(1991) 06 NCDRC CK 0002

In the National Consumer Disputes Redressal Commission

Mohd Basheer And Co — APPELLANT

Vs

STATE BANK OF HYDERABAD — RESPONDENT

Date of Decision : 05-06-1991

Acts Referred:

Citation : 1991 2 CPJ 665 : 1991 2 CPR 140 : 1993 1 CLT 596

Hon'ble Judges : V.BALAKRISHNA ERADI , A.S.VIJAYAKAR , Y.KRISHAN , BRIJENDRA SINGH , B.S.YADAV J.

Judgement

1. THE complainant is a manufacturer and exporter of leather. He is engaged in the business of purchasing raw skins and finishing them for export and for this purpose is running a factory at Warangal in Andhra Pradesh.

2. THE complainant had raised loans totaling to Rs. 91 lakhs by 1981 from the Opposite Party (State Bank of Hyderabad) and against which he had mortgaged his movable and immovable properties. The complainant''s factory was sealed by the Income Tax Department on 23.6.1984.

3. THERE was a fire in the factory of the complainant on the 10th of July, 1984 which was attributed to a short circuit. According to the complainant this resulted in a loss of Rs. 71 lakhs to him by way of damage to the building, machinery and stocks. "A major part of the finished leather ready for export was destroyed".

4. THE factory building, plants, machinery, raw materials and finished stocks had been got insured by the opposite party (State Bank of Hyderabad) as mortgages of the property of the complainant, given as security for the loans advanced to him. The complainant has emphasized that all the movable and immovable properties of the factory were mortgaged with the respondent Bank and therefore they were in the custody and control of the Bank and that the Bank had got the properties insured with the various Insurance Companies for protection of the properties mortgaged and hypothecated by the complainant with the opposite party (Bank).

5. THE complainant alleged that these Insurance Policies were taken out without

the knowledge and notice of the complainant who was kept completely out of the picture and in total darkness by the mortgage. The polices were made in joint names of the mortgager (the complainant) and mortgage (The respondent Bank) but without the signatures of the complainant. The respondent (the mortgage) had wrongly described the premises as godowns in the insurance policies when there were actually no go downs.

6. ACCORDING to complainant there were the following short comings in the service rendered by the respondent Bank (creditor) to the complainant (debtor) which caused considerable loss to the complainant : (i) the fire in the factory could not be noted and controlled due to lack of supervision by the respondent Bank authorities with whom the entire factory was mortgaged.

(ii) While the complainant suffered a loss of Rs. 71 lakhs due to the fire but loss to the extent of Rs. 47 lakhs on account of damage to leather and skins was disallowed by the Insurance Companies under the Insurance Policies on the ground that the goods were not kept in godowns and were therefore not covered by insurance.

The complainant has therefore argued that -the rejection of the complainant''s claim by the Insurance Companies was due to the fact that the Insurance Policies were defective and under -valued and the insured goods said to have been kept in the godowns were not actually kept in godowns as there are no godowns in the factory and hence were not covered by the insurance policies.

7. AS a result of the defective policies taken out by the respondent (Bank) a loss of Rs. 47 lakhs remained uncovered by insurance and therefore loss to his extent was caused due to negligence of the respondent Bank to take out proper Insurance Policies.

8. THE second lapse of the respondent Bank relates to its failure to give timely consent to the creation of a second charge on the properties mortgaged with it. The Sales Tax authorities had raised a demand of Rs. 10,95,420/ - against the complainant in 1985. At the request of the complainant the Sales Tax Authorities agreed to accept his factory properties wide the second charge provided the first charge holder viz. the respondent Bank gave its consent to the same. According to the complainant the respondent (Bank) handled correspondence with the Sales Tax Authority negligently and delayed the matter with the result that the Sales Tax Authorities issued prohibitory orders on 31.3.86 against the factory resulting in its avoidable closure. This again, it is alleged, was due to the negligence on die part of the respondent Bank. According to the complainant the closure could have been avoided but for the negligence of the respondent Bank in dealing with the Sales Tax Authorities. According to the complainant, the respondent Bank also unfairly did not sanction an overdraft of Rs. 3 lakhs for a period of one year to enable the complainant to pay the Sales Tax. In the result the factory remained closed for a period of one year from 9.4.86 due to the negligence of the respondent Bank in not furnishing its consent to the creation of

second charge on the mortgaged properties and in the alternative to granting an overdraft of Rs. 3 lakhs.

9. AT the outset we may observe that mortgager and the mortgage have a common interest in the Insurance of the mortgaged assets. In particular it is in the interest of the mortgage respondent (Bank) that the properties insured are not under -valued and that the insurance policies are not defective.

10. WE cannot also imagine as to how the Insurance Companies could have issued Insurance Policies, that is entered into contracts of Insurance, without proposals from the owner of the properties to be insured viz. the complainant in this case. It may be noted that the PREMIA paid on these Insurance policies was being debited by the respondent (Bank) to the accounts of the complainant with the Bank. During the hearing, the complainant was unable to justify his statements that the factory and his immovable properties were in the custody and control of the respondent Bank as mortgages and not in his possession, that Insurance Policies were taken out jointly in his name as mortgager and the name of the respondent Bank as mortgage without his having given a proposal as he alone had the title in immovable properties, that how he could plead ignorance about the policies and these being defective when he was paying the premier thereon.

11. THE insurance policies were taken out during different periods : 10 policies were taken out during November 1983 to December 1984,3 policies were taken out in 1984 -85 and 2 policies were renewed for 1983 -84 and 1984 -85.

12. ON the face of it, an alleged deficiency in the service to be rendered against the above mentioned insurance policies taken out from 1983 -85 would be barred by limitation at the time the complaint was filed before this Commission. Again the complainant filed a suit O.S. No. 170/86 on 2.9.86 before the Additional Sub - Judge at Wrangle for recovery of the Insurance amount on account of loss Rs. 48.20 lakhs and damages Rs. 26.86 lakhs against Defendants No. 1 to 4 (Bank & Insurance Cos.) (and not against Defendant No. 1 (Bank) only as the complainant has now averred in the complaint. Para 26 of the complaint and Para 27 of the Suit Petition refer). In this suit the Opposite Party (Bank) was defendant No. 1 and the Insurance Companies Defendants No. 2 to 4.

13. THE respondent (Bank) also filed a suit O.S. No. 133/87 on 22nd June, 1987 in the Court on the same Sub -judge for Rs. 1,09,72,415/ -. According to the complainant he persuaded by the Bank to withdraw the suit against the Bank Defendant No. 1 and respondent here on the promise that the complainant would be provided with rehabilitation financial assistance by the Bank. (Eventually, the Bank did not so). In the result the complainant withdrew the suit against the opposite party (Defendant No. 1) but the suit against the remaining parties viz. Defendants No. 2 to 4 (Insurance Companies) is still pending. The Bank (respondent) withdrew is suit No. 133/87 in August 1988.

14. THE Counsel for the respondent submitted a Statement of dates in this case

at the time of the hearing. A perusal of the petition in O.S. No. 170/86 shows that, according to the plaintiff (complainant here), the defendant (Bank) did not inform or intimate the proposals submitted for insuring the risks, the policies issued by the Insurance Companies were not made over to the plaintiff, that the proposals for insurance policies were made without consulting the plaintiff, that Bank (Defendant No. 1 in the suit and the respondent here) in the above suit failed to insure the skins and fresh leather in stock which were kept in godowns as there were no godowns in a building of second class construction and respondent failed to point this out to the Insurance Company while taking out the insurance Policies. In the result the Insurers rejected the claim on the ground that the stock were not properly stored as required under the Insurance Policies. According to the plaintiff (complainant here) the Insurance Companies were bound to insure all the goods lying in the premises irrespective of the class of construction of the building. His claim for a sum of Rs. 48,20,055/ - for loss of stocks and plant and equipment and damages of, Rs. 26.86 lakhs after the withdrawal of suit against Defendant No. 1 (Bank) is now pending only against the Insurance Companies.

15. THE narration of the facts establishes beyond out that the claim against the Insurance Companies is also founded on the same grounds on which the complainant has filed this complaint of deficiency in service against the respondent (Bank) in this case. In particular damages (apart from loss of property) were claimed from all the defendants, Bank as well as Insurance Companies. The dismissal of the suit against the defendant No. 1 (Bank) has not altered the grounds on which the suit is still being prosecuted against the Insurance Companies. The decision in the suit is beyond to determine whether there have been any deficiencies in the service rendered by the Insurance Companies in issuing the Insurance Policies.

16. IT would thus be clear that there is common cause of action in the complaint against the Bank filed before us and in the pending suit against the Defendant Insurance Companies. In fact the complaint virtually amounts to ''restoration'' of the withdrawn suit against the Bank (respondent here and originally defendant No. 1 in the suit) but only in the different forum. There is no doubt that the reliefs sought for by the complainant against the respondent Bank arise out of the same act or translation in which the suit is pending against the Insurance Companies and will involve determination of common questions of fact. Further, having represented to the Civil Court that this dispute as against the Bank has been compromised and got the suit dismissed as against the Bank, it is not legally open to the complainant to reagitate the same matter before this Commission by filing this complaint. On this ground also we decline to entertain this complaint The second charge of deficiency in service rendered by the opposite party (Bank) is in regard to the alleged delay in giving his consent to the creation of the second charge on the mortgaged properties in favour of the Sales Tax Authorities. This is no a question of any service being rendered by respondent Bank to the complainant as envisaged in the Consumer Protection

Act. On the fact of it there is no doubt that complaint on this ground is not maintainable under the Consumer Protection Act.

17. THE complaint is therefore dismissed on the grounds stated above.

