(2001) 02 NCDRC CK 0082

In the National Consumer Disputes Redressal Commission

NATIONAL INSURANCE COMPANY LIMITED — APPELLANT

Vs

SHRI RAM KHANDSARI UDYOG — RESPONDENT

Date of Decision : 07-02-2001

Acts Referred:

Citation : 2001 2 CPJ 547

Hon'ble Judges : K.C.Bhargava , D.D.Bahuguna J.

Final Decision : Appeal dismissed with costs

Judgement

1. THIS is an appeal against the judgment and order dated 10.2.2000 passed by District Consumer Forum, Lakhimpur in Complaint Case No. 558/1997.

2. THE facts of the case stated in brief are that the Khandsari Industry was insured with the opposite party, National Insurance Company Limited for a sum of Rs. 80,000/- with effect from 29.12.1989 till 28.12.1990. On 25.10.1990 suddenly Beggas caught fire and a loss of Rs. 84,000/- was incurred by the complainant. Information of this fact was given to the Insurance Company who appointed a Surveyor. THE Surveyor inspected the place on 1.11.1990 but inspite of that the payment has not been made so far. THE opposite party, National Insurance Company Limited in its written statement has alleged that the complaint has been filed after a very long time. THE cause of action arose on 25.10.1990 while the complaint was filed on 3.9.1997. THE parties filed evidence before the learned District Forum who after considering the case of the parties, came to the conclusion that till 17.10.1996 the correspondence was going on between the parties and on that date the legal notice was served on the opposite party. Insurance Company and after that the present complaint was filed. It has come to the conclusion that even after this, the claim was not settled, hence the learned District Forum allowed the complaint and awarded a sum of Rs. 84,000/- along with interest at the rate of 18% per annum with effect from 10.11.1997 till the date of payment. It also awarded Rs. 500/- as cost. Aggrieved against this order, the appellant, Insurance Company has come in appeal and has challenged the correctness of the order passed by learned District Consumer Forum. 4.We

have heard the learned Counsel for the parties. Learned Counsel for the appellant has argued that there was no repudiation in the present case and no opportunity was given to the opposite party for filing written statement. Only preliminary objection was filed by the opposite party. 5. In the present case, it is an admitted fact that no repudiation has been made by the Insurance Company. When the correspondence was going on between the parties and no repudiation was made by the Insurance Company, the cause of action will not become barred by time but will survive the cause of action when the correspondence is going on between the parties and only then the repudiation is made. As no repudiation is made the cause of action will subsist and the learned District Forum was perfectly justified to come to the conclusion that the matter was within the jurisdiction. 6. Moreover, an application for condonation of delay had already been moved by the complainant before the District Forum. When the learned District Forum has condoned the delay and has come to the conclusion that there was no delay in filing the application, it means the condonation of delay has already been allowed. 7. The learned Counsel for the opposite party has argued that a number of opportunities were given to the appellant for filing written statement but no written statement was filed. According to the appellant, no opportunity was given to it for filing written statement. The appellant has not filed the copy of. the order sheet of the learned District Forum to show that no opportunity was given to it to file the written statement. Therefore, the burden to prove that no opportunity was given was on the appellant. The opposite party has filed the copy of the order sheet beginning from 24.12.1997 to 9.2.2000. It shows that on 2.3.1998, 12.8.1998, 23.10.1998, 19.6.1999, 9.12.1999 opportunities were sought by the appellant for filing written statement and papers. Therefore, it is wrong to say that no opportunity was given by the District Forum for filing written statement. The appellant has filed a preliminary objection before the learned District Consumer Forum. There is no provision under Consumer Protection Act for filing of preliminary objection. The written statement has to be filed. If the appellant had choosen not to file the complete objection then it has to be blamed for its own fault. 8. Thus, we find that the appellant cannot be given chance now to file any written statement or to take any advantage. Thus we find that the judgment and order of the learned District Forum are perfectly correct and requires no interference. The appeal is liable to be dismissed. ORDER The appeal is dismissed with cost of Rs. 2,000/-. The judgment and order of the learned District Forum are confirmed. Let compliance of this order be made within a period of two months from the date of this order. Let copy of this order be made available to the parties as per rules. Appeal dismissed with costs.

