

(2014) 05 NCDRC CK 0049

In the National Consumer Disputes Redressal Commission

Sonepat Urban Co -Operative Bank Ltd.

APPELLANT

Vs

Saini Machinery Store

RESPONDENT

Date of Decision : 20-05-2014

Acts Referred:

Citation : 2014 0 NCDRC 529 : 2014 3 CPJ 157

Hon'ble Judges : B.C.Gupta J.

Final Decision : Petition allowed

Judgement

1. THIS revision petition has been filed under Section 21(b) of the Consumer Protection Act, 1986 against the impugned order dated 10.2.2012 passed by the Haryana State Consumer Disputes Redressal Commission (for short "the State Commission") in FA No. 1567/2009, Sonepat Urban Cooperative Bank Ltd. v. Saini Machinery Store, vide which appeal against the order dated 22.9.2009 passed by District Consumer Disputes Redressal Forum, Sonepat in consumer complaint No. 351/2008 was dismissed and the order of the District Forum allowing the complaint was upheld. Brief facts of the case are that complainant/respondent M/s. Saini Machinery Store, Sonepat is a proprietary concern and is engaged in the business of sanitary wares, C1 pipes, water tank, G1 pipes and fittings and CP fittings and other related goods. The firm is enjoying cash credit limit facility from the petitioner bank and against this facility, the properties and stocks lying in the shop of the complainant was mortgaged with the petitioner bank. As per the rules and regulations and instructions of the Reserve Bank of India, it is necessary to get the stock insured with any general Insurance Company. It is the case of the complainant that as per the rules and regulations and instructions of the RBI, the firm was free to get the stock insured on its own, but it was also mentioned in the said provisions that if the firm did not get the stock insured on its own, it was the duty of the bank to get the stock insured every year after debiting the premium amount from the account of the firm. On 8.6.2007, the premises of the complainant firm got fire which was controlled/extinguished by the fire brigade after struggle of about two hours. The matter was reported to the local Police vide daily diary register at serial No. 14 dated

9.6.2007 and the probable cause of fire was stated, to be short -circuiting in the electric meter. The complainant wrote to the petitioner bank on 9.6.2007 itself about the factum of fire and requested them to depute a surveyor to assess the loss on the spot. The petitioner bank sent a letter dated 15.6.2007 to the complainant saying that the insurance of stock had expired on 20.2.2007. It is the case of the complainant that they were availing the cash credit limit for the last many years from the Bank and Bank used to get the stock of the complainant insured after deducting the payment of premium from the account of the complainant. However, sometimes complainant used to pay the premium in cash at the asking of the respondent to the agent of the Insurance Company. The complainant then appointed the surveyor himself who submitted his report on 16.9.2008, after assessing the loss to the tune of Rs. 2,89,352. The complainant paid a fee of Rs. 11,786 to the surveyor for assessing the loss. When the petitioner refused to entertain the claim, the consumer complaint in question was filed before the District Forum. The District Forum allowed the complaint and directed the petitioner to make payment of Rs. 2,89,352 to the complainant along with interest @ 9% p.a. from 9.6.2007. Appeal filed before the State Commission was dismissed by them vide impugned order. It is against this order that the present petition has been made.

2. AT the time of hearing before us, learned Counsel for the petitioner stated that the job of the bank was to provide the cash credit limit to the complainant. It was the duty of the complainant to get the stocks insured. The learned Counsel invited our attention to the Manual for Urban Co -operative Banks issued by the RBI, saying that as provided in para 10 of the said Manual, it was the duty of the borrower to have the goods insured. On the other hand, learned Counsel for the complainant/respondent maintained that the bank had been getting the stock insured for the last many years and their action in not getting the stocks insured in time amounted to deficiency in service. Hence, the orders passed by the District Forum and the State Commission were in accordance with law and should be upheld. After the conclusion of hearing, the case was reserved for orders, but it was again listed for hearing to seek clarification on certain issues. At the time of re -hearing, the learned Counsel for the Bank stated that during the year previous to the year in which the fire incident took place, the Insurance Policy was taken by the complainant on his own. The learned Counsel for respondent also admitted that during the previous year, the policy was taken by the respondent himself, but during the preceding years, the policy was being taken by the Bank. The version of the Bank is that during certain years, the premium was debited to the account of the respondent whereas in other years, the premium was paid in cash by the respondent. It was also stated by the learned Counsel for the Bank that the bank had not obtained any Undertaking from the borrower to renew the policy by payment of premium after debiting the same from the account of the borrower. In response to this assertion, the learned Counsel for the respondent stated that as laid down in "Manual for Urban Cooperative Banks," issued by the Reserve Bank of India, it was the duty of the

bank to obtain such an undertaking from the borrower and by not obtaining the same, they have committed an act of deficiency.

3. WE have examined the entire material on record and given a thoughtful consideration to the arguments advanced before us. It has been stated in the orders passed by the State Commission and the District Forum that since the bank had been taking the Insurance Policy on behalf of the complainant during all these years, the bank had committed deficiency in not taking the policy for the period during which the fire incident took place. However, we do not feel inclined to agree with this view point, because the primary duty for obtaining an insurance policy is upon the person who is doing his business. In the process if the bank extends a facility to take the policy on behalf of the insured and debits the premium to his account, it does not mean that the obligation for taking the insurance has shifted upon the bank. Therefore, if the bank failed to get the insurance policy renewed for the period in question, it cannot be stated by any stretch of imagination that there has been any deficiency in service on the part of the bank. Had the bank taken the Undertaking from the insured for payment of premium regularly, it would have amounted to deficiency in service if the bank had not obtained the policy for the period in question.

4. THE "Manual for Urban Co-operative Banks" issued by the Reserve Bank of India, Bombay says as follows: Insurance of stocks - -

(j) The borrower should insure the goods for the full value against the risk of fire, burglary and riot in the joint names of the borrower and the bank with usual banker's clause. The bank should ensure that the premium is paid by the borrower promptly before the due date and the warranties are fully observed. In case the borrower fails to renew the policy, there should be an undertaking obtained from the borrower to renew the policy by payment of premium debiting the borrower's account. The bank should make suitable note of insurance policies in "insurance register".

A plain reading of the above provision shows that it is primarily the duty of the borrower to get the goods insured for full value and this insurance has to be in the joint name of the borrower and the bank with usual bankers' clause. It has also been made obligatory on the bank to ensure that premium is paid by the borrower promptly before the due date and the warranties are fully observed. The bank is also required to make suitable note of insurance policies in "insurance register". In the present case, the respondent has taken the plea that the Bank had been getting the stocks insured and debiting the premium to the account of complainant for quite some time. During the year in question, when the fire incident took place, it is made out that neither the complainant nor the bank made efforts to get the insurance done. However, this does not mean that the entire responsibility to get the stock insured had passed on to the bank. It has been admitted by the complainant himself that during the year, previous to the year in which the fire took place, the Insurance Policy was taken by the complainant himself. It may not be fair, therefore, to say that for the period in

question, it was the duty of the bank alone to take the Insurance Policy.

In view of above discussion, we do not find any convincing reasons to agree with the orders passed by the Fora below, because the primary obligation is upon the borrower to insure the goods by taking a suitable insurance policy. This revision petition is, therefore, allowed and the orders passed by the State Commission and District Forum are set aside. The consumer complaint is ordered to be dismissed. There shall be no order as to costs.