

(2007) 09 NCDRC CK 0054

In the National Consumer Disputes Redressal Commission

UNION BANK OF INDIA

APPELLANT

Vs

ANNU VASTRALAYA

RESPONDENT

Date of Decision : 05-09-2007

Acts Referred:

Citation : 2007 4 CPJ 187

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

Final Decision : Revision Petition dismissed

Judgement

1. -CHALLENGE in this revision is to the order dated 19.4.2007 of M.P. State Consumer Disputes Redressal Commission, Bhopal, allowing appeal against the order dated 2.12.2004 of a District Forum with direction to the petitioner to pay amount of Rs. 1,00,000 to respondent No. 1 within 45 days failing which this amount has to carry interest @ 9% from the date of order. The District Forum had dismissed the complaint.

2. IN nutshell, the facts leading to the filing of complaint by respondent No. 1/ complainant are these. Respondent No. 1, a cloth merchant had taken loan from the petitioner/opposite party No. 1 - Bank against hypothecation of stock of cloth of Rs. 1,00,000. Since 1998 onwards, the petitioner had been taking shopkeeper's insurance policy on behalf of respondent No. 1 from respondent No. 2/opposite party No. 2- INSurance Company for a sum of Rs. 1,00,000. INSurance was lastly taken on 15.2.2003 for a period of one year upto 13.2.2004. INSurance for the previous year 2002-2003 had expired on 16.1.2003. It was alleged that during the period from 17.1.2003 to 14.2.2003, theft took place in respondent No. 1's shop and cloth worth Rs. 1,25,000 was stolen. On claim not being settled, alleging deficiency in service the respondent No. 1 filed complaint against both the petitioner and respondent No. 2-INSurance Company. Petitioner alleged that under the hypothecation agreement it was the responsibility of respondent No. 1 - borrower to get the hypothecated stock insured regularly and petitioner was not liable to pay the amount claimed. On interpretation of the relevant clause of hypothecation agreement and considering

the ratio in Allahabad Bank v. J.D.S. Electronic Co., I (2007) CPJ 270 (NC), the State Commission made the award in question in favour of respondent No. 1 and against the petitioner bank. Contention advanced by Mr. M.P. Acharya for the petitioner was that under the hypothecation agreement, it was the primary responsibility of respondent No. 1 to get the hypothecated stock of cloth insured and in view of the judgment in Pradeep Kumar Jain v. Citi Bank & Anr., II (1999) CPJ 7 (SC)=VI (1999) SLT 550=(1999) 6 SCC 361, Allahabad Bank's case (supra) requires re-consideration. Relevant clause of the hypothecation agreement which has been set out in the order of State Commission, reads as follows: "That all the hypothecated goods, the subject of this agreement, shall be insured by the Borrower against fire risk and any other risk as may be necessary and required by the Bank in the discretion, in the joint names of the Borrower and the Bank with some Insurance Company/companies approved by the Bank to the extent of at least 10% in excess of the invoice value or the market value whichever is lesser of the hypothecated goods and that the Cover Note(s) or the Insurance policy/Policies Certificate(s) shall be delivered to the Bank. If the Borrower fails to effect such insurance the Bank may insure the hypothecated goods against fire and any other risk as may be deemed necessary by the Bank in its discretion in such joint names and debit the premium and other charges to such account or accounts as aforesaid as the case may be."

As may be seen from the discussion in Para 5 (at page 364 of the report), Pradeep Kumar Jain's case was rendered with reference to Section 146 of the Motor Vehicles Act, 1998 which cast obligation on the owner of vehicle to take out insurance policy as provided under Chapter XI of the Act. If any vehicle is driven without obtaining such an insurance policy it is punishable under Section 196 of the Act. It was, therefore, held that merely passing of a cheque to be sent to the Insurance Company would not obviate the liability of the appellant to obtain the policy. In the present case, the insurance was to be taken not under the provisions of any Act but under the aforesaid clause of the hypothecation agreement. Pradeep Kumar Jain's case is, thus, distinguishable on facts. As rightly pointed out by the State Commission, the petitioner-Bank in exercise of the discretion given under the said clause had been taking insurance policy of the stock of cloth on behalf of respondent No. 1 and debiting the amount of premium paid in its account. Theft had taken place during the period from 17.1.2003 to 14.2.2003. In para 3 of the written version the petitioner-Bank has pleaded that as and when the respondent No. 1 asked the Bank to obtain insurance the petitioner had taken the insurance policy and premium amount was debited in the account of respondent No. 1 and in 2002-2003 the respondent No. 1 did not ask the Bank to obtain insurance and insurance policy was, therefore, not taken for the period in question. It is pertinent to mention that the petitioner has not produced any request in writing sent by respondent No. 1 to obtain insurance on its behalf since 1998 onwards nor the dates and months when the Bank was approached or the name (s) whom it contacted for the said purpose have been disclosed by the petitioner. It is not the case of petitioner that any notice was

given to respondent No. 1 to get the hypothecated stock insured directly from the Insurance Company for the said period. Considering these facts including that the insurance was being taken since 1998 onwards by the Bank, no fault can be found in the impugned order. Allahabad Bank's case (supra) had been rightly decided and does not require reconsideration. Revision petition, therefore, deserves to be dismissed being without any merit. Dismissed as such. R.P. dismissed.