(2018) 03 NCDRC CK 0122

In the National Consumer Disputes Redressal Commission

Case No : Consumer Case No. 254 Of 2011

M/S. Shree Gulab Trading Co. APPELLANT

Vs

Oriental Insurance Co. Ltd. & Anr RESPONDENT

Date of Decision : 26-03-2018

Acts Referred:
Income Tax Act, 1961 — Section 40A(3), 44AB, 69A, 69B, 269SS
Income Tax Rules, 1962 — Rule 6DD

Citation : (2018) 03 NCDRC CK 0122

Hon'ble Judges : V.K. Jain, J

Bench : Single Bench

Advocate : Manoj Kumar

Final Decision : Dismissed

Judgement

,,,

1.The complainant which is a partnership firm engaged in trading, manufacturing etc. of synthetics/cotton yarn, obtained a Standard Fire & Special",,,

Perils Policy to the extent of Rs.3.5 crores in respect of stock of Grey Cloth, Yarn, Spare Parts etc. and to the extent of Rs.75.00 lacs in respect of",,,

finished goods stored in its godown at 164-165, Guru Krupa Industrial Industrial, Surat. Yet another policy for the same purpose was obtained to the",,,

extent of the sum insured of Rs.2.55 crores. It is alleged that a fire broke out in the godown of the complainant in the night intervening 8/9.07.2010 and,,,

the entire stock stored in the godown got burnt, and consequently damaged.",,,

This is also the case of the complainant, that at the time of fire, poly and poly yarn worth Rs.1,68,77,311/-, grey man made fabric worth",,,

Rs.23,695,721/-, finished cloth and cloth-cut worth Rs.25,037,902/- and embroidery machine parts worth Rs.18,58,745/- had been stored in the said",,, godown. This is also the case of the complainant that a site visit was held by the Branch Manager of the insurer on 13.7.2010, wherein he confirmed",,,

the earlier visit of the Development Manager on 30.6.2010, when the entire stock and documents were verified. According to the complainant, its",,,

Chartered Accountant had also certified the closing stock of the godown at Rs.6,74,69,679/-. The claim lodged by the complainant however, was",,,

repudiated by the insurer vide letter dated 23.5.2011. Being aggrieved, the complainant is before this Commission, seeking payment of Rs.8,57,50,357/-",,,

with interest. The bank from which credit facility had been taken by the complainant, namely IDBI bank, is impleaded as opposite party No.2 in the",,,

complaint.,,,

2. The complaint has been resisted by opposite party No.1 which has taken a preliminary objection that the complainant has relied upon a forged and,,,

fraudulent document, which has been annexed to the complaint. It is further alleged that the majority of the transactions could not be verified as the",,,

same were stated to be cash transactions. It is also alleged that despite repeated follow up, no supplier or third party verified or confirmed the",,,

transaction claimed by the complainant. It is also alleged that the quantity of the damaged goods did not match with the claim of the complainant.,,,

3. The letter of repudiation dated 23.5.2011 to the extent it is relevant reads as under:,,,

â??We regret to inform you that your fire claims under above two policies are hereby repudiated for the following reasons:,,,

1. That your transactions in cash of huge amounts are suspicious and not proved.,,,

2. The huge increase in purchase and decrease in sales are unbelievable.,,,

3. The suppliers and you are unable to provide details of supply i.e. L.R. Copies, Driver details, freight paid details, bank accounts and TDS details.",,,

4. The building, cement sheets of roof, windows and gates are not affected by fire.",,,

5. The policies are obtained with ulterior motive to claim huge amount. So, we are unable to entertain the claims and repudiated the claims and closed",,,

as â??rejectedâ??.,,,

It would thus be seen that huge payments alleged to have been made by the complainant to its supplier have not been believed by the insurer and the,,, same are claimed to be suspicious.,,,

4. Annexure C-13 to the complaint is a visit report dated 13.7.2010 purporting to be written by hand, by the then Branch Manager of the opposite",,,

party No.1. Vide this letter, he purported to certify his personal visit to the godown on 13.7.2010 and having checking the godown and all the papers",,,

comprising purchase bills, photos. He also purported to certify that all the goods of Gulab Trading Company were totally lost in fire and its amount was",,,

Rs.6.8 crores. The aforesaid letter bears the seal of Dhule Branch of the Oriental Insurance Company Ltd., meaning thereby that according to the",,,

complainant the said visit was undertaken and the letter was issued by the then Branch Manager of the Dhule Branch of the insurance company.,,,

The insurer has filed the affidavit of Mr. Rasiquddin, who was posted as Branch Manager in Dhule Branch Office for the period October, 2009 to",,,

October, 2015. After reading the complaint and Annexure C-13, he stated on oath that he had not issued Annexure C-13, which is forged and",,,

fraudulent and is not in his hand writing. He further stated on oath that Annexure C-13 to the complaint does not bear his signature and that the hand,,,

writing as well as the signature is clearly forged and fraudulent. He further stated that he did not visit Surat in July, 2010 nor he issued any such letter",,,

to Gulab Trading Company.,,,

5. No request was made by the complainant to this Commission for cross-examination of Mr. Rasiquiddin. Therefore, I see no reason to disbelieve his",,,

affidavit. Moreover, no attempt was made by the complainant to obtain the expert opinion of a hand writing expert to prove that in fact, the letter",,,

dated 13.7.2010 was written and signed by Mr. Rasiquiddin, Branch Manager, Dhule Branch of Oriental Insurance Co. Ltd. I therefore hold that a",,,

forged and fabricated document has been filed and relied upon by the complainant in order to support its case.,,,

Relying upon and filing a forged and fabricated document before a Court / Forum is by itself sufficient to altogether reject the petition even if the claim,,,

is otherwise well-founded. It is settled legal proposition that a person seeking the intervention of a Court / Forum must come with clean hands and,,,

must not deploy unfair means such as filing forged and fabricated documents in support of its case. A litigant engaged in deployment of such unfair,,,

means is not entitled to be heard on merits and reliance on and fling a forged and fabricated document by itself is sufficient to non-suit a person.,,,

6. Coming to the merits, the survey report, to the extent it appears to be relevant reads as under:",,,

â?? 04.Â EXTENT OF DAMAGE,,,

Building :,,,

Building was found completely saved, Cement sheets of roof were found intact and even fire and black sign was not visible in roof. Windows and",,,

gages were also found completely saved. Very small black sign of smoke was noticed on wall up to 1 to 2 ft. height. Walls and Floors were found,,,

completely saved and no cracks were noticed.,,,

Stock of Grey Fabrics, Yarns, Embroidery spares etc.",,,

Grey Clothes, yard, embroidery spares parts etc. were found half burnt and some cases fully burnt but in very small quantity. Some parts of stock of",,,

Yarn and Cotton were found completely saved. We have also noticed completely saved empty corrugated boxes and cartons. Large quantity of,,,

packing materials found scattered in godown.,,,

Particulars,2008-09,2009-10,01.4.10 to 08.7.2010

Opening Stock,,"8,696,230.00","33,233,439.00

Purchases,"40,919,441.00","200,799,976.00","67,707,315.00

Add: Direct Expenses,"1,606,194.00","28,419,187.00","1,850,233.00

,"42,525,635.00","237,915,393.00","102,790,987.00

Less: Closing Stock,"8,696,230.00","33,233,439.00","92,314,908.00

Cost of Sales,"33,829,405.00","204,681,954.00","10,476,079.00

Sales,"35,519,960.00","221,134,479.00","11,321,302.00

Gross profit,"1,690,555.00","16,452,525.00","845,233.00

Stock Turnover Ratio,4.08,6.65,0.49

Gross Profit Ratio,0.05,0.07,0.07

Increase in Purchase in %,,390.72,34.88

Increase in Sales in %,,522.56,(79.52)

Sl. No.,Plant & Machineries Building,Building,Stock

1.,168 Operational Power loom,"12 sheds spread in 03 Building housing manufacturing plants","Gray stock, yarn and

stock in process in huge

quantity.

2.,14 New Power loom,-do-,-do

3.,27 TFO,-do-,-do-

17-h,"a. Whether a certificate has been obtained from the

assessee regarding payments relating to any expenditure

covered under Section 40-A(3) that the payments were

made by account payee cheques drawn on the bank or

account payee bank draft, as the case may be, (yes/No)","It is not possible for us to verify whether

the payments in excess of Rs.20,000/- have

been made otherwise than by crossed

cheque of bank draft, as the necessary

evidence is not in the possession of the

assessee. Although, I have obtained

certificate in this regard.",

,"a. Amount inadmissible under Section 40A(3), read with

Rule 6DD (with break-up of inadmissible amount)",Not applicable,

balance, if any which is carried forward.",,,

16. As noted by the surveyor, no lorry receipts were produced by the complainant to prove the alleged transportation of the goods from the place of",,,

purchase to the place of the complainant. The case of the complainant in this regard is that it had arranged its own tempo/truck for bringing the goods,,,

to its place and had made cash payments towards the freight. The complainant has placed on record several cash payment vouchers in respect of the,,,

payments alleged to be made to the drivers of the different vehicles. The aforesaid payments were not believed by the surveyor. Therefore, in my",,,

opinion, it was necessary for the complainant to prove that the goods purchased by it were actually carried in the vehicles, numbers of which appear",,,

on the cash vouchers. No affidavit of the owner or driver of any such vehicle has been filed by the complainant. In fact, no evidence has been led by",,, the complainant even to prove the existence of the vehicles, numbers of which appear on the cash vouchers. This is yet another circumstance which",,,

creates serious doubt on the genuineness of the huge cash purchases alleged to have been made by the complainant from different suppliers.,,,

17. This is also pointed out by the learned counsel for the opposite party that several invoices/cash memos alleged to have been issued by different,,,

suppliers are in identical format. It is pointed out that the invoices on pages 179, 180, 183, 184, 185, 186, 187, 188, 189, 190, 191 & 192 have a similar",,,

format where bill number is the same as is the challan number given on the invoices/cash memos. For instance, bill number as well as challan number",,,

is 16 in the cash memo on page 179 issued by Sai Prasad Sale Corporation, 21 in the invoice issued by Shah Enterprises, 20 in the invoice on page 182",,,

issued by Shah Enterprises, 19 in the invoice issued by Prem Trading Company, available on page 183 of the paper-book, 16 in the invoice issued by",,,

Kiran Enterprises available on page 184 of the paper-book, 15 in the invoice issued by Rani Sales Corporation available on page 185 of the paper-",,,

book, 16 in the invoice issued by Sakshi Traders available on page 186 of the paper-book, 15 in invoice of Sakshi Traders available on page 187 of the",,,

paper-book, 13 on the invoice available on page 188 of the paper-book, and issued by Shah Enterprises, 11 in the invoice issued by Sai Prasad Sales",,,

Corporation available on page 189, 12 in the invoice issued by Shah Enterprises available on page 190 of the paper-book, 11 in the invoice issued by",,,

Prem Trading Company available on page 191 of the paper-book, 11 in the invoice available on page 192 of the paper-book.",,,

It is also submitted by the learned counsel for the opposite party that even the envelopes wherein the letters were allegedly sent by different suppliers,,,

to the surveyor, are written by one and the same person, thereby indicating that all the letters in those envelopes were sent by or on the instruction of",,,

one and the same person. However, even if I ignore the similarity in the format of the invoices/cash memos pointed out by the learned counsel for the",,,

opposite party and the alleged similarity in the handwriting in which the envelopes sent to the surveyor have been written, I have no hesitation in",,,

holding that the cash payments alleged to have been made by the complainant to seven suppliers named hereinabove were not actually made since,,,

neither the same have been disclosed in Form 3CD nor the complainant had sufficient cash available to it to make the said cash payments.,,, As a necessary corollary to this finding, I hold that the claim submitted by the complainant to the insurer was substantially false. If the cash payments",,,

alleged to have been made by the complainant to the above referred seven suppliers are excluded, this would mean that the alleged purchases",,,

between 01.4.2010 to 8/9.07.2010 would be much less than what the complainant has claimed. As a consequence, the balance stock as on",,,

08/09.7.2010 would also be much less and therefore, the loss to the complainant would be much much less than what it has claimed. Even if part of",,,

the claim submitted by the complainant to the insurer was false, the insurer was justified in repudiating the entire claim. The complainant therefore, is",,,

not entitled to recover any amount from the opposite party.,,,

18. For the reasons stated hereinabove, the complaint is hereby dismissed, with no order as to costs.",,,