(2015) 05 NCDRC CK 0088

In the National Consumer Disputes Redressal Commission

Case No : 1065 of 2015

Vishnukumar Makhan Agrawal APPELLANT

Vs

STATE BANK OF INDIA RESPONDENT

Date of Decision : 11-05-2015

Acts Referred:

Citation : (2015) 05 NCDRC CK 0088

Hon'ble Judges : AJIT BHARIHOKE , Rekha Gupta J.

Advocate : PRIANK ADHYARU

Final Decision : Revision Petition dismissed.

Judgement

1. BRIEFLY stated the facts relevant for the disposal of the revision petition are that petitioner filed a consumer complaint alleging that he is engaged in commission business of cloth in the name of Amar Jyoti Textile. The complainant, in furtherance of said business obtained cash credit facility of Rs.5.00 lacs from the opposite party bank against hypothecation of his stock. As per the terms and conditions of cash credit facility, the said stock was required to be insured. According to the complainant, the insurance policy in respect of stock of goods was obtained by the bank. The insurance papers were sent by the insurance company to the bank. It is alleged that on 24.03.2003, the petitioner complainant shifted his business from Millennium Textile Market, Ring Road, Surat to a rented shop no. H -254, New Textile Market. Intimation of change of address was given to the opposite party bank vide letter dated 29.03. 2003. Despite that opposite party bank failed to approach the insurance company for change of address of insured premises from Millennium Textile Market to Shop No.H -254, New Textile Market. On 17.05.2003, a fire accident took place at Shop No. H -254, New Textile Market, resulting in destruction of stock of cloth. The insurance claim preferred by the petitioner was repudiated by the insurance company on the ground that said shop where fire accident took place was not insured. According to the petitioner, failure of the opposite party bank to get the change in address of the insured premises in the insurance policy despite of

information given amounts to deficiency in service. Thus, the complainant raised a consumer dispute.

2. THE respondent opposite party resisted the complaint. In the written statement opposite party denied the allegations of the complainant. It was pleaded that as per the terms and conditions of cash credit facility, the complainant was under obligation to keep the hypothecated goods insured at his own risk and expense and that in compliance of the aforesaid condition, the complainant took the insurance policy by paying premium. The insurance policy was, thereafter, assigned in favour of the bank. It was denied that letter dated 29.03.2003 regarding change of address was received by the opposite party bank.

3. THE District Forum on consideration of the facts and appraisal of evidence allowed the complaint and directed the respondent opposite parties to pay a sum of Rs.5.00 lacs to the petitioner with 9% interest p.a. besides Rs.10,000/ - as compensation for physical and mental trauma as also the cost of litigation. Being aggrieved of the order of the District Forum, respondent opposite parties approached the State Commission in appeal and the State Commission vide impugned order allowed the appeal, set aside the order of the District Forum and dismissed the complaint.

4. LEARNED counsel for the petitioner has contended that the impugned order of the State Commission is based upon incorrect appreciation of fact. It is contended that the State Commission has failed to appreciate that the insurance policy on behalf of the complainant was obtained by the bank and the policy documents were also available with the bank. The complainant vide his letter dated 29.03.2003 had intimated the bank regarding change of his address. Despite that the bank did not take initiative about the address of the insured remises in the insurance policy which amounts to deficiency in service. Thus, learned counsel has urged us to allow the revision petition, set aside the impugned order and restore the order of the District Forum.

5. WE do not find merit in the contention of learned counsel for the petitioner. The stand of the petitioner is that the bank has committed deficiency in service by failing to approach the insurance company to get the change of address of insured premises recorded despite of having been informed vide letter dated 29.03.2003. The respondent in its written statement has denied the receipt of said letter. Case of the petitioner is that the letter was delivered to the Area Officer of the bank whereas according to the respondent there is no designation of Area Officer in the said bank. Under these circumstances, the service of letter dated 29.03.2003 on the Branch Manager, State Bank of Indore is suspect. Even if, for the sake of arguments it is accepted that letter dated 29.03.2003 was delivered to the opposite party bank, then also, it is of no avail to the petitioner. To properly appreciate the contention of the petitioner, it would be useful to have a look on the contents of letter which is reproduced as under: Dear Sir, I would like to bring the matter in your kind notice that my business address which is

registered in your record presently is changed now please take the new business address in your consideration for your record as under mentioned: Amar Jyoti Textile H -254, LR Ground New Textile Market, Begumpura, Ring Road Surat Ph. No.2365982 Thanking you Yours faithfully For Amar Jyoti Textile Vishnu Agrawal Proprietor

6. ON reading of the above, it is evident that this letter at best is intimation of change of the business address. The letter does not mention that the petitioner has shifted the stock from originally insured premises at Millennium Road to New Textile Market nor the letter requests the Branch Manager of the Bank to approach the insurance company for changing the address of insured premises in the insurance policy. Thus, we do not find merit in the contention of the petitioner that in view of the letter dated 29.03.2003, the bank was under obligation to get the address of the insured premises changed in the insurance policy. However, on perusal of copy of agreement for cash credit and hypothecation of goods entered into between the parties, we find that as per the terms and conditions, it was the obligation of borrower, i.e. the petitioner, to insure the goods against loss or damage. The relevant condition is reproduced as under: "5th - That the said goods shall be kept at the Borrower''s risk and expense in good condition and fully insured against loss or damage as may be required by the Bank."

7. ON reading of the above condition, it is clear that it was the obligation of the complainant to get the goods fully insured against loss and damage. So far as plea of the petitioner that the insurance policy was obtained by the bank is concerned, it is denied by the bank in the written statement. The petitioner has not shown us any evidence which may suggest that the insurance policy was obtained on behalf of the petitioner by the bank and the policy was retained by the bank. Therefore, also, bank had no obligation to get the address of insured premises changed in the insurance policy. Thus, under the circumstances, we are of the opinion that State Commission while deciding the appeal has rightly appreciated the facts and the impugned order cannot be faulted.

8. IN view of the discussion above, we find no reason to interfere with the impugned order in exercise of revisional jurisdiction. Revision petition is, therefore, dismissed.

