(2008) 07 NCDRC CK 0035

In the National Consumer Disputes Redressal Commission

SUBHASH OTARMAL JAIN — APPELLANT

Vs

NEW INDIA ASSURANCE CO LTD — RESPONDENT

Date of Decision : 17-07-2008

Acts Referred:

Citation : 2008 4 CPJ 197

Hon'ble Judges : B.B.Vagyani , P.N.Kashalkar , S.P.Lale J.

Advocate : A.S.Vidyarthi , Jaya Joile , Raju Varma , Sachin Panwar

Judgement

1. -THESE six appeals have been filed by the six appellants/org. complainants aggrieved by the order of dismissal of their complaints by the District Consumer Forum, Raigad in Consumer complaint Nos. 27 to 30, 41 and 42/2006 dated 9. 8. 2007.

2. THERE is delay of 57 days in filing these appeals. Therefore, application for condonation of delay is filed in each appeal. The inordinate delay is not at all explained satisfactorily. We are, therefore, not inclined to condone the delay. Applications for condonation of delay stand rejected. By way of abundant precaution, we examined the correctness of the order passed by the District Consumer Forum. Briefly the case of the parties in the Forum below may be stated as under:

Six complaints in respective consumer complaints had common grievance that they had taken insurance policies for insurance cover for their Brick Kilns and most of them are resident of Nagothane, Tal. Roha, Dist. Raigad and complainants of Complaint Nos. 41 and 42 are resident of Wakan, Post-Patansai, Tal. Roha, Dist. Raigad. They are in bricks manufacturing business. They had taken loan from Roha Ashtami Urban Co-op. Bank, Nagothane Branch/o. P. No. 2 and at the instance of Bank they obtained insurance cover from O. P. No. 1/ insurance Company of Alibag, Dist. Raigad. Their insurance cover was in force when due to floods of 2005 their Brick Kilns were washed away in the heavy rains. According to the complainants from complaint Nos. 27 to 30, they were carrying out Brick Kilns business in Gat Nos. 177 and 24 in Village Palas and they were storing the bricks in the respective fields. Whereas, the complainant from complaint Nos. 41 and 42 were having Brick Kilns business at Wakan, Tal. Roha, Dist. Raigad. However, according to the complainants while purchasing insurance policy, for the purpose of convenience, the complainants mentioned their place of business or place of manufacturing units at Nagothane, Tal. Roha, Dist. Raigad. However, actual bricks manufacturing was done at Village Palas and at Village Wakan as mentioned above. Because of heavy rains of 25th and 26th July, 2005 their Brick Kilns and Bricks stored in the respective fields got washed away totally and absolutely because there was inundation of water upto 20 ft. in height and this was state of affairs for consecutive two days. The Government recorded Panchanama about their loss of bricks manufacturing business. Thereafter they filed claim petitions. They annexed certain documents to the claim petitions, but their claims were repudiated by O. P. No. 1/new India Assurance Co. on 15. 12. 2005 since the Insurance Company asserted that they had given wrong address of their place of business. They had mentioned place of business at Village Nagothane, Tal. Roha, Dist. Raigad. In the circumstances, the complainants filed individual six complaints as mentioned above and claimed certain damages.

3. O. P. No. 1 filed written statement and pleaded that all the complainants had taken insurance cover for their Brick Kilns and Bricks manufacturing business. But, they pleaded that the insurance cover was to the extent of manufacturing of bricks only and not meant for storage and for transportation of bricks. They pleaded that the insurance cover was taken by the Roha Ashtami Urban Co-op. Bank, Nagothane Branch to secure their loans advanced to these complainants. The Officer of the Roha Ashtami Urban Co-op. Bank had sent proposal forms duly signed by him in respect of all the complainants and submitted them to O. P. No. 1/insurance Company. So, O. P. No. 1 pleaded that it is only O. P. No. 2, who has got authority or right to file consumer complaint. They further pleaded that O. P. No. 2 had not taken insurance cover for bricks after they are taken out from the Brick Kiln. The insurance cover was simply available when the bricks were in the process of manufacture and till it had come out of Brick Kilns. Therefore, the insurance cover as alleged by the complainants was not available to the complainants. Moreover, the complainants had mentioned that the place of business was Village Palas, Tal. Roha, Dist. Raigad or Village Wakan, Post-Patansai, Tal. Roha, Dist. Raigad. Whereas, in the insurance policies and in the proposal forms they had mentioned place of business at Nagothane. Therefore, the damage occurred at one place whereas the insurance cover was taken for different place. Therefore, the Insurance Company is justified in repudiating the claims of the complainants. O. P. No. 2 filed written statement and admitted that the complainants had taken cash credit loan for their Brick Kilns from it and they had mentioned their address as Nagothane, Dist. Raigad. The complainants had taken insurance cover from O. P. No. 1/insurance Company. The complainants had not asked for any reliefs against O. P. No. 2 and complaint should be dismissed as far as Bank is concerned.

4. ON the basis of documents and affidavits filed on record by the rival parties,

the Forum below was pleased to dismiss the complaints holding that the insurance cover was taken at one place whereas loss took place at another place, which place was not covered by the insurance policy and therefore agreeing with repudiation letter issued by the Insurance Company, the Forum below was pleased to dismiss all the complaints. As such org. complainants have filed these appeals. We heard Mr. Sachin Pawar, Advocate for the appellants/org. complainants and Mr. A. S. Vidyarthi, Advocate for the respondent/insurance Company. L/o. Mrs. Jaya Joil, Adv. i/b. Mr. Raju Varma, Adv. for Insurance Company. We are finding that the order passed by the District Consumer Forum is just and proper. We have perused the individual policies issued to these complaints. They mentioned their address at Post Nagothane, Tal. Roha, Dist. Raigad as place of business. No where they have mentioned that their Brick Kilns or bricks manufacturing business was located in Gat Nos. 177 and 24 so far as Complaint Nos. 27 to 30/2006 are concerned and they had also not mentioned the place of business at Wakan, Post-Patansai, Tal. Roha, Dist. Raigad. Therefore, heavy loss occurred to each of the complainants due to floods of 25th and 26th July, 2005, the claims were rightly repudiated by the Insurance Company on the ground that the loss took place at place not covered under the policies. So the claims fall outside the scope of policies. This was the standard repudiation letter issued to all the six complainants whose complaints were decided by the Forum below by passing common order on 9. 8. 2007. Thus, we are finding that the order passed by the Forum below dismissing in all six complaints is just, proper and no fault can be found in the order passed by the Forum below.

5. WHEN traders or businessmen are insuring their place of business or taking shopkeeper''s policy, it is their duty to mention correct address of place of business or place of manufacturing unit so as to get proper insurance cover in the event of loss caused by flood or fire, etc. If they are neglecting in mentioning a place of manufacturing unit or business in the proposal form, then they are bound to suffer for their negligence. Insurance is a contract of mutual good faith and a person taking insurance himself take due and proper care in mentioning place of business or manufacturing unit. In the above mentioned cases, we are finding that all the appellants were having bricks manufacturing business either at Village Palas or at Village Wakan, Post-Patansai, but they mentioned their place of business at Nagothane, Tal. Roha, Dist. Raigad, where in fact at that address no loss due to flood took place. In this view of the matter, the order passed by the Forum below is appearing to be just, proper and sustainable in law. Hence, we pass the following order: ORDER 1. Misc. Appl. Nos. 1790 to 1795/2007 for condonation of delay stand dismissed. 2. Appeals stand dismissed summarily. 3. Copies of the order be furnished to the parties.

Appeals dismissed.

