(2006) 08 NCDRC CK 0013

In the National Consumer Disputes Redressal Commission

SUDARSAN HANDICRAFTS APPELLANT

Vs

Oriental Insurance Co. Ltd. RESPONDENT

Date of Decision : 28-08-2006

Acts Referred:

Citation : 2006 4 CPJ 227

Hon'ble Judges : Chandrashekhar , Rama Ananth , M.Shama Bhats J.

Final Decision : Appeal dismissed

Judgement

1. THIS appeal is by the complainant challenging the Order of the District Forum dismissing the complaint.

2. THE facts in this case are that the complainant is carrying on his business situated at United Mansions, No. 39 (110), M.G. Road, Bangalore-1. THE stock in trade of the complainant was insured with the O.P. for the period from 29.12.2000 to 28.12.2001. When the policy was in force, the Bangalore Mahanagara Palike demolished the premises by virtue of an Order passed under the provisons of the Municipal Corporation Act on the ground that the construction is contrary to the provisions of the Act and bye-laws on 17.10.2003. THE said action was no doubt was questioned by the owner of the said premises before the High Court of Karnataka in Writ Petition No. 38731/2001. THE said Writ Petition was disposed of by the High Court by its order dated 17.10.2003 quashing the notice said to have been issued by the Corppration. THE complainant is only a tenant of the said premises. No doubt, the complainant appeared to have suffered certain loss because of the demolition of the premises by the Bangalore Mahanagara Palike. After the demolition, the complainant made a claim before the Insurance Company claiming compensation. THE said claim was repudiated by the Insurance Company on the ground that the loss if any suffered by the complainant is covered under the exclusion clause of the policy. This has made the complainant to file the complaint before the District Forum alleging deficiency in service. The District Forum dismissed the complaint holding that the injury if any suffered by the complainant is covered under the exclusion

clause. This Order is under challenge by the complainant in this Appeal.

The facts relating to the loss suffered by the complainant is concerned are not disputed. The only question that arises for the consideration in this Appeal is whether the damage or injury suffered by the appellant/complainant is covered under the exclusion clause?

3. THE learned Counsel appeared for the Insurance Company has prouced the copy of the Insurance Policy for our perusal at the time of the arguments. Clause V of the Insurance Policy reads as follows: Riot, Strike, Malicious and Damage. Loss of or visible physical damage or destruction by external violent means directly caused to the property insured but excluding those caused by-

(a) total or partial cessation of work or the retardation by external violent means directly caused to the property insured but excluding those caused by. (b) Permanent or temporary dispossession resulting from confiscation, commandeering, requisition or destruction by order of the Government of any lawfully constituted Authority. (c) Permanent or temporary dispossession of any building or plant or unit or machinery resulting from the unlawful occupation by any person of such building or plant or unit or machinery or prevention of access to the same. (d) Burglary, housebreaking, theft, larceny or any such attempt or any omission of any kind of any person (whether or not such act is committed in the course of a disturbance or public peace) in any malicious act.

Under Clause (b) of the above said Policy, the complainant is not entitled for any compensation in the event if there is any destruction by Order of the Government or any lawfully constituted Authority. In the instant case, the Officers of the Corporation by virtue of the power conferred under this Act have demolished the Building in question on the ground that the construction of the Building is not in accordance with the provisions of the Act and the Bye-laws framed thereunder. If that is so, in our view, the District Forum is right in dismissing the complaint. However, this Order may not come in the way of the complainant to claim damages from the Corporation if the complainant is of the view that damage or injury suffered by him is contrary to the provisions of the Act, Rules or Bye-laws before Appropriate Authority or the Court. Hence, we pass the following: ORDER

4. APPEAL is dismissed. Parties are directed to bear their own costs. Appeal dismissed.

