(1995) 01 NCDRC CK 0015

In the National Consumer Disputes Redressal Commission

NATIONAL TRADING CORPORATION APPELLANT

Vs

UCO BANK RESPONDENT

Date of Decision : 11-01-1995

Acts Referred:

Citation : 1995 0 NCDRC 14 : 1995 2 CPC 511 : 1995 2 CPJ 114 : 1995 3 CPR 18

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

Advocate : JOSEPH VELLAPALLY , KIRTI MISHRA , P.K.SETH , S.L.GUPTA

Judgement

1. THE Complainant had obtained cash credit facilities from the Opposite Party No. 1, UCO Bank against hypothecation of its goods. The Opposite Party No. 1-Bank, in turn was insuring the hypothecated stocks of the Complainant with the Opposite Party No. 2 the New India Assurance Company. The existing Insurance Policy, which was a shop-keepers Insurance Policy, for a sum of Rs. 5 lakhs, expired on 20th December, 1990. On the same date viz,, 20th December, 1990, the Opposite Party No. 2, the New India Assurance Company, wrote to the Bank for renewal of the policy by payment of premia on behalf of various insured parties including the Complainant.

2. ON 12th January, 1991, the Petitioner informed the Bank that ""we are taking the matter into our hands, so you are kindly requested not take any steps for the same" (godown insurance). Thereafter, according to the Petitioner, he wrote to the Bank on 7th March, 1991, to arrange for insurance cover for 22 lakhs. The opening sentence of this letter reads: "You are requested earlier and many times for "insurance of stocks,,, we hereby request you to please arrange an insurance cover for 22,00,000/- from New India Assurance Company, Bhadrak, against fire, theft, burglary, looting etc. on the basis of our stock hypothecated to you against cash credit account with your branch." A zerox copy of the stock statement for the month of February, 1991 was also enclosed. Referring to the letter of 7.3.1991 the petitioner on 20th March, 1991 informed the Bank of "our discussion with the above Assurance Company,, and requested the Bank to debit

the cash credit hypothecation account for Rs. 11,495/- on account of insurance premium cover policy against fire, theft, looting etc. and credit the same amount to the account of the New India Assurance Co. The Bank by its letter dated 13.4.1991 informed the Insurance Company that the godown of the petitioner, National Trading Corporation had been insured for 22 lakhs on 15.3.1991 for which the Insurance Company had issued the money receipt of 9th April, 1991. At this stage, it informed the Insurance Company that the godown insured had been looted and set on fire in the evening of 24th March, 1991. On 22nd April, 1991, the Insurance Company informed the petitioner, National Trading Corporation, that even if the insurance is deemed to have been effected w.e.f. 9.4.1991 it was not liable for the loss prior to this date viz. 24th March, 1991.

3. EARLIER by its letter dated 23rd March, 1991, the Bank informed the National Trading Corporation that their account had been debited with the premium of Rs. 11,491/- on 22nd March, 1991 and the credit for the same has been afforded in the account of New India Assurance Company on 23rd March, 1991.

4. THE petitioner herein had originally filed a complaint against the New India Assurance Company and the United Commercial Bank. The District Forum passed an inconclusive order directing that the Opposite Party No.2 before it, the Bank, should recredit the amount of Rs. 11,495/-with premium to the account of Opposite Party No. 1 (insurer) from the account of the Complainant, National Trading Corporation as originally made and that the Opposite Party No.1 should accept the same and examine its liability and indemnify any loss in the light of the directions made by the District Forum in its order. The State Commission in appeal observed in its order of 21.1.1994 that the previously existing policy covered the risk only till 20th December, 1990. In other words, after 20th December, 1990 the policy had expired and a fresh proposal was necessary for issuing a New Insurance Policy. Acceptance of the proposal could not provide the risk cover until the premium was paid. Although, the Bank debited the premium amount to the account of the Complainant and credited the same to the account of the insurer, the insured had no knowledge of the payment of premium and only on 9th April, 1991, the insurer became aware of the premium having been credited to its account and immediately asked the Bank to reverse the entry. The State " Commission observed that there was no acceptance of the premium by the insurer. It also observed that the Complainant had not pleaded that there was any deficiency in service on the part of the Insurance Company as such it declined to give any direction to the insurer to reconsider the claim. Consequently, the appeals of the Insurance Company and the Bank against the Order of District Forum were allowed and the complaint was dismissed. The Complainant has also came in revision before this Commission against the order of the State Commission. From the recital of the facts given above, it will be clear beyond doubt that the Shopkeeper''s Insurance Policy had ceased to exist on 20th December, 1990. The existing Insurance Policy was only against risks of fire. The new policy which the Complainant wanted to obtain, was for a comprehensive policy not only against risk of fire but also against theft, burglary,

looting etc.

5. AGAIN the existing insurance policy was limited to a sum of Rs. 5 lakhs which expired on 20th December, 1990; the fresh Insurance Policy was required for to cover risk of amounting of Rs. 22 lakhs. In other words, there was a material, difference between the existing policy which expired on 20th December, 1990 and the new policy which the Complainant intended to take both in regard to the amount to be indemnified and the risks to be covered. It was, therefore, obligatory on the part of the Complainant to submit a proposal form and for the Insurance Company to accept the same before receiving premium and issuing an Insurance Policy. This was not done.

6. AT the hearing the Counsel for the Insurer vehemently stressed these points and submitted that there was no Insurance Policy in existence which could make the Insurer liable to compensate the Complainant for the loss due to looting and fire on 24.3.1991. The Counsel for the Complainant could not establish that the Insurer had executed a contract of insurance or even issued an insurance cover to the Complainant. There is a considerable time gap between the expiry of the old policy on 20th December, 1990 and the alleged efforts of the Complainant to obtain a new and materially different Insurance Policy from the middle of March, 1991. No Insurance Policy or cover was issued by the Insurer. There was no room for doubt whatsoever that no insurance cover existed during the said period. We have also reasons to doubt whether the communication of 23rd March, 1991 purporting to be one issued from the Bank to the Petitioner, just a day before the riots took place which destroyed the property, is a genuine document. For these reasons, we have even reasons to doubt whether it is a genuine complaint against the Bank and the Insurance Company. We, therefore, dismiss the complaint and Revision Petition without prejudice to the right of the complainant to seek redress in a Civil Court, if he is so advised. There is no order as to costs.