(2016) 09 NCDRC CK 0159

In the National Consumer Disputes Redressal Commission

Case No : 87 of 2011

Rekha & Ors. APPELLANT

Vs

State Bank of Mysore & Ors. RESPONDENT

Date of Decision : 20-09-2016

Acts Referred:

Citation : 2017 1 CPJ 156 : 2017 2 CPR 789

Hon'ble Judges : K.S. Chaudhari, Prem Narain

Advocate : J. Soma Shekhar, Jitendra Kumar, Bharat Malhotra, Rakesh MalhotraAppeal partly allowed

Final Decision : Appeals Partly allowed

Judgement

1. This appeal has been filed by the appellant against the order dated 7.1.2011 passed by the Karnataka State Consumer Disputes Redressal Commission, Bangalore (in short ''the State Commission'') in CC No. 84/09, Rekha & Ors. v. State Bank of Mysore & Ors. by which, complaint was dismissed. 2. Brief facts of the case are that father of 1 and 3 complainants/appellant Nos. 1 and 3 obtained the housing loan of Rs. 20 lakh from OP No. 1/Respondent No. 1. Complainant No. 2/Appellant No. 2 is the guarantor for the said loan. The necessary documents were executed. At the time of sanction of the loan OP Nos. 1 to 3/ Respondent Nos. 1 to 3 intimated the complainant that loan should be covered with insurance, they deducted the premium of Rs. 91,180 to be paid to OP No. 4/ Respondent No. 4 the Insurance Company. Basavarajappa expected that the said loan amount will be covered through the insurance by issuance of policy by OP No. 4. But unfortunately though OP No. 1 sent the said premium amount to OP No. 4, OP No. 4 failed to cover the risk of the said loan. The arbitrary act of OP No. 4 caused both mental agony and financial loss to the complainant. In the meantime, Basavarajappa passed away on 17.8.2008. Complainant No. 1 became the owner of the said property in pursuance of the Will executed in her favour. Thereafter, suddenly OP Nos. 1 to 3 demanded the complainant Nos. 1 to 3 to pay back the amount due with interest. When complainant directed the OP

to recover the said amount from OP No. 4 in pursuance of the insurance policy but to their utter shock and surprise they came to know that the said loan was not covered by the OP No. 4. Complainants sent legal notice but there was no proper response. Alleging deficiency on the part of OP, complainants filed complaint before State Commission. 3. OP Nos. 1, 2 and 3 resisted complaint and denied allegations made by the complainant in to. According to OP Nos. 1 to 3 they did deduct the premium and sent it to OP 4 but as per the group insurance scheme floated by the OP 4 the insurance will be covered only to the loan which were repayable in a monthly EMI whereas the loan obtained by Basavarajappa and complainant No. 3 was repayable in 10 yearly instalments. Under the circumstances, OP No. 4 refused to cover the said loan. Then it returned back the said premium amount which was credited to the account of the Basavarajappa. The said facts were brought to the knowledge of said Basavarajappa who accepted the same and addressed a letter dated 7.9.2007. The other allegations of the complainant are false and frivolous. There was no deficiency in service on the part of the OP Nos. 1 to 3. Complaint is devoid of merit and prayed for dismissal of complaint. 4. OP No. 4 resisted complaint and submitted that they did receive the premium from OP Nos. 1 to 3 with respect to the insurance coverage of the loan availed by Basavarajappa. But their group insurance scheme was applicable only to the loan repayable in monthly EMI not in yearly EMI, so they refused to accept the said proposal and sent back the amount. The request for coverage was not considered and that amount was re-credited to the account of the Basavarajappa. There was no concluded contract between the complainants and the OP No. 4. Hence OP No. 4 was not liable to pay the outstanding dues after the death of Basavarajappa. The other allegations made in the complaint were baseless. There was no deficiency in service on the part of the OP No. 4 and prayed for dismissal of complaint. 5. Learned State Commission after hearing the parties dismissed complaint against which, this appeal has been filed along with application for condonation of delay. 6. Heard learned Counsel for the parties and perused record. 7. Learned Counsel for the appellants submitted that as there is no proof of remitting payment of insurance premium by OP Nos. 1, 2 and 3 to OP No. 4 and return of premium by OP No. 4 to OP Nos. 1, 2 and 3, learned State Commission committed error in dismissing complaint; hence, appeal be allowed and impugned order be set aside and complaint be allowed. On the other hand, learned Counsel for the respondent Nos. 1, 2 and 3 submitted that as policy coverage was not issued by OP No. 4 and amount returned by OP was credited to borrowers account, learned State Commission rightly dismissed complaint; so, appeal be dismissed. Learned Counsel for the Respondent No, 4 submitted that as there was no privity of contract between the loanee and OP No. 4, learned State Commission rightly dismissed complaint and prayed for dismissal of appeal. 8. As there is delay of only two days in filing appeal, delay stands condoned for the reasons mentioned in the application. 9. It is not disputed that deceased Basavarajappa obtained loan of Rs. 20 lakh for construction of house and as per terms of housing loan, deceased agreed for loan insurance cover from SBI Life Insurance Co. Ltd. to the extent of limit sanctioned to him. In para 6 of the complaint, complainant admitted that insurance premium of Rs. 91,180 was debited to loan account on 15.4.2006. OP Nos. 1 and 2 in their written statement submitted that premium was sent by them to OP No. 4 by demand draft dated 15.4.2006 and OP No. 4 in its written statement admitted that OP Nos. 1,2 and 3 sent remittance of Rs. 91,180 by demand draft dated 15.4.2006 and sought for insurance coverage under group insurance scheme. Thus, it becomes clear that as per terms and conditions of loan, OP Nos. 1,2 and 3 debited loan premium amount from the account of deceased and remitted this amount to OP No. 4 for issuing insurance cover. In such circumstances, there was no deficiency on the part of OP Nos. 1, 2 and 3 in remitting insurance premium to OP No. 4. Learned Counsel for appellant submitted that copy of draft and letter by which draft was returned by OP No. 4 has not been placed on record; so, no reliance can be placed on these pleadings of OP. This argument is devoid of force because when complainant himself has admitted that as per their statement of account premium amount was debited and remitted by OP Nos. 1 and 2 to OP No. 4 which has been admitted by OP No. 4, no further proof for remitting payment and returning back the payment was required. OP No. 4 has specifically pleaded that they did not accept request for coverage and returned the amount immediately to O P Nos. 1 and 2 which is further proved by copy of postage book dated 15.7.2006 of OP Nos. 1 and 2 which reveals that letter was received from OP No. 4. Perusal of statement of account of deceased further reveals that this amount stood credited in the account of deceased; so, it did not require any discussion for disposal of complaint that letter dated 7.9.2007 was forged one and we also are of the view that question of forgery of aforesaid document cannot be decided by this Commission as criminal investigation/proceedings are pending. Thus, there was no deficiency on the part of OP for non-coverage of loan by insurance policy. 10. it is not disputed that aforesaid premium amount was credited in loanee''s account on 7.9.2007 whereas this amount was returned back by OP No. 4 on 5.7.2006 and in such circumstances complainants are certainly entitled to interest on Rs. 91,180 from 6.7.2006 to 7.9.2007 @ 12% p.a. as prima facie OP is charging interest @ 12% p.a. and to this extent appeal is to be allowed. 11. Consequently, appeal filed by appellant is partly allowed and impugned order dated 7.1.2011 passed by the learned State Commission in CC No. 84/09, Rekha & Ors. v. State Bank of Mysore & Ors. is partly modified and respondent Nos. 1, 2 and 3 are directed to pay interest @ 12% p.a. on Rs. 91,180 from 6.7.2006 to 7.9.2007 within 30 days. Parties to bear their costs. Appeal Partly Allowed.