

Canara Bank v M/s Leatheroid Plastics Pvt. Ltd

Civil Appeal No. 4645 of 2019

Respondent company had been maintaining banking relationship with the Appellant bank including availing credit facilities which included past debt-repayment. On 04.01.2001, the Appellant agreed to extend certain financial facilities to the respondent against secured against mortgage of land, buildings stocks etc. On the same day two documents viz. “Deed of Hypothecation Re; Machinery” and “Agreement re; Collateral Security; Machinery; Vehicles” came to be executed between the parties. The deed provided for hypothecation of plant, machinery, tools and accessories already purchased as also the machinery to be purchased in relation to the term loan of Rs. 15 lakhs and; the other document covered the credit facilities under the other heads and also contemplated hypothecation of additional security plant, machinery, tools and accessories and motor vehicles already purchased and to be purchased. Under both the documents, it was the duty of the borrower to obtain insurance of the assets at the same time it was permissible for the bank to obtain insurance for the hypothecated assets. Accordingly, the appellant bank took out insurance and debited the premium from the accounts of the respondent however the entire set of hypothecated assets were not covered under the said policy which only covered stock-in-progress and building but did not cover plant, machinery and accessories etc. On 27.08.2001, there was fire in the premises, as a result of which the stocks and machineries got damaged. The Respondent lodged a claim with the insurance company and a surveyor was appointed. Respondents contended that after the survey was conducted is then they came to know that the policy did not cover plant, machinery and accessories etc. As per the calculation of the respondent, replacement value of the uncovered assets was Rs. 1.50 crores and they had spent Rs. 6.50 lakhs on overhauling machinery for restarting the unit. The respondent received Rs. 34,92,970 towards the claim for assets covered under the insurance

Respondent moved the National Commission Disputes Redressal Commission, New Delhi vide Complaint No. 173 of 2003, against the appellant bank alleging deficiency in services in not obtaining insurance for machineries, accessories etc. and claimed Rs. 2 crores. The complaint was partly allowed by the Commission vide the judgment dated 06.02.2019 where the Appellant was directed to pay Rs. 31.76 lakh to the respondent along with 9 % interest which was the value of plant and machinery assessed by the surveyor. The Commission inter alia held that there was deficiency on part of Appellant where the insurance policy was regularly taken out by the bank and the premium was debited from the account of the respondent. It was only when there was fire in the premises, it was found that the cover did not include machinery and as a result the respondent had to suffer loss and was denied the benefit of insurance claim.

Appellant challenged the judgment passed by the NCDRC before the Supreme Court and inter alia contended that it was the responsibility of the borrower to obtain the insurance policy under the contracts and the bank could not be held responsible for any shortcoming in the policy. It was further pleaded that copy of the policy, statement of other relevant papers regarding the policies and payments were supplied to the respondents whenever their Directors visited the premises of the bank. On the other hand, Respondent filed cross-objections and reiterated their demand for Rs. 2 crores and contended that there was deficiency on the part of the appellant in not getting insurance for the entire assets hypothecated to the bank. Respondents relied upon two letters dated 11.06.2001 and 2.07.2001 addressed to the appellants seeking copies and status of the Insurance Policy but no reply was received by them.

Supreme Court upheld the judgment passed by the NCDRC and at the same time dismissed the cross objections of the respondent. According to the judgment, the issue before the Supreme Court was whether there was any deficiency of service on the part of the appellant in not covering the whole set of hypothecated assets under the insurance policy. It was held that;

- a. The Court referred to clause 9 of the documents, according to which it was the duty of the borrower to obtain insurance policy however it was also observed that as per the clause liberty was also with the bank to take out insurance at the risk, responsibility and

- expenses of respondent only to the extent of the value of the securities as estimated by the bank however the bank could not be held responsible for rejection of the claim wholly or in part and even in case the loss or damage to the hypothecated assets which were not adequately covered by the insurance taken by the borrower. The court construed the clauses in both the documents and held “*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 Court further held it to be a case of underinsurance and further observed that “*We have already construed the relevant clause 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 was rendering to the borrower. Effecting insurance was not their absolute obligation. But such obligation they had taken it upon themselves...*”
- b. The court held that the NCDRC was right in holding that the complainant had suffered losses on account of inaction and negligence on the part of the bank which constituted deficiency in service and the losses arising out of such deficiency was compensable under the provisions of the Consumer Protection Act. The court took into account the failure of the appellant in alerting the respondent about the entire set of assets not being covered under the policy and the silence of the bank on two letters by the respondent seeking particulars of the policy. The contention of the bank regarding making the policies and statements being made available to the respondent was rejected as no evidence was lead in support thereof.
 - c. The Court also rejected the counter-objections filed by the respondent as it was observed that the respondents had failed to make out any case for enhancement of the sum awarded as compensation.

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