of Rs. 50,000/- from the appellant/1st opposite party Tamilnadu Mercantile Bank Ltd. for business purposes on the recommendation made by the District Industries Centre, Tuticorin under Prime Minister Rojgar Yojana Employment Scheme dated 31.10.1994. Yet another fact about which there is no dispute is that the stock in trade in the business premises of the 1st respondent/complainant had been hypothecated with by the appellant/1st opposite party Tamilnadu Mercantile Bank Ltd. THERE is also no dispute that the appellant/1st opposite party Bank took a policy of insurance by paying necessary and requisite premium in order to safeguard their interest. Admittedly the 1st respondent/complainant was originally carrying on his business in a rented shop

bearing Door No. 1/144A, Main Road, Puthiamputhur. The insurance policy was taken by the appellant/1st opposite party insuring the stock in trade stored in the business premises at Door No. 1/144A, Main Road, Puthiamputhur.

The 1st respondent/complainant was forced to shift his shop to Door No. 4/131A, Mela Bazaar, Puthiamputhur as a consequence of the owner of the shop was demanding vacant possession of the building on the ground of demolition and reconstruction.

3. IT is the positive case of the 1st respondent/complainant that the change of address of the business premises had been duly communicated by him to the 1st opposite party/appellant Bank through the District Industries Centre, Tuticorin. On the other hand, the 1st opposite party/appellant Bank would contend that the change of place of business premises was not at all intimated to them at any point of time by the 1st respondent/complainant and, therefore, while renewing the policy of insurance taken by them on 9.1.1996 for the stock in trade stored in the business premises of the 1st respondent/complainant, they had furnished the old place of business premises of the complainant. On 22.7.1996 at about 8.45 p.m. the complainant''s shop met with a fire accident and the entire electrical and electronic goods stored in the inside, the new premises of the shop, had been damaged. The 2nd respondent Insurance Company appointed a Surveyor to inspect to the business premises. The Surveyor after making inspection of the business premises reported that the fire accident took place at Door No. 4/131A, Mela Bazaar, Puthiamputhur which was not the premises in respect of which insurance policy had been taken. He also reported that the loss sustained to the stock in trade of the 1st respondent/complainant was to the tune of Rs. 19,447/- only and not Rs. 55,000/- as claimed by him. The 2nd respondent Insurance Company took a stand that they are not liable for the claim of loss stated to have been sustained by the complainant inasmuch as the fire accident took place in a building which was not the subject of the insurance covered by the policy of insurance taken by the 1st opposite party/appellant Bank. The 2nd respondent Insurance Company took a stand under Clause 9 of the Exclusion Clause which prescribes insurance does not cover property insured if removed to any building or place other than in which it is herein stated to be insured, except machinery and equipment temporarily removed for repairs, cleaning, renovation or other similar purposes for a period not exceeding 60 days. The Forum below accepted the case as projected by the 2nd respondent Insurance Company and mulcted liability on the part of the 1st opposite party/appellant Bank for the loss sustained by the 1st respondent/complainant quantified in a sum of Rs. 19,447/- as reported by the Surveyor. The rationale for mulcting upon liability on the part of the 1st opposite party/appellant Bank was that notwithstanding the fact that the 1st respondent/complainant intimated the shifting of the business premises to the new address, the 1st opposite party/appellant Bank did not renew the policy of insurance giving the change of address of the premises of the 1st respondent/complainant.

4. THIS sort of an order as passed by the Forum below is challenged by the 1st opposite party/appellant Bank. What the 1st opposite party/appellant Bank would contend is that the 1st respondent/complainant did not at all intimate to them the change of place of business premises at any point of time. Such a stand taken by the 1st opposite party/appellant Bank is in paragraph 5 of the counter filed by them. In tune with the stand as taken by in paragraph 5 of the counter, they also sent a letter under Ex. B8 dated 13.3.1997 to the Surveyor of the Insurance Company. The stand so taken by them cannot at all be expected to commend any acceptance at our hands on the face of the letter under Ex. A4 dated 12.12.1995 sent by the complainant to the District Industries Centre, Tuticorin which, in turn forwarded the same to the 1st opposite party/appellant Bank. We have perused Ex. A4 letter and on such perusal, we are able to discern that the letter bears an endorsement on its back as to the factum of the said letter having been despatched by the District Industries Centre, Tuticorin to the first opposite party/appellant Bank for necessary action. The factum of despatch is also further vouchsafed by the postal seal available therein. Such being the case, the stand taken by the 1st opposite party/appellant Bank that the 1st respondent/complainant at no point of time intimated to them the change of place of business premises cannot at all be acceded to. Such being the case, the 1st opposite party/appellant Bank was rather callous or negligent in renewing the policy by not furnishing the new address of the place of business premises of the complainant. It is because of their negligence the 2nd respondent Insurance Company repudiated the claim; otherwise legitimate claim of the 1st respondent/complainant under Exclusion Clause 9 of the policy taken by the 1st opposite party/appellant Bank for the benefit of the 1st respondent/complainant cannot at all be repudiated. In such circumstances, it cannot at all be stated that the order of the Forum below mulcting liability on the part of the 1st opposite party/appellant Bank to pay to the 1st respondent/complainant a sum of Rs. 19,447/-, the loss sustained by the 1st respondent/complainant as a consequence of the fire accident, cannot at all be stated to be not sustainable in law. Further the Forum below mulcted liability for payment of interest at 12% per annum on the part of the 1st opposite party/appellant Bank from the date of the complaint till realisation. The rate of interest so awarded rather appears to be reasonable. Therefore, such part of the award is also confirmed. This apart, the Forum below also awarded costs of Rs. 500/- which does not appear to be rather unreasonable calling for interference. We also confirm such part of the award. As such the appeal deserves to be dismissed. In fine, the appeal fails and the same is dismissed. We, however, make no order as to costs on the facts and in the circumstances of the case. We also make it crystal clear that the order of the Forum below as confirmed by us is to be complied with by the 1st opposite party/appellant Bank within a month from the date of receipt of our order, or otherwise the complainant shall have liberty to invoke provisions of Section 27 of the Consumer Protection Act, 1986 (for short, "the Act"). Appeal dismissed.