(2015) 09 NCDRC CK 0053

In the National Consumer Disputes Redressal Commission

Case No : 1174 of 2010

ORIENTAL INSURANCE CO. LTD. APPELLANT

Vs

M/S. PAVAN ENTERPRISES & ANR. RESPONDENT

Date of Decision : 01-09-2015

Acts Referred:

Citation : 2016 1 CPJ 503

Hon'ble Judges : J.M. Malik

Advocate : Sakshi Gupta, K. Radha

Judgement

1. Late Sh. Vupputuri Ayyanna- Complainant was the proprietor of M/s Pawan Enterprises. After his death, the matter is being pursued by Sri Vupputuri Srinivasa Rao, his son ?Complainant No. 2, who also joined as one of the complainants, from the very start. There can be no conflictions on the point that Sri Vupputuri Srinivasa Rao ?Complainant No. 2, stepped into the shoes of complainant-1, by virtue of a will. The above said proprietorship deals in cotton. It has got its own warehouse and keeps the stocks for further proceedings in Pressing mills.

2. The original proprietor, Sh. Vupputuri Ayyanna obtained insurance coverage for his business including in the risk address of M/s Srinivasa Pressing Company Private Limited also. The Insurance Policy was to commence from 28.11.2001 to 27.11.2002. The complainant purchased two lots of cotton bales from Sri Sambasiva Lakshmi cotton Ginning Mills, Chintapallipadu, at the premises of M/s Srinivasa Pressing Company Pvt. Ltd., Kurunthala, Vatticherukur Mandal, on 06.05.2002 under Cash/Credit Bills for amounts of Rs.4,30,892/- and Rs.4,30,484/- respectively, the total amount being Rs.8,64,376/-. The complainant took possession of the cotton in the premises of M/s Srinivasa Pressing Company Pvt. Ltd. on 06.05.2002. It may be mentioned here that lots belonged to Sri Sambasiva Lakshmi Cotton Ginning Mills, which were already lying there, on 18.04.2002. The said purchase at another''s premises was made after the lapse of 18 days.

3. Unfortunately, on 08.05.2002, at about 7-30 P.M., a fire broke out at the premises of Sh. Sambasivarao Pressing Company Pvt. Ltd. and the above said cotton bales were gutted in fire. It also transpired that the payment of the said goods was not made, immediately. There was made subsequently on 13.05.2002 and the same was encashed on 14.05.2002. The claim made by the complainant was repudiated. The complainant, thereafter, filed a complaint before the District Forum with the prayer that the above said sum of Rs.8,64,376/- alongwith interest, compensation etc. be granted in favour of the complainant.

4. The respondent/Insurance Company contested the present case. It categorically denied the ownership of the complainant of the goods in question. It contended that Sri Sambasiva Lakshmi Cotton Ginning Mill, was the owner of the property in dispute. Since it did not have insurance of that cotton, therefore, they introduced the complainant to come to its rescue.

5. The District Forum dismissed the complaint.

6. Aggrieved by that order the complainant preferred an appeal before the State Commission. The State Commission allowed the complaint and directed the OP to pay to complainant No. 2, a sum of Rs.8,64,376/- with interest @6% p.a. from the date of repudiation, i.e. 28.03.2003 and pay an amount of Rs.5,000/- representing costs.

7. The Revision Petition was filed by the Oriental Insurance Company Ltd. ? the OP. The Revision Petition was filed in the year 2010. Mr.K.Maruthi Rao, counsel for the complainant appeared on 16.12.2014. His wife, Ms. K. Radha, Advocate, appeared on 22.01.2015, and prayed for a date. The adjournment was granted subject to payment of Rs.5,000/-

as costs. The case was fixed for 24.08.2015. Counsel for the complainant pleaded no instructions. She also displayed her inability to pay the costs. Arguments were heard ex-parte from Ms. Sakshi Gupta, counsel for the petitioner in the presence of Ms. K. Radha. Till the announcement of this judgment, neither the costs were paid nor was a request made to hear the counsel for the complainant.

8. A closet scrutiny of the orders of both the Fora below go to show that the order passed by the District Forum cannot be faulted. It has taken the correct view. Now, we turn to the reasoning given by the State Commission. The State Commission correctly decided that the Complainant No. 2 has got the '' locus standi'' to contest this case. I do not pick up a conflict with that finding.

9. Secondly, the State Commission opined that even if the payment is made after few days after this incident, on 14.05.2002, the sale cannot be said to be invalid. It explained that the District Forum passed the order obviously under the impression that for a conclusion of the contract of sale of goods, the instantaneous passing of consideration is sign '' Quo-non'', but the law in this regard is otherwise. It observed that any contract of sale of goods for that

matter in any contract, the consideration could be not necessarily down payment and it could also be a payment on the spot or promise or part payment and part promise. The State Commission also found that the parties to the transaction obtained permit of the Agricultural Market Committee, Guntur and also paid tax as per Ex-A-20 for covering this very same transaction.

10. The third reason given by the State Commission is reproduced as follows:- "Likewise in order to condemn this transaction as false, the District Forum also embarked upon a conjecture that Sri Sambasiva Lakshmi Cotton Ginning Mills was not in the habit of getting its cotton pressed by M/s.Srinivasa Pressing Company Private Limited as it was the customer of Balaji pressing Mill and that the said Sri Sambasiva Lakshmi cotton Ginning Mill diverted its stocks to M/s Srinivasa Pressing Company Private Limited only to lend colour of truth to this transaction allegedly owned by the complainant by way of accommodation. This again is an argument that suffers from the vice of double presumption. Such conjectural argument without the basis of first conclusively proving that the cotton in truth only belongs to Sri Sambasiva Lakshmi Cotton Ginning Mills and then that it temporally switched loyalty to M/s Srinivasa Pressing Company Private Limited only to take advantage of the insurance coverage readily available with the complainant".

11. I am of the considered view that all these arguments carry exiguous value. Although, the legal proposition cited by the State Commission may be true, yet, to understand an event, its

concomitant circumstances must be understood, too. The facts are stubborn things. The report of the Surveyor, who visited the spot immediately, is relevant. The following observations made by the Surveyor go a long way to dispel the doubts, if any. "5. It is not out of place to mention here that the 100 bales involved in the subject claim are purchased from Sri Sri Sambasiva Lakshmi Cotton Ginning Mill on 06-05-2002, this was the first time that the insured made a purchase from Sri Sri Sambasiva Lakshmi Cotton Ginning Mill since 01-04-2001. 6. However, the insured had made payment for the above mentioned purchase vide Cheque Number: 411036 datede 13-05-2002 drawn on Bank of Maharashtra favoring Sri Sri Sambasiva Lakshmi Cotton Ginning Mill for Rs. 8,64,324/-. The cheque has been duly honored by the drawee, we have vouched the same into the Pass Book, and the same is also duly certified by the bank vide their Letter No: AL17/CC/GEN/2002 dated 15 June 2002. (Copy Enclosed) th

7. We have asked the insured whether the stocks of Sri Sri Sambasiva Lakshmi Cotton Ginning at Sri Srinivasa Pressing Company Private Ltd., are insured and if so to produce a copy of insurance policy covering the sotcks of Sri Sri Sambasiva Lakshmi Cotton Ginning Mill, the insured stated that they are not aware of the same and if there is insurance cover they will produce a copy of the policy to us, which they have not done so far. Therefore, the real intention behind these purchases appears to accommodate Sri Sri Sambasiva Lakshmi Cotton Ginning

Mill, which does not have insurance cover for the stocks lying in Sri Srinavasa Pressing Company Private Ltd. This is evident from the facts that Sri Sri Sambasiva Lakshmi Cotton Ginning Mill does not have insurance in Sri Srinivasa Pressing Company Privazte Ltd., but had stock of cotton in Sri Srinivasa Pressing Company Private Ltd. On the other hand Pavan Enterprises had insurance cover valid up to 27-11-2002 (one year policy taken on 28-11-2001) but had no stock at Sri Srinivasa Pressing Company Private Ltd., (other than these 100 bales purchased).

8. We have raised this point in discussions with the insured. The insured stated that they have purchased these bales on bale condition. Bale condition means the purchaser purchase loose lint from the seller and the seller will be responsible to handover the lint in FB bale form in the premises where the purchaser had an insurance cover. They also stated that Sri Sri Sambasiva Lakshmi Cotton Ginning Mill do not get their bales pressed at Sri Srinivasa Pressing Company Private Ltd., but only at Balaji Pressing Company. The insured further stated that as they don''t have an insurance cover at Balaji Pressing Company, Sri Sri Sambasiva Lakshmi Cotton Ginning Mill have shifted the lint boras from Balaji Pressing Company to Sri Srinivasa Pressing Company Private Ltd., and got them pressed at Sri Srinavasa Pressing Company Private Ltd., and then transferred them to their name vide T/L No. 2/54 dated 06-05-02.

Even if we take the above mentioned explanation to be correct, 100 bales which were pressed on 18-04-2002 as per P.R. Register of the press were transferred only on 06-05-2002 i.e. after 18 days, only for the reasons best known to the insured and Sri Sri Sambasiva Lakshmi Cotton Ginning Mill. If the bales were purchased on bale condition on 06-05-2002 why were these bales pressed on 18-04-2002 and stacked in Sri Srinivasa Pressing Company Private Ltd., long before the purchases? Based on the above-mentioned points we are of the opinion that the transaction involving purchase of 100 bales on 06-05-2002 by the insured is purely to accommodate Sri Sri Sambasiva Lakshmi Cotton Ginning Mill.

9. The subject claim is a clear case of transfer of stocks from an uninsured to the insured to derive undue benefit from the insurers and is not a genuine trade transaction which has taken place in the normal course of business. Hence the subject claim may be repudiated by the insurers".

12. I see no reason to discard the report of the Surveyor. He appears to be a guileless witness. No motive was ever attributed to him. There must be some reasonable ground or doubt to reject his report. The report of the surveyor carries infinite significance as was held in "Roshan Lal Oil Mills Ltd. & Ors." (2000) 10 Supreme Court Cases 19 and in "D.N. Badoni Vs. Oriental Insurance Co. Ltd." I (2012) C.P.J. 272 (NC).

13. Consequently, I accept the Revision Petition, set aside the order of the State Commission and dismiss the complaint. No order as to costs.