

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

REVISION PETITION NO. 358 OF 2017

(Against the Order dated 19/10/2016 in Appeal No. 607/2013 of the State Commission West Bengal)

1. BRANCH MANAGER, STATE BANK OF INDIA
RADHANAGAR AD BRANCH 85/1, DR. SACHIN SEN
ROAD, P.O. GHURNII, P.S. KOTWALI KRISHNAGAR,
DISTRICT- NADIA-741103
WEST BENGAL

.....Petitioner(s)

Versus

1. SARASWATI PAUL
W/O. CHITTARANJAN PAUL, BASANTA NAGAR, P.O.
GHURNI, P.S. KOTWALI, KRISHNAGAR,
DISTRICT-NADIA-741103
WEST BENGAL

.....Respondent(s)

BEFORE:

HON'BLE MR. SUBHASH CHANDRA, PRESIDING MEMBER

FOR THE PETITIONER : MR ABHIJEET KUMAR, ADVOCATE

FOR THE RESPONDENT : MR MANISH SHUKLA, ADVOCATE

Dated : 04 December 2023

ORDER

1. This revision petition assails the order dated 19.10.2016 in First Appeal No. FA/607/2013 of the State Consumer Disputes Redressal Commission, West Bengal, Kolkata (in short, the 'State Commission') upholding the appeal of the petitioner against order dated of the District Consumer Disputes Redressal Forum, Nadia (in short, the 'District Forum') dated 20.05.2013 in Consumer Complaint no. CC 32 of 2012.

2. The brief facts of the case are that the respondent/complainant obtained a loan facility for grocery business from the petitioner/opposite party on 28.03.2008. On 05.01.2009 the truck carrying the goods of the respondent/complainant met with an accident resulting in a loss of Rs.6,00,000/-. Under the terms of the loan, the petitioner was required to obtain an insurance cover. On 06.02.2009 the petitioner debited Rs.2,892/- from the account of the respondent/complainant and purchased two Standard Fire and Perils insurance policies of New India Assurance Co. Ltd. valid from 09.02.2009 to 08.02.2010 in the name of the respondent/complainant. As these were purchased after the accident on 05.01.2009, they did not cover the loss on account of the accident. The respondent/complainant claims that it is entitled to a claim of Rs.6,00,000/- with interest @ 16% from 05.01.2009 with damages of Rs.4,00,000/-. The petitioner initiated a Demand Notice to recall the loan of Rs 8,99,017/- with accrued interest on 09.05.2012 and a Money Suit before the Civil Judge (Sr. Division), First Court, Nadia against the respondent/complainant and the guarantor. The District Forum dismissed the complaint concluding that it was initiated as a counter measure against the

Money Suit and that no evidence was brought on record regarding the accident and for non-joinder of parties. The State Commission allowed the appeal against the order of the District Forum without appreciating that the appeal was not maintainable for non-joinder of parties and without there being any documentary evidence to prove that grocery business to earn her livelihood had been undertaken by the respondent/complainant, since the respondent/complainant's family had also taken a loan for stationary business and hence the loan in question alone was not responsible for the earning of livelihood. No records of the vehicle or the FIR with the Police in respect of the accident had also been filed to establish the accident. It is also averred that even if the policy had existed prior to the accident, its coverage would not have covered 'transit insurance'. Therefore, there was no deficiency in service by the petitioner as the respondent/complainant was not a 'consumer' qua the standard fire and perils policy.

3. I have heard the learned counsel for both the parties and carefully considered the material on record.

4. The finding of the District Forum is as under:

It is admitted position that Saraswati Paul and Biswajit Paul could not repay the loan amount to the bank for which money-suit no. 14/13 is pending in the 1st Court of the Civil Judge, Sr. Division, Krishnanagar, Nadia.

From the record we find that the petition for interim injunction dated 10.11.12 filed by the complainant was rejected by this Forum.

Thus, we are inclined to hold that the present complaint is not maintainable in this Forum for the reasons recorded above indulging defect of parties.

Regarding the duty of the OP bank to buy Insurance Policy we don't agree with the ld. Advocate for the complainant that the petition dated 06.01.09 and the application dated 29.05.08 have no bearing with the present case. In the application dated 29.05.08 Saraswati Paul has stated that she did not get the copy of the insurance letter from the bank or Insurance Company. She allegedly authorized the bank to deduct premium policy by letter dated 29.05.08.

In the application dated 06.09.09 Saraswati Paul has mentioned that on 05.01.09 at about 5:15 am vehicle carrying the goods of the grocery met with an accident. Unfortunately, the vehicle number and the nature of the vehicle which was allegedly carrying goods have not been mentioned. Moreover, the xerox copy of the GD was not filed before this Forum nor the GD was called for proving the same in order to prove the bona fide of the complainant. The alleged accident took place on 05.01.09 but it has not been duly proved. Thus, in the absence of proof of bona fide and the vehicle number and the nature of the vehicle of the alleged accident along with the copy of the GD, we hold that the case of the complainant is very weak. There is nothing on record to establish that the bank has duty to buy the insurance policy for the claimant before alleged accident.

This case has been initiated as a defence mechanism of the money suit mentioned before. The bank had no duty to buy insurance policy on 04.02. 2013 for the claimant on the date of agreement.

The plaint of the money suit No. 14/13 which is supported by affidavit cannot be overlooked. We rely upon the plaint and hold that Saraswati Paul and Biswajit Paul and Jhuma Sharma are facing trial for recovery of money in money suit No. 14/13 and due amount of Rs 8,99,017/-. The plaint was filed on 14.02.13 while the dated signature of the ld. advocate below the affidavit accompanied with the plaint.

5. The State Commission in the impugned order dated 19.10.2016 concluded as under:

The Bank Statements dated 20.06.2012 and 02.12.2015 related to Account No. 30357145164, is available on records, demonstrate that the insurance premium of Rs 2,892/- was debited from the said account of the Appellant/Complainant on 06.02.2009 for 'Insurance 08-09'. The 'Duplicate Schedule' of the related Insurance Policies (nos. 512403/11/08/11/00002345 and 512403/46/08/04/00001726), as available on records, reveals that the premium was paid to the concerned Insurance Company on 9.2.2009 and the coverage of the said Insurance Policies commenced on and from 9.2.2009 covering only for the two months of '08-'09 and not for the whole of the year '08-'09 as apparent from the mention to that effect in the Bank Statements concerned. The aforesaid noting about the coverage of the policy as well as delay in payment of the premium even after debiting the amount of premium earlier, constitutes deficiency in service on the part of the Respondent/P-Bank.

Consequently, the instant Appeal is allowed and the impugned judgment and order is set aside.

6. The learned counsel for the petitioner argued that on 28.03.2008, the respondent along with her son Biswajit Paul obtained loan facilities from the petitioner's Bank for undertaking a grocery business. He further stated that on 05.01.2009, the truck carrying the goods of the respondent met with an accident which resulted a loss of Rs.6,00,000/- to the respondent. Learned counsel for the petitioner states that 06.02.2009, the petitioner Bank debited an amount of Rs.2892/- from the respondent and purchased on 09.02.2009, two insurance policies being no.00001726 for burglary and 0002345 for standard fire and perils policy from the New India Assurance Co. Ltd., in the name of the respondent and the policy was valid from 09.02.2009 to 08.02.2010. Learned counsel for the petitioner alleges that the policy does not cover the loss suffered by the respondent on 05.20.2009. Based on the above mentioned facts, the respondent filed a consumer complaint against the petitioner bank claiming deficiency of service and further claimed that the respondent was entitled to get Rs.6,00,000/- along with interest of 16% from 05.01.2009 in addition to damages to the tune of Rs.4,00,000/- as compensation. The respondent bank filed reply and written arguments before the District Forum.

7. Learned counsel for the petitioner states that on 09.05.2012 after repeated letters/reminders for regularization of the cash credit account, the petitioner Bank issued demand notice to call back the loan and demand of Rs.8,99,017/- being the outstanding amount along with accrued interest till the date of final payment. Learned counsel for the petitioner submits

that the petitioner Bank had instituted Money Suit no.14 of 2013 before the Civil Judge (Senior Division) First Court, Nadia at Krishnagar against the respondent who was the guarantor for the loan for realization of Rs.8,99,017/- in favour of the petitioner Bank which was at the hearing stage. On 20.05.2013, the District Forum dismissed the Consumer Complaint no.12/32 filed by the respondent by observing that the matter had been instituted as a counter measure against the money suit initiated by the petitioner Bank as there was no document present on record to establish the occurrence of the accident and has also observed that the matter was not maintainable for non-joinder of parties. Learned counsel for the petitioner prays that the revision petition be allowed and set aside the impugned order dated 19.10.2016 passed by the State Commission in First Appeal no. 607 of 2013.

8. Learned counsel for the respondent argued that the respondent obtained a loan from the petitioner Bank under CC Loan account no.30357145164, and that through this business the respondent earned his livelihood. The respondent's son also had a CC loan number 11298760617 with the petitioner Bank. The respondent authorized the Bank to debit Rs.2892/- from its account to purchase all type of insurance policy including transit policy in respect of the assets of the respondent and the petitioner Bank deducted the said amount as premium from the account of the respondent.

9. Learned counsel for the respondent submits that an unfortunate incident took place on 05.01.2009 whereby the truck of the respondent met with an accident and the respondent suffered a loss of about Rs.6,00,000/-. Learned counsel further states that the respondent approached the petitioner to collect the policy copy for the period 2008-2009 issued by the New India Assurance Co. Ltd., and was informed that the premium was deducted from the account of the respondent. Learned counsel for the respondent further submits that a theft had occurred in the business premises of the respondent's son. Learned counsel further stated that the officers of the petitioner's bank also gave a proposal to the respondent to convert the CC loan to a term loan, which was consented by the respondent on 22.11.2011 to settle the matter peacefully.

10. Learned counsel for the respondent submits that the respondent was entitled to receive Rs.6.00 lakh due to deficiency in service on part of the petitioner Bank since it had deducted Rs.2892/- from the respondent's account on 06.02.2009 and purchased two insurance policies. Learned counsel for the respondent states that the order of the State Commission be upheld in the interest of justice and the revision petition be dismissed with cost.

11. Learned counsel for the respondent relied upon the judgment of the Hon'ble Supreme Court in ***Hemiben Ladhbai Bhanderi Vs. Saurashtra Gramin Bank & Anr.*** Civil Appeal No. 979 of 2020 arising out of SLP (C) No. 5637 of 2019 decided on 03.02.2020 which held that when there was a specific finding of fact that it was the failure of the Bank to deduct the premium and to pay it to the insurer which resulted in the insurer repudiating the claim on the ground that no cover existed, deficiency of the bank is evident in failing to deduct the premium in time since "... *Had the Bank not been deficient in the performance of its services, the deceased would have been entitled to an insurance cover in the same terms as was provided by the insurer to all other account holders desirous of obtaining insurance.*" The instant case is equally covered by this ratio.

12. From the above, it is manifest that the Bank was expected to obtain insurance with regard to the loan sanctioned by it to the respondent/complainant. While the loan was sanctioned earlier, the insurance was obtained by the payment of the premium on 09.02.2009. This fact is evident from the passbook issued by it in favour of the respondent as noted by the State Commission. The respondent/complainant's case is of deficiency in service against the petitioner alleging that delay in obtaining the insurance cover deprived it of seeking claim for losses. It is immaterial whether the FIR and GD of the Police Station recorded the details or whether the claim would have been admitted or repudiated. That is a matter for the Insurance Company to consider and decide upon in terms of the policies issued by it. It is also immaterial whether there is a money suit against the respondent/complainant instituted by the petitioner which will be decided on its merits by the Civil Judge. The District Forum erred in considering these issues and arriving at a finding to dismiss the complaint on the grounds that these issues were germane to the issue of deficiency in service. The issue of whether the petitioner was authorized to obtain the insurance policies is not in question since it has deducted it as a condition of the loan sanctioned. The District Forum should have limited itself to a consideration of deficiency in service with respect to the loan. On the other hand, the impugned order has considered this aspect and rightly concluded that there was indeed a deficiency in service by the petitioner *qua* the respondent/complainant and proceeded to award damages and compensation. The pleadings of the petitioner are clearly intended to obfuscate the issue.

13. In view of the foregoing, it is manifest that the petitioner Bank erred in delaying in obtaining the insurance cover on behalf of the respondent/complainant. This was a deficiency in service which is admitted on the basis of facts since the premium was deducted from the loan account of the respondent/complainant on 09.02.2009, as also evidenced from the passbook entries, while the loan was sanctioned in 2008. The ratio of the judgment in *Hemiben Ladhbhai Bhanderi* (supra) squarely applies to the case on hand. The revision petition is therefore liable to fail.

14. In view of the foregoing discussions and in the facts and circumstances of the case, the revision petition is therefore found to be without merits and is accordingly disallowed. The order of the State Commission is allowed and upheld. Parties shall bear their own costs. Any pending IAs stand disposed of with this order.

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**SUBHASH CHANDRA
PRESIDING MEMBER**