

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

CONSUMER CASE NO. 1288 OF 2015

1. PATEL HOME FURNISHING

Proprietorship firm Through Proprietor, Sh. Brajkishor Patel, 2/12,
Nagshi K Charan Chawl, Rani Sati Marg, Shivaji Nagar,
Pathanwadi, Malad East,
Mumbai - 400 097.

.....Complainant(s)

Versus

1. NATIONAL INSURANCE CO. LTD. & 2 ORS.

Goregaon Business Centre, Office No. M-35, Hirnen Shopping
Centre, 177, M.G. Road, Opp. Ratna Hotel, Goregaon (W),
Mumbai - 400 062.

2. Bank Of Baroda

Malad East Branch, 14 Pragati Shopping Center, Manchhubahai
Road, Opp. Daffary Road, Malad East,
Mumbai -400 097.

**3. Cunningham Lindesy Internation Insurance Surveyors & Loss
Assessor Pvt. Ltd.,**

402, Center Point, 4th Floor, J.B. Nagar, Andheri Kurla Road,
Andheri East,
Mumbai - 400 059

.....Opp.Party(s)

BEFORE:

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

For the Complainant : Mr Animesh Dixit, Advocate with
Mr H Navarah, Advocate

For the Opp.Party : For Opposite party no.1 Mr Yogesh Malhotra, Advocate
For Opposite party no.2 Mr Mihir Gujjewar, Proxy Counsel
For Opposite party no.3 DELETED

Dated : 17 Jan 2023

ORDER

PER MR SUBHASH CHANDRA, MEMBER

1. This is complaint is filed under section 21 of the Consumer Protection Act, 1986 (in short, the 'Act') alleging deficiency in service in the repudiation of his claim under a Fire and Peril Insurance policy issued by the opposite party.

2. The facts of the case, in brief, as stated by the complainant are that the complainant is a proprietorship firm in the business of home furnishing which had obtained an insurance policy from opposite party no.1 covering stocks hypothecated with opposite party no.2. The complainant obtained a cash credit facility (CC-H) of Rs 60 lakhs against hypothecation of stocks with his residential flat as additional collateral security. As mandated by opposite party no. 2, Fire and Perils Insurance Policy No.246014111410000029 for hypothecated

stock for Rs.24,99,500/- and Policy No.246014111410000030 for Rs.1,25,00,000/-were taken effective from 04.08.2014 to 03.08.2015. Both the respective premiums of Rs 5351/- and Rs 26,756/- were debited from the CC-H account. The location of the hypothecated stocks was shifted from Shop No. A/4, Tapovan, Rani Sati Marg, Malad East, Mumbai 400097 and Shop No. 3A, Wing Maqbool Apartment, Rani Sati Marg, Malad East, Mumbai 400097 to a new location at 2/12, Nagshi K Charan Chawl, Rani Sati Marg, Shivaji Nagar, Pathanwadi, Malad East, Mumbai 400097 with due intimation to opposite party no.1 through opposite party no.2. On 06.03.2015 there was an accidental fire between 2am-3am in the godown premises Shop No. 2/12, Nagshi K Charan Chawl due to an electrical short circuit. The fire also damaged another adjacent godown of the complainant at Shop No.2, Nagshi K Charan Chawl, Rani Sati Marg, Shivaji Nagar, Pathanwadi, Malad East, Mumbai 400097 which was insured by SBI General Insurance Co. The fire was put out by the Fire Brigade. The entire hypothecated stock was burnt.

3. The opposite party no.2 was informed the next day by the complainant who communicated the fact to opposite party no. 1. Opposite party no. 3, M/s Cunningham Lindsey International, Insurance Surveyors & Loss Assessors Pvt. Ltd. (in short, 'Surveyor') was appointed as surveyor by opposite party no.1. The site was inspected on 08.03.2015, 12.03.2015 and 14.03.2015 by the surveyor. Complainant submitted details of stock register, IT returns, sale purchase bills, invoices, fire brigade's repost, police *panchnama*, etc as asked for. According to the complainant, opposite party 1 delayed sharing details of endorsement of the policy to the new location, 2/12 Nagshi K Charan Chawl, to the surveyor. According to the complainant, shop nos.1- 2/12 measuring 400 sq. yds. and shop no.2 measuring 300 sq.yds., are adjacent and interconnected although shop no. 2 is not insured by opposite party no.1. It is stated by the complainant that shop no 2 is on the front side and shop no 2/12 is on the rear side. The complainant states that the surveyor concluded that the loss occurred in the front unit which was not insured since he considered the front unit to be Shop no. 2/12, Nagshi K Charan Chawl, Rani Sati Marg, Shivaji Nagar, Pathanwadi, Malad East, Mumbai 400097 and the rear unit to be Shop no 2, Khimsura Chawl, Shivaji Nagar, Pathanwadi, Quarry Road, Malad East, Mumbai 400097. Despite production of several documents, including the affidavit of the owner of the premises, the surveyor submitted his report dated 16.06.2015 concluding that the fire occurred in the *rear* unit. However, even after the report was prepared, the surveyor kept seeking details from the complainant since one email dated 26.06.2015 refers to documents being awaited from the complainant and another dated 01.07.2015 to his visit to the site to verify the electricity bill with neighbours.

4. The complainant states that the beneficiary of the repudiation is opposite party no.2 (Bank) which has commenced recovery proceedings under the SARFAESI Act, 2002 against the residential flat no.1004 pledged to it. It is contended that the repudiation is a deliberate deficiency in service and unfair trade practice by the opposite parties. He has prayed that this Commission:

- i. Allow the instant complaint of the complainant and against the opposite parties
- ii. Direct the opposite party no. 1 to pay a sum of Rs 1,30,42,045/- as a loss suffered to the complainant along with pendant light and future interest at the rate of 18% per annum and costs till realisation
- iii. Direct the opposite party no. 1 to pay a sum of Rs 5,00,000/- as cost, compensation, mental tension and agony to the complainant along with pendent-lite and future interest at the rate of 18% per annum and costs till realisation
- iv. Direct the opposite party no. 2 to pay a sum of Rs 5,00,000/- as cost, compensation, mental tension and agony to the complainant along with pendent-lite and future interest at the rate of 18% per annum and costs till realisation
- v. Direct the opposite party no. 3 to pay a sum of Rs 10,00,000/- for the negligence, deficiency of service, and putting the intentional financial hardship to the complainant, along with pendent-lite and future interest at the rate of 18% per annum and costs till realisation

vi. Direct the opposite party no. 3 to pay a sum of Rs 5,00,000/- as cost, compensation, mental tension and agony to the complainant along with pendent-lite and future interest at the rate of 18% per annum and costs till realisation

vii. Pass such other orders in favour of the complainant and against the opposite parties herein as this hon'ble Commission deems just and proper in the facts and circumstances of the case and in the interest of justice and equity.

5. The complaint has been resisted by the opposite parties no. 1 and 2 by way of reply. It is contended by opposite party no. 1 that the complaint is *mala fide* and not maintainable. Preliminary objection is taken that the complainant is not a 'consumer' under the Act and that the insurance was obtained for commercial purpose. It is denied that there was any deficiency in service and that in view of complicated questions of law involved, this Commission lacks jurisdiction. Opposite party has relied upon Clause 13 of the policy which provides for resolution of disputes pertaining to the quantum of loss as per the Arbitration and Conciliation Act, 1996 and contended that the complaint was not maintainable.

6. It is admitted that the complainant obtained two Standard Fire and Special Peril Policies covering stocks of cloth, curtains, fabrics and other material at two locations which were shifted to 2/12, Rani Sati Marg, Shivaji Nagar, Pathanwadi, Malad East, Mumbai 400097 with effect from 03.03.2015 and necessary endorsements made.

7. The assessment of net loss by the surveyor appointed on intimation of the fire on 16.06.2015 was Rs 5,97,316/- since there were two locations seen on the premises: location no. 1 or Shop no. 2 (rear unit) and location no. 2 or shop no 2/12 (front unit). According to the surveyor, the fire actually occurred in location no. 1 rear unit (Shop No. 2) where the insured had much higher loss as substantial stock was stored here whereas there was minor smoke damage to stock in location no. 2. The surveyor reported that insured had agreed that damage in location 2 is not more than 10% which was acceptable to him.

8. The surveyor also stated that the insured/complainant informed that they had two insurance policies, one with SBI Gen Insurance and the other with National Insurance Co. Ltd. or opposite party 2. While the complainant submitted that Location 1 was covered by the policy with National Insurance Co. Ltd., the surveyor found no evidence of the actual address on site as there was no clarity as to Nagshi Charan Chawl and Khimsura Chawl. The rent agreements provided by the complaint did not have any plan of the buildings attached in order to resolve this issue. The surveyor attempted to determine the addresses with reference to the electricity meters and found that meter for Location 1 was fixed on the back side wall and for Location 2 on the front wall. The surveyor concluded that the location covered under the policy of National Insurance Co. Ltd was Location 2 or the front unit in which damage was due only to smoke and for which the complainant had agreed that the value loss was only 10%. Accordingly, loss of Rs 5,97,316/- was assessed only in respect of this location as per instructions of the insurer/opposite party 1.

9. On behalf of opposite party 2 it is submitted that the complainant is incorrect in alleging that it had remained a "mere spectator" in the proceedings. It is contended that Rs 147.89 lakhs towards credit facilities apart from over Rs 5.63 lakhs against credit card facilities availed, including interest, is outstanding against the complainant which had become a NPA on 31.03.2015. Proceedings under the SARFAESI Act, 2002 are therefore justified by the opposite party 2. It is contended that it cannot be held responsible for the declining of any claims by opposite party no. 1 on account of the fire. The prayer clause no. iv claiming Rs 5 lakhs with interest is stated to be without basis.

10. Parties lead their evidence and filed their written arguments. We have heard the learned counsel for both the parties and considered the material on record carefully.

11. Learned counsel for the complainant argued essentially as per the complaint. It was submitted that the location of the hypothecated stocks under policy no 246014111410000029 was for shop no. A/4, Tapovan, Rani Sati Marg, Malad East, Mumbai 400097 and under no. 246014111410000030 it was shop no. 3A, Wing Maqbool Apartment, Rani Sati Marg, Malad East, Mumbai 400097. The stock at both the locations was

transferred to a new location, Gala No 2/12, Nagshi K Charan Chawl, Rani Sati Marg, Malad East, Mumbai 400097 under intimation to the opposite party no. 1. Shop No. 2, Khimsura Chawl (front side) and Gala No. 2/12, Nagshi K Charan Chawl (rear side) are adjacent. It is averred that the SBI Gen Insurance covered the front side whereas the rear side was covered by National Insurance Co. Ltd. The conclusion with regard to the address of the premises arrived at by the surveyor is averred to be erroneous and contrary to the affidavit of the owner of the premises, Smt Gangaben Narshibhai Chawhan. It is submitted that the surveyor's report states that the fire originated in the rear portion where substantial stock was stored. However, the loss is assessed on with regard to the front location which is taken to be insured by National Insurance Co. Pvt. Ltd. It was also argued that there was a deliberate and intentional deficiency in repudiation of his claim by the opposite parties since that enabled activation of recovery proceedings by opposite party no.2 under the SARFAESI Act, 2002 as the complainant's residential flat was the collateral for the CC-H.

12. On behalf of the opposite party no. 1, the learned counsel submitted that the Complaint is not a Consumer under Section 2 (1) (d) of the Consumer Protection Act, 1986 as the Policy in question was taken by the Complainant for commercial purpose. The Consumer Complaint is, therefore, not maintainable. It was also submitted that the Complaint involved complicated questions of fact and law as also needs elaborate evidence, which can be done by the Civil Court. The dispute cannot be decided by the Consumer Forum in summary proceedings. The Complaint is liable to be dismissed as not maintainable.

13. On merits, learned Counsel for Opposite party no.1 submitted that the Policy covered the premises at 2/12, Nagshi K Charan Chawl, Rani Sati Marg, Pathanwadi, Shivaji Nagar, Malad East, Mumbai. There were two premises adjacent to each other. Front unit with aforesaid address was insured with Opposite Party No.1. Rear unit Shop No.2, Khimsura Chawl, Shivaji Nagar, Pathanwadi, Quarry Road, Malad East was insured with SBI General Insurance and not with Opposite Party No.1. Fire had actually occurred in the rear unit, though there was minor damage due to smoke in the front unit. The Surveyor requested the Complainant to produce the rent agreement for aforesaid two premises. The Complainant produced the combined rent agreement for both premises. The rent agreement did not mention about the location or size of the premises. The Surveyor sent several reminders to the Complainant to produce any other evidence to prove that the damaged due to fire was in the premises covered under the Policy issued by Opposite Party No.1, which he failed to do.

14. Learned Counsel for Opposite Party No.2 submitted that the goods damaged in the fire were hypothecated with them for which insurance claim was filed with Opposite Party No.1. Opposite Party No.2 recommended that the claim of the Complainant be settled at an early date. For recovery of the loan, Opposite Party No.2 filed case under Section 19 of Recovery of Debts and Bankruptcy Act, 1993 before Debt Recovery Tribunal-II, Mumbai. Opposite Party No.2 had not committed any deficiency in service. Moreover, no relief had been sought by the Complainant against them.

15. It is admitted by the Parties that on the date of incident of fire, the Policy was valid. Factum of fire as well as cause of fire are also admitted. It is also admitted that the fire occurred in one godown and also caused loss in the second godown due to smoke. The only issue remaining relates to the location/address of the godowns. The Complainant contended that the loss was caused in shop No.2/12, Nagshi K. Charan Chawl, Rani Sati Marg, Pathanwadi, Shivaji Nagar, Malad East, Mumbai, which was insured with Opposite Party No.1. According to Opposite Party No.1 the godown in which fire occurred was in Gala No.2, Khimsura Chawl, Shivaji Nagar, Pathanwadi, Quarry Road, Malad East, which was insured with SBI General Insurance and not with Opposite Party No.1. In para 10 of the written statement, Opposite Party No.1 stated as follows: -

“Policy description covers location as 2/12, Nagshi K. Charan Chawl, Rani Sati Marg, Pathanwadi, Shivaji Nagar, Malad East, Mumbai 400097. At site there are two premises having the following address:

- 1. Referred to as Rear Unit – Shop #2, Khimsura Chawl, Shivaji Nagar, Pathanwadi, Quarry Road, Malad East.*

2. Referred to as Front Unit – 2/12, Nagshi K. Charan Chawl, Rani Sati Marg, Pathanwadi, Shivaji Nagar, Malad (E).”

According to Opposite Party No.1, the premises where the loss was caused due to fire was the front unit/2/12, Nagshi K. Charan Chawl, Rani Sati Marg, Pathanwadi, Shivaji Nagar, Malad (E). The Complainant alleged that the premises 2/12, Nagshi K. Charan Chawl, Rani Sati Marg, Pathanwadi, Shivaji Nagar, Malad (E) is the rear unit. In this regard, the Complainant also filed affidavit of the owner of the godown, wherein she stated as follows: -

“... I further state that Room No.2 (Front side/Road side facing is having entrance from the main road and Room No.2/12 (Backside facing) is having entrance from the right side of the Gali situated next to Room No.2.

I further state that I had given my two aforesaid room premises on leave and license basis to MR. BRAJKISHOR PATEL on commercial purpose for 36 months commencing from 1/2/2015 to 31/1/2018.”

16. From the aforesaid affidavit, it is clear that front side unit was Gala No.2, Khimsura Chawl, Shivaji Nagar, Pathanwadi, Quarry Road, Malad East and the rear unit was 2/12, Nagshi K. Charan Chawl, Rani Sati Marg, Pathanwadi, Shivaji Nagar, Malad East, Mumbai.

17. Complainant had also filed report dated 26.09.2015 by Shivam Electricals, Government Licensed Contractor stating as follows: -

“(1) Shop No.2 Front side Towards road, there is single phase meter installed and its Main is coming from 2/c/25mm Big Meter cabin Meter No.5170625 & A/c No.101828946.

(2) Behind shop No.2 i.e. 2/12 there was 3 phase cable fixed and installed from road side 4/c/25 mm² REL Cable Service and also found that main cable was kept idle and no connection given to main TPN switch and in due course the main switch was dismantled & removed since last year fab as inspected by me and same is tally as Reliance Energy Ltd. Billing too.....”

18. From the aforesaid report, it is clear that the front godown is Gala No.2, Khimsura Chawl, Shivaji Nagar, Pathanwadi, Quarry Road, Malad East and the rear godown is 2/12, Nagshi K. Charan Chawl, Rani Sati Marg, Pathanwadi, Shivaji Nagar, Malad East, Mumbai.

19. The affidavit of the owner as well as the report of Shivam Electricals corroborate with each other and clarify that the fire occurred in the rear godown i.e. 2/12, Nagshi K. Charan Chawl, Rani Sati Marg, Pathanwadi, Shivaji Nagar, Malad East, Mumbai, which is insured by Opposite Party No.1. In the Fire Brigade Report dated 19.05.2015, the place of incident is mentioned 2/12, Nagshi K. Charan Chawl, R.S. Marg, Pathanwadi, Shivaji Nagar, Malad (East) Mumbai 400 087. The Surveyor or the Insurance Company had not led any evidence contrary to the above. We, thus, conclude that the Opposite Party/Insurance Company was not justified in repudiating the claim of the Complainant on the ground that the fire occurred in the godown which was not insured by them.

20. From the facts and circumstances mentioned above, the Complaint is partly allowed. Opposite Party No.1 is directed to examine the claim dated 28.05.2013 filed by the Complainant and pay the net loss arrived with

interest @ 6% p.a. from the date of repudiation till realization. The order be complied within 3 months, failing which interest would be paid @ 9% p.a. No order as to costs.

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C. VISWANATH
PRESIDING MEMBER

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SUBHASH CHANDRA
MEMBER