
(2006) 11 NCDRC CK 0026

In the National Consumer Disputes Redressal Commission

UCO BANK

APPELLANT

Vs

Gadadhar Mohapatra

RESPONDENT

Date of Decision : 13-11-2006

Acts Referred:

Citation : 2006 3 CPR 363 : 2007 1 CPJ 29

Hon'ble Judges : K.S.Gupta , P.D.Shenoy J.

Advocate : A.K.Ray , Bishwajit Bhattacharya

Judgement

1. THIS revision is directed against the orders of Consumer Disputes Redressal Commission Orissa, Cuttack dated 28. 2. 2002 dismissing appeal against the order dated 20. 1. 1998 of a District Forum and dated 31. 12. 2002 dismissing review application against the order dated 28. 2. 2002. The District Forum had directed the petitioner/opposite party, Bank to pay compensation of Rs. 67,500 and cost to the respondent/complainant.

2. FACTS giving rise to this revision lie in a narrow compass. Respondent was sanctioned term loan of Rs. 60,000 by the petitioner bank. A hypothecation agreement was executed on 3. 10. 1996 by the respondent in favour of the petitioner. Out of sanctioned amount, a total sum of Rs. 52,240 was disbursed by the petitioner to Shree Hanuman Store, Tulsi Store and Toran from whom the respondent had purchased textile goods. Respondent alleged that term loan of Rs. 20,000 was also taken on 21. 9. 1994 from the petitioner. At that time an amount of Rs. 534 was retained towards premium of a shopkeepers" insurance policy for a sum of Rs. 1 lakh by the bank. At the time of taking said term loan of Rs. 60,000 the bank did not obtain shopkeepers" policy. In the intervening night of 29/30. 12. 1996 some thieves after breaking open the front door of the shop committed theft of textile goods of approximately Rs. 70,000 and cash of Rs. 3,500. FIR with regard to incident was lodged with the police. Since the petitioner bank had not obtained shopkeeper"s policy of Rs. 1,50,000 it being deficient in service was liable to pay the said amount. In the written version though sanction of loan of Rs. 60,000 was not denied but it was alleged that it

was the responsibility of the respondent to have taken the insurance policy under Clause 6 of the hypothecation agreement. It was denied that petitioner was liable to pay the amount claimed on ground of its being deficient in not purchasing policy on behalf of the respondent. Pursuant to the order dated 13. 1. 2006 the Registry has secured the file from the concerned District Forum. Controversy between the parties mainly revolves around the interpretation of Clause 6 of the hypothecation agreement dated 3. 10. 1996 admittedly executed by the respondent in favour of the petitioner bank. Original hypothecation agreement is placed on the file of District Forum and Clause 6 thereof which is material, is reproduced below: "6. That the hypothecated goods shall be insured against Fire risk by the Borrowers in same insurance office or offices approved by the Bank and in the name and for the sole benefit of the Bank for their full market value and that the Borrowers will on demand deliver to the Bank all policies and the receipts for premia paid on such insurance endorsed and assigned with the full benefit thereof in favour of the Bank. Should the Borrowers fails to so insure or fail to deliver the policies or receipts for premia duly endorsed as aforesaid three days after demand the Bank shall be at liberty, though not bound to effect such insurance at the expenses of the Borrowers. The Borrowers further agree that the Bank shall be at liberty at any time at its discretion (without being bound to do so) to insure the securities for their full market value against riot and civil commotion risk or any other type of insurance risk at the expenses of the Borrowers with any Insurance Company. "

It was pointed out by Mr. A. K. Roy for respondent that a letter dated 15. 10. 1996 under certificate of posting was sent by th respondent to the petitioner bank for getting the cloth stock insured for Rs. 1. 5 lakh and premium amount debited in his current account No. 1051g/96. To be noted that complaint is silent in regard to dispatch of said letter by the respondent. There was, thus, no occasion for the bank to have admitted/denied the receipt of the said letter in the written version. Pursuant to the order dated 13. 1. 2006 bank has filed the affidavit of Jayanta Kumar Pattnaik, Chief Manager denying the receipt of the said letter dated 15. 10. 1996 from the respondent. Bank has also filed extract of the respondent's account which would show that amounts of Rs. 32,000 and Rs. 20,240 on 4. 10. 1996 and Rs. 7,760 on 16. 11. 1996 were debited in his account. These cover the disbursement of the entire sanctioned amount of Rs. 60,000. It was pointed out by Mr. Biswajit Bhattacharya for petitioner that after having disbursed the said amount by 16. 11. 1996 no money was available for purchase of shopkeeper's policy of Rs. 1. 5 lakh with the Bank and letter dated 15. 10. 1996 allegedly sent under certificate of posting had been fabricated by the respondent to show that part of the loan sanctioned was still available for payment of the premium amount. Relying on the decision in *Pradeep Kumar Jain v. Citi Bank and Anr.*, II (1999) CPJ 7 (SC)=vi (1999) SLT 550= (1999) 6 SCC 361, it was contended by Mr. Bhattacharya that Bank cannot be held responsible for the loss arising out of theft in view of Clause 6 of the hypothecation agreement. Term loan of Rs. 20,000 granted in 1994 wherefrom Rs. 534 were

retained by the petitioner towards premium was a separate transaction having no bearing in this case. Present case is to be decided taking note of Clause 6 of the aforesaid hypothecation agreement. Considering the aforesaid affidavit of Jayanta Kumar Pattnaik, there seems to be no reason to disbelieve the stand taken on behalf of petitioner about non-receipt of above letter dated 15. 10. 1996. In ordinary course the respondent would not have sent such an important letter under certificate of posting. Bare reading of aforesaid Clause 6 would show that it was obligation of the respondent to have got the hypothecated stock of cloth insured with an Insurance Company for its full market value and on failure of respondent to do so option/discretion was given to the petitioner bank to get/not to get the hypothecated stock insured. To be noticed that the risk to be covered under the said clause was against fire and not the theft. Thus, on both the grounds and taking note of the ratio in Pradeep Kumar Jain's case (supra), the orders passed by fora below holding the petitioner Bank being deficient in service in not having insured the hypothecated stock of cloth and thus liable to pay the claimed amount, cannot be sustained in law and deserve to be set aside.

3. RESULTANTLY, revision is allowed and aforesaid orders dated 20. 1. 1998 and 28. 2. 2002 are set aside and complaint dismissed. No orders as to cost. Revision Petition allowed.