

State Bank of India and Anr. Vs. New India Assurance Company Ltd.

Civil Appeal No. 1234 of 2020 arising out of SLP (C) No. 13380 of 2019
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Full judgment text

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[Civil Appeal No. 1234 of 2020 arising out of SLP (C) No. 13380 of 2019]

Dr. Dhananjaya Y. Chandrachud, J

1. Leave granted.

2. This appeal arises from a judgment and order of the National Consumer Disputes Redressal Commission¹ in a first appeal from a judgment and order of the State Consumer Disputes Redressal Commission, Andhra Pradesh².

3. On 14 November 2005, a loan agreement was entered into between the first appellant - State Bank of India³ and the second respondent⁴. Under the terms of the agreement, all the assets which were charged to the Bank were to be insured by the borrower. In pursuance of the loan agreement, an insurance cover was obtained by the Bank on behalf of the borrower in pursuance of an arrangement which it had with the insurer. A fire took place on the premises of the borrower on 15 February 2007. The insurer not having accepted the claim, the second respondent filed a consumer complaint before the SCDRC. By an order dated 17 November 2014, the SCDRC allowed the complaint in the following terms:

"In the result, the complaint is allowed. The opposite party no.1 and 2 are directed to forward the claim of the complainant to the opposite party no.3 and the opposite party no.3 to process the claim in accordance with law. The opposite party no.3 shall pay a sum of Rs.50,000/- towards compensation together with costs of Rs.7,000/-. Time for compliance four weeks."

Thus, by the above order of the SCDRC, the Bank was directed to forward the claim of the insured to the insurer. The insurer was, in turn, directed to process the claim in accordance with law. No liability to pay compensation was fastened on the Bank.

4. This order of the SCDRC was not challenged either by the borrower or by the Bank. The first appeal before the NCDRC was filed by the insurer who is the first respondent to the present proceedings. By an order dated 6 February 2019, the NCDRC allowed the appeal by making the Bank liable to pay the claim of the borrower, together with interest at the rate of 9% per annum. That has given rise to the present appeal.

5. Mr. Ramesh P. Bhatt, learned senior counsel appearing on behalf of the appellants, submits that against the order passed by the SCDRC, no appeal was filed by the borrower. The only direction of the SCDRC was for the Bank to forward the claim to the insurer so that it could be in accordance with law. Yet, it has been submitted, that in the appeal which was filed by the insurer against the above direction of the SCDRC, the NCDRC has held the Bank liable. Mr Bhatt submitted that this is contrary to law since the borrower had accepted the order of the SCDRC. Moreover, it has been submitted that in the course of the proceedings which arose from the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002, a settlement was arrived at between the Bank and the borrower in terms of which a 'No Dues' Certificate was issued by the Bank on 12 June 2017. The borrower, it has been submitted, had, on affidavit, agreed to withdraw all claims as against the Bank. Hence, it has been submitted that as between the borrower and the Bank, there could be no valid basis in law to direct the Bank to pay the amount of the claim to the borrower.

6. On the other hand, it has been urged on behalf of the insurer by Mr Varinder Kumar Sharma, learned counsel that the claim which was submitted by the borrower was belated. The NCDRC has found that the claim was submitted nearly six and a half years after the incident of the fire which took place on 15 February 2007. Hence, it has been submitted that the NCDRC was justified in coming to the conclusion that the claim was time barred. Insofar as the borrower is concerned, the fact that there has been a one time

settlement with the Bank is not in dispute. However, Mr Seshatalpa Sai Bandaru, learned counsel for the borrower disputed that the borrower had filed an affidavit withdrawing all claims.

7. Having heard the learned counsel appearing on behalf of the contesting parties, it has emerged from the record that the order of the SCDRC was accepted by the borrower. The only direction of the SCDRC was for the Bank to forward the insurance claim to the insurer. As between the Bank and the borrower, there has been a one time settlement. The Bank had issued a communication on 10 February 2017 to the borrower in pursuance of which an affidavit was filed by the borrower on 31 May 2017 in the following terms:

"I am accepting OTS Terms & Conditions and oblige the same. I further undertake to agree for consent order to be passed in the Tribunal/Court for which I /We will co-operate to pass the consent order and in case of failure to attend for passing the consent order your bank is at liberty to present the said affidavit in the concerned Tribunal/Court for passing the consent order. I/Co-borrowers/Directors/Partners/Guarantors will withdraw all the cases filed by me/us in DRT/High Court/Any other courts against your bank. If I/we failed to withdraw the same your bank is at liberty to file the present affidavit for dismissal/withdrawal of the pending cases. If I/we failed to comply with any Terms & Conditions of the OTS, your bank can continue the SARFAESI Proceedings."

Pursuant thereto, on 12 June 2017, the Bank recorded that it had closed the loan account on receipt of the amount in terms of the compromise settlement.

8. In this background, we see no reason or justification for the NCDRC, in an appeal by the insurer, to foist the liability on the Bank. The fundamental point is that the borrower not having challenged the order of the SCDRC, such a liability could not have been foisted on the Bank by the NCDRC. The only issue in controversy was the liability of the insurer. The NCDRC held that the insurer was not liable since the claim was submitted nearly six and a half years after the incident of fire.

9. For the above reasons, we allow the appeal and set aside the impugned judgment and order of the NCDRC dated 6 February 2019, which held the Bank liable to compensate the second respondent in respect of the insurance claim. There shall be no order as to costs.

10. The appellants shall, in pursuance of the present judgment, be at liberty to withdraw the amount which has been deposited before this Court in pursuance of the interim order passed pending the disposal of the present proceedings, together with the interest accrued, if any.

1"NCDRC"

2"SCDRC"

3"Bank"

4 "Borrower"

Source disclosure: Complete sanitized public judgment text retained for research. Official-primary replacement and later-history closure remain pending.

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