

(2003) 07 NCDRC CK 0027

In the National Consumer Disputes Redressal Commission

United India Insurance Company Ltd.

APPELLANT

Vs

PREM SAGAR SINGH

RESPONDENT

Date of Decision : 18-07-2003

Acts Referred:

Citation : 2003 2 UC 1040 : 2003 4 CPJ 579 : 2004 1 CLT 332

Hon'ble Judges : K.D.Shahi , Surendra Kumar , Luxmi Singh J.

Final Decision : Appeal allowed

Judgement

1. THIS is an appeal by the Insurance Company against the order of the District Forum, Udham Singh Nagar dated 25.11.2002, whereby the claim of the complainant Prem Sagar Singh was allowed for recovery of Rs. 1,00,000/- as the insured amount.

2. THE brief facts of the case as contained in the complaint are that the complainant is a tenant of a shop in which he was kept articles of electronic and electrical goods for sale and repair. THE shop is said to be in the tenancy of the complainant Prem Sagar Singh from 1.2.1999. It is to be noticed that Prem Sagar Singh is the alone complainant in this case as he has alleged in his exclusive tenancy. In para 2 of the complaint, it is alleged that earlier the owner of the shop was Smt. Akhtar Jahan. She sold it to Smt. Kanchan Chauhan on 28.8.1999. THE complainant had taken a loan of Rs. 50,000/- from the bank and had also spent his money. He has kept articles worth Rs. 1,57,400/- in the shop. THE list of the articles is attached with the FIR, copy filed before the learned Forum. It is alleged in Para 4 of the complaint that the shop was insured from 26.4.2000 to 25.4.2001. In para 5 of the complaint, it is alleged that the complainant fell ill and his brother Jaswant Singh had gone to Moradabad to appear in IIIrd Year's examination of LLB from 26.4.2000 to 7.5.2000. The shop was, therefore, closed. The house of the landlord adjoins the shop and in the absence of the complainant and his brother, the landlord broke the western wall of the shop and also broke the shutter and lock of the shop and took all the articles kept in the shop in his possession. The exact words are : "Yeh ki dukan

aur bhavan swami ka bhavan mile huye hain, bhavanswamini ne dukan kee pashichamee deewar tor kar darvaja laga liya aur dukan ke tale va senter lok tor diye aur dukan main rakha saman bhee apne kabje main kar liya. "

We lay emphasis on the words "saman bhee apne kabje main kar liya" for the purpose that it is not said that a theft was committed by the landlord, but, it is only said that he took the articles in his possession. On 7.5.2000, when the brother of the complainant came from Moradabad, he found that the landlord had taken the possession of the shop and had also damaged the articles of the shop. Here too, we give emphasis on the word "khurd vurd" It is nowhere said that the articles were stolen. It is said that the brother of the complainant gave information to the local police on 8.5.2000. It is further said that the brother of the complainant has lodged a case under Section 6 of the Specific Relief Act before the Civil Judge, Junior Division for the possession of the shop. The complainant lodged the claim before the Insurance Company on 11.5.2000 and said that the articles kept in the shop are worth Rs. 1,57,400/-, the list of which is attached with the complaint. The complainant claimed a compensation of Rs. 1,00,000/- from the Insurance Company. He did not claim any cost or interest on this amount.

The Insurance Company filed a Written Statement and alleged that the case is false and has been fabricated to get money. There is no evidence of any theft. It appears that the complainant himself, has given the possession of the shop to the landlord and has prepared a false list of articles to get claim.

3. AFTER taking the evidence of the parties, the learned Forum allowed the claim. Being aggrieved by that order, the present appeal has been filed. We have heard the learned Counsels for the parties and gone through the records. The first question is whether the complainant Prem Sagar Singh is the owner of the articles or his brother Jaswant Singh is the owner or both of them are the owners jointly. If Prem Sagar Singh is the owner, the complaint is competent one. If Jaswant Singh is the owner, the complaint before the learned Forum by Prem Sagar Singh is not maintainable. If both are the tenants and owners of the articles, then both should have filed the complaint. The other day, Jaswant Singh may come alongwith another complaint and may lodge the case against the landlord that she has taken the articles. She should pay the price. The complainant or his brother will not get once price from the Insurance Company and then price for the same articles from the landlord. To scan this point, we have to see the case of the parties. In the complaint it is alleged that Prem Sagar Singh was the tenant and he is the owner of the articles. In Para 8 of the complaint, it is alleged that the brother of the complainant Shri Jaswant Singh has filed a suit under Section 6 of the Specific Relief Act for possession of the shop. If complainant is the tenant of the shop, how Jaswant Singh has lodged this ? For legal rights, it is immaterial whether one is brother or father. However, in the suit under Section 6 filed by Jaswant Singh, it is alleged in Para 1 that he is the tenant of the shop. In Para 3 it is alleged that the agreement of tenancy is

between him and the earlier landlord. In para 4, it is alleged that he used to do the business of electrical goods in the shop. In Para 5, it is alleged that he become the tenant of the new landlord after the same. In Para 6, it is alleged that the defendant pressed the plaintiff i.e, Jaswant Singh to vacate the shop. Incidentally, it is alleged in this para that his brother Prem Sagar Singh had taken the loan of Rs. 50,000/- for the shop of which articles were purchased and kept in the shop. In Para 7 it is alleged that he used to pay the rent. In Para 11, it is alleged that he lodged the F.I.R. In Para 12 it is alleged that his articles were stolen. In Para 13, it is written that he used to sale the articles. Lastly, he prayed for recovery of possession. Thus, according to this, the complainant Prem Sagar Singh has nothing to do with the shop. Everything belongs to Jaswant Singh. If it is so, this complaint is not legally maintainable.

4. NOW coming to the actual theft. From the allegations of the complaint, it is nowhere said that there was any theft. However, F.I.R. was lodged. A copy of the F.I.R. is here. The F.I.R. was lodged by Shri Jaswant Singh. It is alleged in this FIR that he is the tenant, however, the business is joint. If the business is joint, the insurance should also have been joint and the complaint should have been filed by both the partners. It is further alleged that his brother Prem Sagar Singh was ill and from 26.4.2000 to 7.5.2000 he was out in connection with the examination. The shop was closed. The internal western wall was cut down and on 7.5.2000 when the informant came back, he found that the landlord had taken the possession and there was absolutely no articles of the informant in the shop. Thus from this F.I.R. it is not clear when the theft took place. It might have taken place on any date between 26.4.2000 to 7.5.2000. The law of consumer rests on the theory of negligence or deficiency in service. If the complainant, himself is negligent, he cannot blame third person for his negligence and if he had been negligent, he cannot get any compensation. There is nothing either in the complaint before the District Forum or in the claim under Section 6 of the Specific Relief Act or in the FIR that any precaution was taken for the safety and guard of the shop and articles. During the course of arguments, the learned Counsel for the complainant said that he has verbally told it to the District Forum that a watchman remains there on duty and this is the precaution which he took. This is nowhere either in the affidavit or anything in writing. Even if we take it to be actually correct, then also the theft should have been immediately detected and an F.I.R. should have been lodged by the watchman even in the absence of the complainant. At least, he should have given an information to the complainant regarding the theft. No person has filed any affidavit that there was a watchman. Thus, it is apparent that no precaution was taken by the complainant himself and the argument of the learned Counsel for the Insurance Company cannot be easily brushed aside that since there was a dispute of tenancy, it is possible that the complainant has already taken his articles out and left the shop unattended and the landlord took the possession of the shop where there were no articles. The Company has appointed a Surveyor. The Surveyor has visited the spot and found that there was no theft. The report of the

Surveyor is the main basis for the repudiation of the claim and if the Company repudiates the claim on that ground, there is no deficiency in service and in these circumstances the complainant is free to file a civil suit.

5. THE main dispute in this case is that of tenancy. Admittedly, the landlord has taken away the articles. As said above, there is no allegation of any theft. Like a suit for recovery under Section 6 of the Specific Relief Act, the complainant is free to file a suit before the Civil Court for the return of his articles. District Forums are not meant to go into controversies like this and to award claim to the complainant for his own negligence.

6. THE appeal in the circumstances of the case is fit to be allowed. ORDER THE appeal is, hereby, allowed. THE judgment and order dated 25.11.2002 passed by District Forum, Udham Singh Nagar is set aside. THE complaint is dismissed. THE complainant is at liberty to file a civil suit for the return of his articles as well and in the event, any such suit is filed, the judgment of the learned Forum as well as this Commission shall not be taken any expression of opinion on the merits of the case. Cost of this appeal shall be easy. Appeal allowed.