(2014) 03 NCDRC CK 0004

In the National Consumer Disputes Redressal Commission

Puri Gramya Bank — APPELLANT

Vs

Susama Kumari Biswal And Ors. — RESPONDENT

Date of Decision : 13-03-2014

Acts Referred:

Citation : (2014) 03 NCDRC CK 0004

Hon'ble Judges : V.B.GUPTA J.

Final Decision : Appeal allowed

Judgement

1. APPELLANT /opposite party No. 1 has filed this First Appeal challenging order dated 1.5.2006, passed by State Consumer Disputes Redressal Commission, Cuttack, Orissa (for short, ''State Commission''). The case of Complainant/ Respondent No. 1 in brief is that, in order to start a Dairy Farm under loan basis, she sent her proposal to the Krushi Sahayak Kendra, Puri which was approved by them, vide letter dated 4.2.1998 and her proposal to avail a loan of Rs. 3,69,000 was forwarded to the Appellant -Bank for sanction. Appellant sanctioned the loan amount of Rs. 3 lakh in the favour of respondent, vide letter dated 3.11.1998. The sanction order clearly stated, that the 20 number of cows shall be purchased in two phases. However, appellant issued funds for purchase of 7 number of cows only on three different dates, i.e. on 20.4.1999, 30.4.1999 and 4.5.1999. As a result thereof, respondent No. 1 could not run a full -fledged Dairy unit to enable her to earn profit and to repay the loan. As per the terms and conditions, respondent No. 1 was required to repay a sum of Rs. 5,000 as monthly instalment and she has paid at least one instalment on 29.10.1999. However, she could not repay further as her Dairy unit and 7 number of cows were destroyed due to the Super Cyclone on 29/30.10.1999. Respondent No. 1 reported this matter to RespondentNo.2/Collector, Puri Respondent Nos. 2 and 3 and New India Insurance Company produced the certificate of the Tehsildar, Kakatpur, regarding destruction of her Dairy unit. Though, respondent No. 4 which had insured 5 cows, sanctioned a sum of Rs. 33,000, Respondent No. 4/ Oriental Insurance Company, has not yet given the insurance claim for the other 2 cows.

2. IT is further alleged that when appellant issued notice for repayment of the loan, respondent No. 1 intimated the appellant as the farm has been completely destroyed by the Super Cyclone as such appellant did not release money for the rest 13 numbers of cows, the project is not continuing and repayment of loan amount by respondent No. 1 does not arise. It is further stated, that respondent No. 1 could have availed the subsidy amount of Rs. 86,400 from the Government had the project been completed with 20 cows unit. However, respondent No. 1 could not get it due to the deficiency in service on the part of the appellant. Had appellant given her money for the rest of 13 cows, she would have been benefited by earning a sum of Rs. 24 lakh. Thus, she also sustained a loss of more than Rs. 2 lakh due to the destruction of the cow shed which she had erected and the appellant did not insure it as per the terms and conditions of the loan. Over and above this, the appellant has adjusted Rs. 1 lakh which was kept by the guarantors as fixed deposit towards the loan account which is arbitrary and illegal. Appellant did not file any written version, but filed a counter affidavit (in Misc. Case No. 427 of 2005) arising out of the present case.

3. RESPONDENT Nos. 2 and 4 did not file any written statement. Respondent No. 3, in its written version admitted that respondent No. 1 had approached respondent No. 2 for establishment of a commercial Diary project under the new agricultural policy which was approved by it and was sent to appellant with a recommendation to finance the project of respondent No. 1, as per their Banking procedure. It is further stated that a full -fledged dairy project consists of 20 cows. However, sanction of 7 numbers of Jersy Cows by the appellant, contravene the agricultural policy.

4. STATE Commission, vide impugned order partly allowed the complaint passed following directions: Opposite party No. 1 to compensate Rs. 1,35,000 which amount was released for the construction of cowshed in favour of the complainant and to adjust the same towards the outstanding loan amount of the complainant We further direct that the insured amount with opposite party No. 4 be adjusted against the outstanding loan amount of the complainant. The opposite party No. 4 is directed to settle the claim with interest at the prevailing commercial Bank rate of interest within thirty days of receiving copy of this order.

Being aggrieved, appellant has filed this appeal.

5. WE have heard the learned Counsel for the appellant as well as Counsel for respondent Nos. 1 and 4 and gone through the record.

6. ON 26.2.2014, at the time of arguments learned Counsel for appellant gave a statement that it does not claim any relief against respondent Nos. 2 and 3. Accordingly, names of respondent Nos. 2 and 3 were ordered to be deleted from the array of the parties. It has been contended by learned Counsel for the appellant, that respondent No. 1 has not placed any proof with regard to the actual loss suffered with respect to the cow shed. The next limb of argument advanced by the learned Counsel is, that as per terms and conditions of the loan

it was for respondent No. 1 to have the cow shed insured. She did not give any instructions or authorization to the appellant for making insurance cover with respect of the cow shed. Thus, State Commission has committed grave error on this aspect.

7. ON the other hand, it has been contended by learned Counsel for respondent No. 1, that it was for the appellant to have got the cowshed insured and in the absence of the same, liability for it shall rest upon the appellant.

8. APPELLANT , vide letter dated 3.11.1998 (Page 23 of the Paper -book) sanctioned a loan of Rs. 3 lakh in favour of respondent No. 1. The terms and conditions regarding the loan has been placed at Page 25 -26 of the Paper -book. The relevant condition is No. 5 which state: 5. Farm building live stock feed stock etc. are to be insured for full value under Bank''s clause. Periodical renewal of the insurance should be ensured.

A plain reading of this condition shows that it was for the respondent No. 1 to have the farm building, live stock and feed stock, etc, insured for full value. Above condition nowhere states, that it was for the appellant to get the renewal of the insurance.

9. THERE is nothing on record to show that respondent No. 1 ever got the farm building, live stock and feed stock, etc. insured. Nor there is any document to show, that respondent No. 1 asked the appellant to get the same insured.

10. UNDER these circumstances, in view of the condition No. 5, it was the duty of respondent No. 1 to have got the building and stock, etc. insured. There is also no evidence to show that respondent No. 1, ever gave any instructions to the appellant to get the same insured. As such no liability can be fastened upon the appellant. The State Commission has thus committed a grave error in allowing the complaint of respondent No. 1. Accordingly, we set aside the impugned order and allow the present appeal. Consequently, the complaint filed by respondent No. 1 before the State Commission, stands dismissed. Parties shall bear their own costs.