

Canara Bank Vs. M/s. Leatheroid Plastics Pvt. Ltd.

Civil Appeal No. 4645 of 2019
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Full judgment text

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[Civil Appeal No. 4645 of 2019]

Aniruddha Bose, J.

1. The appellant, Canara Bank, had extended credit facilities to the respondent Company, Leatheroid Plastics Private Limited under different heads. The respondent had been having banking relationship with the appellant since 1980. The credit facilities involved in this appeal included restructuring of past debt repayment. The arrangement of extending such credit was agreed upon on 4th January 2001. The bank agreed to extend the following financial facilities to the respondent, against mortgage of land, buildings stocks etc; towards security:

Two documents were executed on that date, i.e. 4th January 2001 for such purpose. One was a deed of hypothecation and the other an agreement of collateral security for machinery and vehicles. The former contemplated hypothecation of plant, machinery, tools and accessories already purchased as also the machinery to be purchased, which "are erected/to be erected/kept/to be kept or in transit for being erected at the premises in the occupation of the borrower" in relation to term loan of Rs.15 lacs.

The latter agreement covered credit facilities under other heads and also contemplated hypothecation of additional security "plant, machinery, tools and accessories and motor vehicles" already purchased and to be purchased. Particulars of the hypothecated assets were listed in the schedules to the two deeds. Under the respective deeds/agreements, it was borrower's obligation to keep the hypothecated assets insured but the bank retained the liberty to obtain insurance coverage of such assets.

The bank had exercised the option of effecting the policy, which was permissible under both the agreements and debited the premium from the respondent's account. The entire set of hypothecated assets, however, was not covered by the policy. The said policy covered stocks in process and building for Rs.50 lacs, Rs.2 lacs and Rs.28.88 lacs. No coverage was taken for plant, machinery and accessories etc.

2. There was a fire in the premises of the respondent little beyond the midnight hours of 27th August 2001, which caused damage to their stocks and machineries. The respondent lodged claim with New India Assurance Company, Kanta Nagar branch. It is the contention of the respondent that from the survey undertaken in pursuance of such claim, they came to learn that the policy did not cover plant, machinery and accessories etc.

The respondent's own assessment of replacement value of these 5 uncovered assets was Rs.1.50 crores. The respondent also claimed to have had spent Rs.6.50 lacs on the machinery on order and overhaul for restarting the unit. The unit had to remain shut for some time on environmental issues. The appellant, however, had valued the same for Rs.31.76 lacs. The respondent received insurance claim for Rs.34,92,970/.

3. The respondent under those circumstances became liable, as part of their debt repayment obligation, for the price of such uncovered hypothecated assets damaged by fire. The petition of complaint before the Commission, however, was founded on loss on account of portion of the assets left uncovered in the insurance policy.

The Bank had initiated recovery process before the forum constituted for such recovery. But for the purpose of adjudication of this appeal, we do not consider it necessary to give details of particulars and status of such proceedings.

The respondent approached the National Consumer Disputes Redressal Commission, New Delhi (the Commission) with an original petition for compensation of Rupees two crores along with certain other reliefs from the bank alleging deficiency in service in not obtaining insurance for machineries, accessories etc.

That petition was registered as Complaint No.173 of 2003. The Commission accepted the plea of the respondent that there was deficiency of service on the part of the bank but directed the appellant to pay the compensation of Rs.31.76 lac to the complainant along with interest at the rate of 9% per annum from the date of settlement of insurance claim within a period of 8 weeks from the date of the order.

This order was made on 6th February 2009. The present appeal is against that decision. The respondent have also filed a crossobjection in which they seek raising of the compensation sum to Rs.2 crore, as was originally claimed before the Commission.

4. As we have indicated earlier, the respondent had been obtaining credit facilities from the bank since the year 1980. In the year 1998 their manufacturing unit had to discontinue operation, their premises having been sealed by the Delhi Pollution Control Committee on the order of this Court. They were permitted to restart their operations in the month of December 1989.

By that time there was default in meeting their earlier credit obligation to the bank and they had approached the bank for rescheduling, refinancing and rehabilitation of the unit. The debts on account of old limits of Rs.15 lacs open cash credit and Rs.8 lacs key shut cash credit along with interest had scaled upto Rs.40 lacs. This sum was funded as part of the refinance and rehabilitation package.

5. The fixed assets and the prime securities were to be insured by the borrower for adequate value in terms of the bank's guidelines. To the Special Leave Petition, the bank has annexed copies of the said two documents. The first one is captioned "Deed of Hypothecation re: Machinery". This appears to be in standard form as in the copy annexed, identity of the borrower has been left blank.

We, however, proceed on the basis that the Deed actually executed had the identical terms and conditions. In the clause relating to consideration, it is provided that the hypothecated assets were for security of repayment to the bank of a sum of Rs.15,00,000/together with interest, bank charges, costs of recovery commission etc. Clause 9 of this deed specifies:

"The borrower shall adequately insure the Hypothecated Machinery for the full market value against risk of fire war, riots, civil commotion, strike, accident, risk, thefts and also for such other purposes as may be prescribed by any law for the time being in force and as required by the Bank and keep the policy always current by duly and punctually paying the premia from time to time and to assign the benefits in insurance policy thereof to the bank.

The bank shall be entitled for all the benefits of all such policies. The borrower hereby agrees and undertakes to do everything necessary to transfer and effectively vest in the bank the benefits of all such policies. The borrower further agrees to indemnify the bank against loss by reason of damage to or destruction or loss of the Hypothecated Machinery from any cause whatsoever by reason of claim by third party in respect of the same.

The bank is at liberty and is not bound to effect such insurance at the risk, responsibility and expenses of the borrower with any insurance company only the extent of the value of security as estimated by the bank and that in the event of insuring the security, the bank shall not be considered or deemed to be responsible or liable for nonadmission or rejection of the claim wholly or in part whether the claim is made by the bank or by the borrower.

It is expressly undertaken by the borrower that he shall himself/ of his own accord take all steps like initiation of filing claims/furnishing necessary information to the bank/insurance company without being informed of details of loss/damage for any reason whatsoever. In the event of rejection of claim either wholly or in the part on account of loss/damage to the security. The borrower shall be liable to repay to the bank the entire outstanding liability without requiring the bank to proceed in the first instance against the insurance company.

In the event of non-settlement of claim, the bank may as its absolute discretion take action against insurance company without being under any obligation to do so or require the borrower himself to take action, in which case the borrower shall not be entitled to question the decision of the bank, if the bank does not lodge any claim under the policy within the time limit prescribed under such policy, the bank shall not be liable to the borrower for not filing any claim or suit for recovery of the incurred amount against the Insurance Company or any other person."

6. The particulars of the credit facilities extended to the respondent has also been specified in the second document, captioned "Agreement re: Collateral Security: Machinery; Vehicles.". The first recital clause thereof stipulates:

"WHEREAS the Borrower is engaged in the business of Mfr. Of Synthetic Leather illegible and for the said purpose applied to the Bank for certain credit facilities and the Bank as sanctioned the following credit facilities amongst others on the terms and conditions inter alia that the borrower shall secure repayment of the sums and advanced by the Bank including interest, bank charges, costs, commission, etc. by way of further security by hypothecation of borrowers machinery and/or vehicles. Amount in words)

1. OCC Rs. 40.00 Lacs (Rupees Forty Lacs only)
2. SDB Rs. (Rupees)
3. BE/SB Rs. 10.00 lacs *(Rupees Ten Lacs only)
4. TL Rs. 15.00 (Rupees Fifteen Lacs only)
5. FITL Rs. 10.08 Lacs (Rupees Ten Lacs Eight thousand only)
6. WLTL Rs. 29.99 lacs (Twenty Nine Lacs Ninety Nine Thousand only)

In case where only machinery or vehicle is hypothecation words machinery and or and vehicle may be deleted, as the case may be." (quoted verbatim).

7. Clause 9 of this agreement is nearidentical to clause 9 of the deed of hypothecation and we reproduce below this clause as well:

"9.That the borrower shall adequately insure the Hypothecated Machinery for the full market value against risk of fire war, riots, civil commotion, strike, accident, risk, thefts and also for such other purposes as may be prescribed by any law for the time being in force and as required by the Bank and keep the policy always current by duly and punctually paying the premia from time to time and to assign the benefits in insurance policy thereof to the bank.

The bank shall be entitled for all the benefits of all such policies. The borrower hereby agrees and undertakes to do everything necessary to transfer and effectively vest in the bank the benefits of all such policies. The borrower further agrees to indemnify the bank against loss by reason of damage to or destructions, loss of the hypothecated asset from any cause whatsoever by reason of claim by third party in respect of the same.

The bank is at liberty and is not bound to effect such insurance at the risk, responsibility and expenses of the borrower with any insurance company only to the extent of the value of security as estimated by the bank and that in the event of insuring the security the bank shall not be considered or deemed to be responsible or liable for non-admission or rejection of the claim wholly or in part whether the claim is made by the bank or by the borrower.

It is expressly undertaken by the borrower that he shall himself or his own accord take all steps like imitation of filing claims, furnishing necessary information to the bank/Insurance Company without being informed of details of loss or damages for any reason whatsoever.

In the event of rejection of claim either wholly or in part on account of loss/damage to the security the borrower shall be liable to repay to the bank the entire outstanding liability to repay to the bank the entire outstanding liability without requiring the bank to proceed in the first instance against the insurance company.

In the event of non-settlement of claim, the bank may at its absolute discretion take legal action against insurance company without being under any obligation to do so or require the borrower himself to take action in which case the borrower shall not be entitled to question the decision of the bank, if the bank does not lodge any claim under the policy within the time limit prescribed under such policy, the bank shall not be liable to the borrower for not filing any claim or suit for recovery of the insured amount against the Insurance Company or any other person.

That the registration certificate issued in respect of the hypothecated vehicles shall contain requisite entry regarding hypothecation of the vehicle in favour of the bank. That the borrow hereby makes it clear that through the hypothecated vehicles is registered in the name of one of its partner Sri.....with

the Regional Transport Authorities the said vehicle is the property of the firm and that it has got authority to create its hypothecation."

(The copy annexed to the petition leaves the space above blank).

8. At the initial stage of the proceeding before the Commission, objection was taken on maintainability thereof on the ground that the respondent was not a consumer. The Commission had sustained this objection and dismissed the petition. That dispute had reached this Court in Civil Appeal No. 445 of 2004, which was preferred by the respondent. Their appeal was allowed on 20th January, 2010. It was held by this Court:

"This Appeal has been filed against the impugned order of the National Consumer Disputes Redressal Commission, New Delhi (for short 'the National Commission') dated 22nd August, 2003. The National Commission has dismissed the claim petition of the appellant on the ground that the appellant is not a consumer after the amendment to Section 2 (d) (ii) of the Consumer Protection Act, 1986 (for short 'the Act').

Learned counsel for the appellant submitted that the amendment to section 2 (d) (ii) came into force only on 15th March, 2003 whereas the claim of the appellant relates to the year 2001. He submitted that the amendment does not have retrospective effect. This controversy is covered by a two Judge Bench decision of this Court in Karnataka Power Corporation & Another vs. Ashok Iron Works Private Limited reported in (2009) 3 SCC 240.

Accordingly, this appeal is allowed; judgment of the National Commission is set aside and the impugned judgment of the National Commission is set aside and the matter is remanded to the National Commission to consider the case on expeditiously. Merits afresh in accordance with No costs."

9. On remand, the matter was heard by the Commission and the complaint of the respondent was partly allowed in its order of 6th February, 2019. The Commission, in substance, held that there was deficiency in service on the part of the bank on the following reasoning:

"The main issue in this case is that the loss to machinery and accessories was not paid because of no insurance coverage. As made out in the abovementioned submissions, Insurance Policies were regularly taken by the Bank and premium amount debited from the accounts of the complainant.

The complainant had repeatedly requested the opposite party to furnish details of the Insurance Company and premium fixed. Documentary evidence, with letters written by the complainant and received by the Opposite Party, have been adduced by the Complainant by way of evidence. It is not the case of the Opposite Party that notice was given at any point of time calling upon the complainant to get the insurance done.

Suddenly when fire broke out in the Complainant's premises and it was found that no insurance was taken for the machinery, the onus and blame for taking the insurance was shifted to the complainant, for the inaction and negligence on the part of the Opposite Party. Thus the complainant had to suffer the loss and was denied the benefit of insurance claim."

10. Relying on three earlier decisions of the Commission in the cases of Allahabad Bank vs. J.D.S. Electronic Company MANU/CF/0433/2006 : I (2007) CPJ 270 (NC), Union Bank of India vs. Annu Vastralaya and Anr. MANU/CF/0262/2007 : IV (2007) CPJ 187 (NC), and Kashmir Singh vs. Punjab National Bank & Anr., [Revision Petition No. 1552 of 2012 decided on 03.12.2014], the Commission held and directed:

"In view of above, the Opposite Party is clearly responsible for the loss suffered by the complainant and there is every duty cast upon it to compensate for the same. The Complainant has prayed to allow the Complaint by passing an order against the Opposite Party to pay compensation/damages of Rs. 2 crores.

He has claimed replacement value of Rs. 1.5 crores for the machinery, Rs. 45 lakh on account of loss of business and profit. Rs. 1.5 lakh loss on account of the mistake made by the OP, deducted as miscalculation charges by the Insurance Policy, Rs. 3.5 lakh on account of mental agony, suffering hardship and loss in business and livelihood.

As per the valuation report dated 14.12.2000 submitted by the valued Mr. S.K. Kalia of Kalia Technical Services, appointed in consultation with the Complainant, the value of Plant and Machinery has been assessed at Rs. 31.76 lakhs. In our considered view, therefore, a compensation of Rs. 31.76 lakhs to the

complainant, along with interest @ 9% p.a. from the date of settlement of insurance claim, would meet the ends of justice.

In view of the above, the Opposite Party is directed to pay a compensation of Rs. 31.76 lakhs to the Complainant along with interest @ 9% p.a. from the date of settlement of insurance claim within a period of 8 weeks from the date of this order."

11. Assailing the decision of the Commission, it has been urged on behalf of the bank that it was the responsibility of the borrower to obtain the insurance policy under the respective contracts. As a consequence thereof, the bank could not be held responsible for any shortcoming in the policy.

It has also been pleaded in the bank's written statement or reply before the Commission, portions of which has been reproduced in the petition of appeal, that copy of the policy, statement of other relevant papers regarding the policies and payments used to be supplied by the bank to the respondent company whenever their directors used to visit bank premises. To sustain their case that the duty to insure rested with the borrower, clause 18 of the sanction letter has been relied upon by the bank, which stipulates:

"18. The fixed assets such as Building, Plant and Machinery and the prime securities to be insured for the adequate value as per our bank's guidelines."

12. What we have to adjudicate here is as to whether there was any deficiency of service on the part of the bank in not covering the whole set hypothecated assets under the insurance policy. The respondent company's stand has been that they had been asking for copies of the policies but they were not given particulars thereof. The premium for the same was deducted by the bank from their account. In their counter affidavit, payment of insurance premium from their account has been shown in the following table:

13. It has been the respondent's case that two letters were sent dated 11th June, 2001 and 2nd July, 2001 seeking copies and the status of the Insurance Policy but there was no reply to such letters. These two letters dated 11th June, 2001 and 2nd July, 2001 have been annexed at pages 71 and 72 of the Counter Affidavit of the respondent company filed in connection with the subject appeal.

14. Turning to clause 9 of the respective deeds/agreements, we find that it was the duty of the respondent to obtain the insurance policy. But liberty was with the bank also to effect such insurance at the risk, responsibility and expenses of the borrower only to the extent of the value of the securities as estimated by the bank. In the event of rejection of the claim wholly or in part irrespective of the fact as to whether the claim was made by the bank or the borrower, the bank's responsibility ceased.

What emerges from a plain reading of clause 9 of the respective documents is that the duty to effect insurance was with the borrower, and the bank could not be held responsible if there was any loss or damage to the hypothecated assets which was not adequately covered by insurance taken by the borrower. Bank also would not remain responsible if the claim was rejected, whether in whole or part thereof.

But the question that arises for adjudication in this appeal is that if the bank themselves effected the insurance and left significant part of hypothecated assets out of it without any intimation to that effect to the borrower, could such omission be held to be a lapse on the part of the bank? Going through the said two clauses, in our opinion, their proper construction would be that once the bank exercised the liberty to effect the insurance, it was implicit that such insurance ought to have covered the entire set of hypothecated assets, against which the credit facilities were extended.

The bank could absolve themselves from any obligation in the event the claim was rejected wholly or in part. If, however, the bank in exercise of their liberty effected the insurance, then it became their obligation to cover the entire set of hypothecated assets. The clause under which liberty is given to the bank to effect insurance starts with the phrase - "The bank is at liberty and is not bound to effect such insurance."

The employment of the adjective "such" in this clause demonstrates that if the bank effected insurance, that policy would have to carry the features which a borrower's policy would have covered as per the terms of the deeds or agreements. The borrower's liability in such a situation to repay to the bank could arise in the event of rejection of the claim or part thereof, such claim arising on account of loss/damage to the hypothecated assets.

But the grievance of the borrower here is that though the bank effected such insurance, part of the hypothecated securities was left out from the coverage. It was a case of underinsurance. We have already construed the relevant clauses to mean that if the bank had exercised liberty to effect insurance, it was

their duty to take out policies covering the entire set of hypothecated assets.

That would constitute part of services the bank were rendering to the borrower. Effecting insurance was not their absolute obligation. But such obligation they had taken it upon themselves. The contractual terms also envisaged bank's option or liberty to take up such obligation.

15. This being the position of law, in our opinion, the Commission was right in holding that the complainant had suffered loss because of inaction and negligence on the part of the Bank. This constituted deficiency in service. Any loss arising out of such deficiency was compensable under the provisions of the Consumer Protection Act, 1986. Before the Commission, certain decisions of the Commission were relied upon. The bank sought to distinguish these decisions, again relying on certain order of the Commission. But we have considered this case independently, on its own factual basis and accept the view of the Commission.

The position could have been different in the event the Bank had alerted borrower at the time of effecting the policy that the entire set of assets was not being covered by the policies being effected by them. No such case has been made out. On the other hand, the Bank remained silent to the two letters of the respondent seeking particulars of the policy. The bank's stand that the policies and statements were made available to the Directors of the respondent Company is also not backed by any material. No particulars thereof has been furnished. We also do not find any reason as to why once the Bank had exercised their liberty or option for effecting insurance chose not to cover the entire set of hypothecated assets.

16. In such circumstances, we do not find any reason to interfere with the order under appeal. The appeal is dismissed. As regards the crossobjection of the respondent, we find the decision of the Commission to be supported by adequate reasoning. In our opinion, the respondent have not made out any case for enhancement of the sum awarded as compensation. We reject the crossobjection.

17. All connected applications shall stand disposed of. 18. No order as to costs.

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

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