

ICICI LOMBARD GENERAL INSURANCE CO. LTD. V. PADMAJA SIRIPALLI & ANR.

1. ICICI LOMBARD GENERAL INSURANCE CO. LTD.
4TH FLOOR, RED FORT CAPITAL PARSVNATH TOER,
BHAJI VEER SINGH MARG, GOLE MARKET,
NEW DELHI-110001

.....Petitioner(s)

Versus

1. PADMAJA SIRIPALLI & ANR.
S/O. PALLAPARAJU, R/O. H.NO. 1-8-499/5, STREET NO. 9,
S.V. TEMPLE STREET CHIKKADPALLY, MUSHEERABAD
HYDERABAD
TELANGANA STATE
2. ICICI BANK LTD.
2ND FLOOR, 5-9-2, JVL TOWERS BEGUMPET
HYDERABAD-500004
TELANGANA

.....Respondent(s)

Case No: Company Appeal (AT) (Ins.) No. 576 OF 2021

Date of Judgement: 03 Jan 2023

Judges:

HON'BLE MR. C. VISWANATH, PRESIDING MEMBER
HON'BLE MR. SUBHASH CHANDRA, MEMBER

For the Petitioners : Mr. Anand Shankar Jha, Advocate with
Ms. Meenakshi S. Devgan, Advocate

For Respondent No.1 : In Person

For Respondent No.2 : NEMO

For Respondents Nos.3 & 4 : Mr. Navneet Kumar, Advocate with
Mr. Antarik Chakraborty, Advocate

For the Petitioner : Mr. Navneet Kumar, Advocate with
Mr. Antarik Chakraborty, Advocate

For Respondent No.1 : In Person

For Respondents No.2 : Mr. Anand Shankar Jha, Advocate with
Ms. Meenakshi S. Devgan, Advocate

Facts

Complainant obtained Rs 26.83 lakh home loan from ICICI Bank. Bank disbursed loan amount without verifying builder's documents, construction plan, layout approvals etc. Complainant repaid Rs 5.09 lakh in loan installments till Feb 2010. Thereafter she lost job and could not pay further installments. Bank took forceful possession of her apartment and sold it through auction. GHMC Commissioner informed complainant that builder had violated regulations and was liable to pay Rs 15.96 lakh penalty. Also found that bank had released loan amount in different names without complainant's knowledge. Bank illegally transferred Rs 88,300 as insurance premium to ICICI Lombard without instructions. Complainant filed magistrate court complaint against parties and police registered FIR. Also filed consumer complaint seeking Rs 9.99 lakh compensation for losses.

Court's Opinions

Builder proceeded ex-parte; not considered deficiency of service by builder. Complaint signing blank forms but paying installments for 2 years shows she was not forced to take loan. Default due to job loss is her own admission. Bank followed due SARFAESI Act procedure for recovery after default. Complainant also admitted before District Forum she signed all documents so cannot deny knowledge of insurance

policy. Insurance policy covered only 3 EMIs i.e. Rs 80,220 for loss of job risk.

Arguments by Parties

ICICI Bank:

Complaint not maintainable due to SARFAESI Act bar u/s 34 and 17. Also barred by limitation beyond 4 years. Disbursement as per loan agreement; Complainant should have verified project details. No recovery from insurance company as no claim filed.

ICICI Lombard General Insurance:

State Commission wrongly directed payment of Rs 9.99 lakh despite terms of policy. Only covers loss of 3 EMIs i.e. Rs 80,220.

Complainant:

Never approached bank for loan; forced to sign blank forms. Bank in collusion with builder to defraud her. Sanctioned loan without verification of building plan, layout. Did not honor insurance claim on job loss.

Sections

Section 21(b) Revision Petition

Referred Laws

SARFAESI Act 2002 barring jurisdiction under Sec 34 & 17

The Commission allowed ICICI Bank's revision petition and set aside order against it, while partly allowing ICICI Lombard's petition limiting its liability to Rs 80,220. Complaint against bank was dismissed.

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Court

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Full Text of Judgment:

1. Since facts and the issue involved in both Revision Petitions are same, we dispose of them by a common order.

2. According to the Petitioner/Insurance Company, Revision Petition No.3221/2017 has been filed with a delay of 70 days. The Petitioner has, therefore, filed IA/15600/2017 an application for condonation of delay. As per report of the Registry, there is no delay in filing the Revision Petition. In the interest of justice, however, IA/15600/2017 is allowed and delay condoned.

3. Respondent No.1 in both cases is the Complainant. Opposite Party No.1 is the builder. Opposite Parties Nos. 2 to 4 are ICICI Bank Ltd. and its Branches. Opposite Parties Nos.5 & 6 are ICICI General Insurance Co. Ltd. and ICICI Lombard General Insurance Co. Ltd. respectively. Opposite Party No.7 is the Commissioner, GHMC. Case of the Complainant is that she obtained a housing loan of Rs.26,83,300/- from Opposite Party No.2/ICICI Bank Ltd. Before sanctioning the loan, the Bank was required to verify the documents relating to the project of the builder. It was found that the builder was not having a valid construction plan and approved layout. The Complainant repaid the loan amount of Rs.5,09,010/- in instalments from May, 2008 to February, 2010. Thereafter, the Complainant could not pay the instalments as she lost her job. The Bank forcibly took possession of the Complainant's apartment. The Commissioner, GHMC informed the Complainant that the builder had constructed the apartment against the Rules & Regulations and the builder was required to pay penalty of Rs.15,96,175/-. It was also informed that ICICI Bank, ICICI General Insurance Co. Ltd. and ICICI Lombard General Insurance Co. also colluded with each other. The Complainant was surprised to know that the Bank had released an amount of Rs.26,83,300/- in favour of different names without her knowledge and consent. The Bank also transferred Rs.88,300/- in the name of ICICI General Insurance Co. Ltd. for purchase of Insurance Policy, without her instructions. The alleged Policy, inter-alia covered the risk of loss of job. On 11.06.2011, the Complainant filed a Complaint in the Court of IX Metropolitan Magistrate, Ranga Reddy District. The Complaint was referred to SHO, Miyapur for investigation. On 21.12.2011, the Police registered FIR. The

Complainant also filed Consumer Complaint with the District Forum with the following prayer: –

“1. To direct the Opposite Parties No.1 to 6 to pay the compensation sum of Rs.9,99,789/- (Nine lakhs ninety nine thousand seven hundred eighty nine only) for the loss incurred to the complainant with 14% interest till the realization of the amount.

2. To pay the cost of the complaint.

3. To award any other relief or reliefs as this Hon'ble Forum deems fit and proper in the circumstances of the case and thus render justice.”

4. The builder and the Commissioner, GHMC were proceeded ex-parte. The Bank and the Insurance Company filed separate written statements. The Bank/Opposite Parties Nos.2 to 4 stated that they disbursed housing loan of Rs.26,83,300/- and the same was to be repaid by the Complainant in 240 monthly instalments of Rs.26,740/- each. The Complainant started defaulting in payment of instalments from December, 2008 onwards. The Bank sent several letters and reminders to the Complainant. The Bank also sent notice dated 18.09.2009 but the Complainant did not reply. They issued notice dated 17.05.2010 under SARFAESI Act, 2002. The Complainant, however, did not repay the dues. Chief Metropolitan Magistrate under SARFAESI proceedings appointed an Advocate Commissioner to take possession of the property of the Complainant. The Advocate Commissioner took possession of the property on 16.12.2010 and handed over the same to the Bank. Thereafter, the Bank sold the property through auction. The Complainant also approached the Banking Ombudsman, who dismissed the Complaint. The Complainant suppressed these facts in her Consumer Complaint.

5. The Insurance Companies/Opposite Parties Nos.5 & 6 in the written statement stated that the payment of insurance premium was a part of loan agreement executed by the Complainant. It was false that the Bank transferred the insurance premium amount in the name of the Insurance Company without knowledge

or instructions of the Complainant. There was, thus, no cause of action against Opposite Parties Nos.5 & 6.

6. After hearing the learned Counsel for the Parties and perusing the record, the District Forum dismissed the Complaint.

7. Aggrieved by the order of the District Forum, the Complainant filed First Appeal before the State Commission. The State Commission, vide impugned order dated 20.04.2017, allowed the Appeal. The order of the State Commission reads as follows: –

“In the result, we allow the appeal and set aside the orders of District Consumer Forum, Ranga Reddy dated 13.11.2013 made in CC No.109/2012 and consequently we allow the complaint in part and direct the Opposite Parties 2 to 6 therein to pay a sum of Rs.9,99,789/- to the Complainant with interest @ 9% per annum from the date of complaint i.e. 26.06.2012 till realization, with costs of Rs.5,000/-. The Complaint against OP No.1 and 7 is dismissed but with no costs. Time for compliance: 4 weeks.”

8. Aggrieved by the impugned order of the State Commission, Opposite Party/Bank filed Revision Petition No.2324/2017 and Opposite Party ICICI Lombard General Insurance Co. Ltd. filed RP/3221/2017.

9. Heard the Learned Counsel for the Parties and carefully perused the record. Learned Counsel for the Petitioner/Bank submitted that the Consumer Complaint was not maintainable in view of Section 34 read with Section 17 of SARFAESI Act, 2002. As the Complainant failed to repay the loan amount in spite of legal notice, the Bank initiated proceedings under SARFAESI Act, 2002. The remedy available to the Complainant was before the Debt Recovery Tribunal. The Agreement was executed on 30.03.2008 and the disbursements were made immediately thereafter. The Consumer Complaint was filed by the Complainant on 26.06.2012, after expiry of more than 4 years.

10. On merits, learned Counsel submitted that the State

Commission erred in not appreciating the fact that the Bank had acted in accordance with the terms & conditions of the Agreement, which was duly executed and signed by the Complainant. The Bank had disbursed the amount only at the request of the Complainant and the Complainant never challenged the disbursement for about 4 years from the date of sanction. It was the duty of the Complainant to verify about the title of the property and requisite approvals, from the developer. For the fault on the part of the Complainant, the Bank cannot be held liable. State Commission also failed to appreciate that the Complainant had not filed any document before the Insurance Company relating to loss of her job. The Consumer Complaint was filed by the Complainant after SARFAESI proceedings were initiated by the Petitioner/Bank. It was submitted that the actual grievance of the Complainant was against the developer. It was the duty of the developer to obtain necessary approvals from the concerned authorities. The Bank cannot be held liable for the fault of the developer. The State Commission also erred in assuming that the Bank recovered Rs.13,62,697/- from the Insurance Company. As the Complainant had not lodged any insurance claim, there was no question for the Bank to recover any amount from the Insurance Company.

11. Learned Counsel for the Petitioner/Insurance Company submitted that the State Commission directed the Insurance Company to pay an amount of Rs.9,99,789/- with 9% interest p.a., contrary to the terms & conditions of the Insurance Policy. The State Commission wrongly appreciated that the sum insured for "loss of job" was Rs.26,00,000/-. Actually the sum insured under the Policy for loss of job was 3 EMIs. The EMI amount was Rs.26,740/- per month, hence, the maximum liability of the Insurance Company could be not more than Rs.80,220/-. Learned Counsel relied on the judgment of Hon'ble Supreme Court in Export Credit Guarantee Corporation of India vs. Garg Sons International (2013) (1) SCALE 410 and submitted that the terms and conditions of the Insurance contract have to be construed strictly.

12. The Respondent/Complainant submitted that the Complainant never approached the Bank for housing loan. The agents of the Bank and the Insurance Company came to the Complainant and took her signatures on blank forms. The Complainant had also not made any request for disbursement of loan amount in the manner alleged by the Bank. It was submitted that the Bank in collusion with the builder create false, bogus and fictitious loan to deceive the innocent people. The Bank also sanctioned the housing loan without verifying the building plan and approved layout. The Insurance Policy also covered the risk of loss of job but they did not honour the claim made by the Complainant due to loss of job.

13. It is relevant to mention that both the Fora below have dismissed the Complaint against the builder. Even before this Commission, the builder has not been made a Party. As the builder has not been made a party, we are not dealing with the allegation of deficiency in service by the builder.

14. The Complainant alleged that she was forced to sign the loan documents. Admittedly, the Complainant was working in a software company at the relevant time and she was not an illiterate. It is also admitted by the Complainant that the loan instalments could not be paid by her due to loss of job. It is Complainant's own admission that she paid the loan instalments from May, 2008 to February, 2010. Thereafter, she could not pay the instalments due to loss of job. After disbursal of loan amount and repayment of loan instalments for about two years, the Complainant cannot allege that she was forced to sign the loan documents. Had the Complainant been forced to sign the loan documents, she could have made Complaint to the Bank about the same. The Complainant also admitted that she defaulted in repayment of instalments. The Complainant had made bald

allegation that she was forced to sign the loan documents. She has not produced any evidence to substantiate her allegation. The allegation appears to be an afterthought and is accordingly rejected.

15. The Complainant also alleged that the Bank had illegally

taken possession and sold the Complainant's flat. As discussed in the preceding paragraph, the Complainant defaulted in payment of the loan instalments. As the Complainant defaulted the EMIs, the Bank issued loan recall notice dated 18.09.2009 but the Complainant failed to repay the dues. Thereafter, the Bank started proceedings under SARFAESI Act by issuing notice dated 17.05.2010. The Bank also published the notice in Telugu and English newspapers and thereafter auctioned the property. The Bank had, thus, followed the due procedure to recover the loan amount. The allegation of the Complainant that the Bank had illegally taken possession and sold the flat is, therefore, rejected.

16. The Complainant further alleged she never instructed the Bank to obtain Insurance Policy. The Bank illegally transferred the insurance premium to the Insurance Company. In this regard, observation of the District Forum is relevant, which reads as follows: –

"It is stated by Opposite Parties 5 and 6 that the insurance coverage was made as part of the Agreement entered by the complainant. They also filed the policy copy and the risk assumption letter which are marked as Ex.B14 and B15. The complainant admits that she signed on all therelevant documents."

From the aforesaid, it is clear that the Complainant admitted before the District Forum that she signed on all the relevant documents. After admitting the fact that she signed the relevant documents, the Complainant cannot make the allegation that she had not purchased the Insurance Policy. The allegation is, therefore, rejected.

17. The Complainant also alleged that the Insurance Policy also covered the risk due to loss of job. Perusal of the Insurance Policy makes it clear that the sum insured due to loss of job was 3 EMIs. The Insurance Company was, thus, liable for the amount of 3 EMIs. Admittedly, the EMI was Rs.26,740/-. The Insurance Company was, therefore, liable for

payment of Rs.80,220/- (Rs.26,740/- x 3). In the written arguments filed on behalf of the Insurance Company, it is admitted that the liability of the Insurance Company could not be more than Rs.80,220/-.

18. In view of the above, RP/2324/2017 filed by the Bank is allowed, the impugned order qua Bank is set aside and Complaint against the Bank is dismissed. Revision Petition No.3221 of 2017 filed by the Insurance Company is partly allowed. Insurance Company is directed to pay to the bank account of the Complainant an amount of Rs.80,220/- on the Complainant submitting proof of loss of job to the Insurance Company. Order be complied within 2 months. No order as to costs.