(2017) 02 NCDRC CK 0085

In the National Consumer Disputes Redressal Commission

Case No : 782 of 2015

M/S. RATHI SYNTEX LTD. APPELLANT

Vs

BANK OF BARODA & 2 ORS. RESPONDENT

Date of Decision : 15-02-2017

Acts Referred:

Consumer Protection Act, 1986, Section 24 (A) - Finality of orders

Citation : 2017 1 CPR 802

Hon'ble Judges : Ajit Bharihoke

Advocate : Rajesh Malhotra

Judgement

1. The complainant is a registered company under the Companies Act, 1956. It is engaged in the process of manufacturing fabric. The complainant earlier had a loan account with the State Bank of Bikaner & Jaipur. The opposite party bank on 13.4.2007 took over the said loan against hypothecation of the plant machinery and stock of the complainant company. It is alleged that the opposite party while granting financial assistance to the complainant company told that the opposite party bank had business tie up with the National Insurance Co. Ltd. and therefore the bank would get the factory building plant machinery and stocks of the complainant insured. The complainant without any objection gave consent to the opposite party bank that it should get the factory plant machinery and stock insured on behalf of the complainant. It is further alleged that the opposite party bank had assured the complainant that it will get the insurance policy renewed at its own level. Thereafter the opposite party bank bought the insurance policy pertaining to the factory building of the complainant insured and a policy was issued by the National Insurance Co. Ltd. The said policy was effective from 28.3.2012. Unfortunately, a fire broke out in the production unit of the complainant in the earlier hours of 11.4.2012 resulting in huge loss. Intimation of fire was given to the police as well as local administration. On the basis of said information report No.990 dated 17.4.2012 was registered at police station Bhawani Mandi. The complainant also intimated about the loss due to fire to the

opposite party and requested the opposite party to intimate the insurance company for deputing a surveyor to assess the loss. The opposite party bank vide its letter dated 12.4.2012 intimated the complainant that the insurance policy for the factory building had been renewed and called upon the complainant company to assess the damage. It was also mentioned in the letter that the insurance of plant machinery and stock was to be carried out by the complainant from New India Assurance Co. Ltd. and as per available record the said policy was effective only upto 23.12.2011. According to the complainant failure on the part of the opposite party bank in getting the insurance policy pertaining to plant machinery and stock amounts to deficiency in service and because of that the complainant was put to loss of Rs.2.5 crores.

2. Opposite party on being served resisted the complaint by filing the written statement. Besides denying the allegations on merits, the opposite party took the plea that the consumer complaint is not maintainable for the reason that the services of the opposite party bank were availed for commercial purpose. It was also pleaded that the complaint is a glare example of abuse of process of law and has been filed as a counterblast to recovery proceedings initiated by the opposite party bank after declaring the loss of the complainant as non-performer. Plea of limitation is also taken.

3. I have heard the parties on limitation as well as maintainability of the complaint and perused the record.

4. The first contention of learned counsel for the opposite party is that the complainant has no locus standi to file the consumer complaint as he is not a consumer as envisaged under Section 2 (1) (d) of the Consumer Protection Act, 1986 (for short, "the Act'').

5. Learned counsel for the complainant on the contrary has submitted that since the dispute raised relates to failure of the opposite party bank to get the insurance policy pertaining to plant machinery and stock renewed, in view of the law laid down in the matter of M/s Harsolia Motors vs. M/s National Insurance Co. Ltd. (1)/2005 CPJ (NC) , the complainant is a consumer. 5. In order to appreciate the contentions of the parties, it would be useful to have a look on the definition of "Consumer" as envisaged under Section 2 (1) (d) of the Act. The Section reads as under: -

"d) "consumer" means any person who-

(i) buys any goods for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promised, or under any system of deferred payment when such use is made with the approval of such person, but does not include a person who obtains such goods for resale or for any commercial purpose; or

(ii) hires or avails of any services for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such services other than the person who ''hires or avails of the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first mentioned person but does not include a person who avails of such services for any commercial purposes ; Explanation .- For the purposes of this clause, "commercial purpose" does not include use by a person of goods bought and used by him and services availed by him exclusively for the purposes of earning his livelihood by means of self-employment"

6. On reading of the above, it is clear that consumer is a person who buys goods or hires or avails of services for consideration present, past or future. The section however carves out an exception by providing that the person who has purchased goods or hired/availed of services for commercial purpose, shall not be included in the definition of consumer. In the instant case admittedly the complainant company has hired and availed of the services of the opposite party bank in relation to its business norms, therefore, in my considered view the complainant is excluded from the definition of consumer.

7. As the complainant is not a consumer he has no locus standi to invoke the consumer jurisdiction. So far as plea of the complainant that his case is covered under the judgment of Harsolia Motors (supra) is concerned, the argument is misconceived because the deficiency in service alleged in the complaint is failure on the part of the bank to get the insurance policy for plant machinery and stock.

8. As regards the issue of limitation, it is the case of the complainant that the fire accident took place on 11.4.2012 and when the complainant contacted the bank the opposite party bank sent advisory letter dated 12.4.2012. The said letter is reproduced as under: - " BANK OF BARODA

BOB/KOTRAJ/ADV/2012-13 Dt.12.04.2012

M/s Rishi Syntex Ltd.,

Bhawani Mandi,

District Jhalawar,

Dear Sir,

Re: Fire at your factory at Bhawani Mandi

We refer to your letter dated 11.04.2012 regarding fire at factory premises at Bhawani Mandi and wish to inform you as under: Vide Policy No.370800/11/11/31000001776 dated 28.03.2012 insurance of factory building has been renewed by us from National Insurance Co. Ltd. We have communicated with the said co. to assess the damage. Kindly advise us the extent of damage. The insurance of P & M and Stock used to be carried out by you from the New India Assurance Co. Ltd. As per our available records the policy was effective upto 23.12.2011. The New India Assurance Co. Ltd., Jhalawar Road, Kota branch has provided us copy of insurance paper of P & M effective upto 23.08.2012 we are advising the company to do the needful in the related matter kindly advise in the renewal policy of stock so that we can progress further in the related matter.

Yours faithfully,

(S.L. Godua)

Chief Manager"

9. On reading of the above, it is clear that on 12.4.2012 the complainant came to know that the insurance policy with New India Assurance Co. Ltd. relating to the plant machinery and stock of the complainant company was not renewed. Thus, it is clear that the cause of action for filing the consumer complaint against the opposite party bank arose on 12.4.2012 when it came to the knowledge of the complainant that the insurance policy was not renewed after 23.12.2011. Thus, the limitation for filing of the consumer complaint started running w.e.f. 12.4.2012. As per Section 24 (A) of the Consumer Protection Act, 1986, the limitation for filing of consumer complaint is two years from the date of cause of action. Thus, the complaint to be within limitation ought to have been filed latest by 12.5.2014. Instant complaint has been filed after the expiry of two years period on 7.8.2015. No explanation for condonation of delay of more than one year beyond the said period of two years has been given nor any application for condonation of delay has been filed. Thus, I am constrained to hold that the complaint is time barred.

10. In view of the discussion above, the consumer complaint is time barred. Otherwise, also it is not maintainable because the complainant is not a consumer as envisaged under Section 2 (1) (d) of the Act. Complaint is accordingly dismissed.

