

(2001) 05 NCDRC CK 0067

In the National Consumer Disputes Redressal Commission

Oriental Insurance Co. Ltd.

APPELLANT

Vs

PRAKASH JEWELLERS (SOUTH END)

RESPONDENT

Date of Decision : 15-05-2001

Acts Referred:

Citation : 2002 1 CPJ 57 : 2002 2 CPR 440

Hon'ble Judges : Lokeshwar Prasad , Rumnita Mittal , S.P.Saberwals J.

Final Decision : Appeal dismissed

Judgement

1. THE above mentioned appeal arises out of an order of the District Forum-II dated 12.10.1998 passed in Complaint Case No. 1380/1995 entitled Prakash Jewellers v. Oriental Insurance Co. Ltd.

2. THE facts relevant for the disposal of the present appeal, in brief, are that the respondent had filed a complaint before the District Forum under Section 12 of the Consumer Protection Act, 1986 (hereinafter referred to as "the Act") averring therein that the respondent had obtained a Jewellery Block Insurance Policy from the appellant for the jewellery lying in his shop at F-39, South Extension Part-I, New Delhi-110 049, covering the period 3.12.1993 to 2.12.1994. On 12.5.1994 while the proprietor of the shop was attending to his regular customers from the Embassy of Germany from Egypt and Turkey, one man and two ladies entered the shop and desired to see various items of jewellery. However, they created a confusion in the shop and thereafter left hurriedly. Later on it was found that two boxes, containing 9 pairs each, of gold diamond tops, were missing from the stock. An F.I.R. was immediately lodged with the police and a claim was lodged by the respondent with the appellant Company for an amount of Rs. 3,11,846.50. THEREafter, the appellant deputed a Surveyor, M/s. Aggarwal and Sons, who made investigations and raised some queries from the respondent, who promptly replied the same vide its letter dated 15.6.1994. Again a letter dated 22.9.1994 was received from the above mentioned Surveyors seeking more information which though supplied earlier, was again furnished by the respondent vide its letter dated 24.9.1994. Even after that, the respondent kept

on corresponding with the appellant apprising them of the non-availability and non-action of their Surveyor M/s. R.L. Aggarwal and Sons and also requested for the early settlement of his claim. Eventually when the appellant failed to settle the claim of the respondent, the latter filed a complaint before the District Forum praying for compensation of Rs. 3,11,846.54 being the value of the articles stolen plus Rs. 31,184.65 being 10% of the aforesaid value, as block insurance coverage together with interest @ of 18% p.a., as well as, cost of litigation. The above averments of the respondent were controverted by the appellant in its reply/written version, filed before the District Forum. The main defence of the appellant was that the respondent had not co-operated with the Surveyor appointed by it, namely, M/s. Aggarwal and Sons, and had not supplied the required information/clarifications desired by the Surveyor. It was further stated that the claim of the respondent was repudiated on 1.9.1995 after careful scrutiny at various levels, of the report of the Surveyors (M/s. R.L. Aggarwal and Sons) dated 15.12.1998, the said report revealed a number of discrepancies in the story concocted by the appellant regarding the theft of jewellery items from its shop. The appellant had further stated in its reply/written version filed before the District Forum, that a second Surveyor i.e. M/s. H. Kanan and Co. had also been appointed for independent survey of the bona fides of the loss/claim alleged by the respondent, but on scrutiny of the case of the respondent, the claim was repudiated, and as such there was no deficiency in service on its part.

The learned District Forum, basing its decision on the report of M/s. H. Kanan and Co. Surveyors held that the claim of the respondents was justifiable and, therefore, directed the appellants to indemnify the appellant for his loss according to the policy, in respect of theft of two jewellery boxes together with interest @ 15% from 1.4.1995 till payment and also awarded Rs. 10,000/- as compensation for mental harassment and Rs. 1,000/- as costs.

3. AGGRIEVED by the above said order the appellant has filed the present appeal. A notice of the appeal was duly served on the respondent, who entered appearance through his Counsel. We have heard the Counsels for the parties, as well as have perused the documents/material on record.

4. THE impugned order is dated 12.10.1998, whereas the appeal has been filed on 21.12.1998, i.e. much beyond the statutory period of 30 days as prescribed under Section 15 of the Act for filing an appeal before the State Commission. Further, the same is not accompanied by any application for condonation of delay, neither is there any explanation in the memorandum and grounds of appeal, for the delay in filing the appeal. As pointed out by the Counsel for the respondent, a bare perusal of the certified copy of the impugned order reveals, that the same is a duplicate copy. Furthermore, there is an endorsement on the said copy of the order, whereby it appears that the first certified copy of the order was probably sent to the parties vide despatch No. 4962-63 on 29.10.1998. Besides that, the respondent had also placed on record, a copy of its letter dated 4.11.1998, vide which a copy of the impugned order was sent to the

appellant. Photocopy of the acknowledgement receipts dated 6.11.1998/9.11.1998, as well as the copy of letter of the appellant dated 15.12.1998, acknowledging the letter of the respondent dated 4.11.1998 has also been placed on record, which goes to show that the appellant was aware of the impugned order but applied for a duplicate copy of the order only on 2.12.1998 and thereafter filed the appeal on 21.12.1998 after the lapse of a considerable time. As per Section 15 of the Act, an appeal from an order of the District Forum can be preferred within a period of thirty days from the date of the order, and as per the proviso to the aforesaid provision, an appeal can be entertained even beyond the prescribed period of thirty days if the State Commission is satisfied that there was "sufficient cause" for the delay in filing the appeal. In the absence of any such cause, the State Commission is precluded from entertaining an appeal. THEREfore, in the instant case, in the absence of any application, assigning "sufficient cause" for the delay, the present appeal being barred by limitation is liable to be rejected as time barred. Even on merits the appellant has no case. The learned District Forum has exhaustively dealt with all the aspects of the matter, and has based its decision on the report of Surveyor M/s. H. Kanan & Co., appointed by the appellant itself. The factum of theft of jewellery items from the shop of the complainant stands corroborated by the FIR lodged by the respondents, which fact is not denied by the appellants. Even the statement of the foreign dignitaries of the Embassy, as recorded by the Surveyors M/s. Agarwal and Sons, corroborates the case of the respondent regarding the circumstances of the theft. Thus, in the event of both the Surveyors' reports, confirming the circumstances leading to the theft of jewellery articles, the appellant could not have held that the claim of the respondent was bogus and fraudulent and as such rejected the claim of the respondent. The deficiency in service on the part of the appellant is thus established and there is, therefore, no infirmity in the order of the District Forum, being impugned in the present proceedings. As such, the present appeal filed by the appellant being devoid of merit is liable to be dismissed and the same is dismissed accordingly. However, in the circumstances of the case, the parties are left to bear their own costs. The present appeal is disposed of in above terms. Appeal dismissed.