**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP No.23289 of 2016 (O&M)

Date of Decision : 1.11.2017

Shree Balaji Enterprises and another … Petitioners

versus

Punjab National Bank and others ... Respondents

**Coram: Hon'ble Mr. Justice Rajesh Bindal
Hon'ble Mr. Justice Gurvinder Singh Gill**

Present:- Mr. Suman Jain, Advocate, for the petitioners.
Mr. Arvind Rajotia, Advocate, for respondent nos.1 and 2.
Mr. Satpal Dhamija, Advocate, for respondent nos.3 and 4.

Rajesh Bindal, J.

The petitioners have approached this court challenging the action of respondent No.3-Oriental Insurance Company Limited (for short, 'the Insurance Company') whereby the insurance claim on account of loss suffered by the petitioners due to fire in the business premises, has been declined.

Learned counsel for the petitioners submitted that the petitioners had started business of wholesale in medicines and drugs in the year 2003. Cash credit limit of ₹ 19,00,000/- was initially got sanctioned which was enhanced to ₹ 50,00,000/- in the year 2013. The credit facility was availed from Punjab National Bank. The stock besides being hypothecated to bank was insured with respondent No.3 -company.

Insurance premium was being paid by the bank directly to the insurance company. Earlier the petitioners were carrying on their business at Railway Road, Palwal, however, the premises was changed to Mohalla Painth, Near Dayanand School, Palwal. Due intimation thereof was given to the bank vide letter dated 15.4.2010 (Annexure P-1). The stocks were insured by the respondent insurance company from 29.1.2011 onwards on annual basis. Prior to that, the stocks were being insured with Bajaj Allianz General Insurance Company. The insurance policy clearly states that the bank was functioning as an agent of the insurance company for the purpose of insurance. As per the practice, all the details were furnished by the bank to the insurance company and the petitioners never came in picture. In an unfortunate incident of fire in the business premises of the petitioners on the intervening night of 13/14.5.2015, entire stock was burnt. Incident was reported to the insurance company. Surveyor was appointed, who vide his report dated 10.12.2015 assessed the loss at ₹ 51,62,191/-. In his recommendation, the surveyor opined that the address of the premises insured is different than the premises, where incident of fire took place. It was on that basis that the insurance company rejected the claim. As in the incident of fire, the petitioners' entire stock was lost, he suffered huge loss in business, which had to be discontinued. The bank initiated action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, “SARFAESI Act”) by issuing notice on 19.5.2016 seeking to recover an amount of ₹ 49,56,211.84 due as on 28.12.2015 including interest upto September 30, 2015. The petitioners, thereafter had deposited a sum of ₹ 27,25,000/- with the bank to save his residential house from being auctioned.

The submission is that the petitioners being not at fault, in case there is any, the claim of insurance could not be declined. The bank was duly informed about the change of address. As an agent of the insurance company, the bank got the premises insured. In any case, even the new premises is also located in Committee Chowk area at Palwal, as was the earlier premises. It is further submitted that there is no proposal form submitted by the petitioners mentioning address as is sought to be alleged. Learned counsel for the petitioners further submitted that though the building where the stocks had been stored was also insured for a sum of ₹ 38,00,000/- and premium was paid for that but still nothing has been paid on account of loss of building damaged in fire. The surveyor had assessed the loss at ₹ 7,63,893/-. The salvage value was determined at ₹ 76,389/- but no amount was awarded. The building which is owned by the husband of the proprietor of the firm was mortgaged with the bank to secure the loan along with hypothecation of stocks.

Learned counsel for the bank submitted that as per the practice followed, the properties against which the loans are advanced, are to be insured at the cost of the borrower. The borrower is at liberty to furnish insurance policy with the bank however, in case of failure, the bank gets the property mortgaged insured at the cost of the borrower. Representative of the insurance company is called to the branch of the bank, who takes necessary required particulars from the record and issues insurance policy, for which the premium is paid by the bank. In the case in hand also same process was followed. It is for this reason that there is no proposal form furnished by the insured for the purpose of the insurance. The fact that the building was mortgaged to secure the loan is not disputed.

Learned counsel for the insurance company submitted that in the audited balance-sheets of the petitioners for the year 2010-11, address mentioned is of Railway Road, Palwal, which though was changed in the balance-sheets for the subsequent years. He further submitted that in the returns being filed under the Haryana Value Added Tax Act, 2005, the address being furnished by the petitioners is still of Railway Road, Palwal. As the premises insured and the place where the petitioners were carrying on business are different, the claim was rightly rejected. Learned counsel for the insurance company with reference to the insurance claim for damage to the building in fire, submitted that as building was not owned by petitioner No.1-firm which had taken the policy, claim was rightly declined.

After hearing learned counsel for the parties, we find the claim of the petitioners to be meritorious. It is a case in which the claim of the petitioners has not been dealt with properly by the Insurance Company. The petitioners having raised loan from the bank, the stocks were hypothecated and even the immoveable property in the name of the husband of the proprietor of the firm was also mortgaged. The fact that there was fire in the business premises is not in dispute. Only ground on which the claim of the petitioners was rejected by the Insurance Company was that the address mentioned in the policy was of Railway Road, Palwal, whereas the fire was at a different premises. We find this to be a totally non-justifiable ground to reject the case of the petitioners.

After the loan was raised by the petitioners, admittedly, the stocks and the building were got insured by the bank and the premium was paid from the account of the petitioners. Earlier the petitioners were carrying on business from the Railway Road premises, however, in the year

2010, the same was shifted to the premises in question where incident of fire had taken place. Admittedly, change of address was informed to the bank vide letter dated 15.4.2010. Definite stand taken by the bank is that as per the practice followed, the representative of the Insurance Company is called to the branch of the bank and he takes the particulars of the Insured from the record and insurance policy is issued, accordingly. The loanee does not come in picture. That is the reason, admittedly, there is no proposal form available in the present case as none was filled either by the loanee/ insured or the bank. It is also not in dispute that the bank was functioning as an agent of the Insurance Company.

The surveyor had assessed the loss of stocks to the tune of ₹ 51,62,191/-. It was lost in the incident of fire is not in dispute. The only issue raised by him was the location of firm, on the basis of which the claim was rejected. The ground is found to be untenable.

The contention raised by learned counsel for the Insurance company that in the returns filed under the Haryana VAT Act, the address mentioned was of Railway Road, will be of no consequence as in the case in hand, the parties to the dispute are the petitioners, namely the insured, the bank, who was working as an agent of the Insurance Company and the Insurance Company. The change of address of the premises insured was duly notified to the bank.

In view of our aforesaid discussion, the petitioners are held entitled to receive the insurance claim of ₹ 51,62,191/-, on account of loss of stocks suffered in the incident of fire.

Another claim rejected by the Insurance Company is pertaining to the loss to the building in fire. The ground for rejection is that the building is not owned by the petitioners. It is not in dispute that the building was insured for a sum of ₹ 38,00,000/- and premium was paid for the same. The building is not registered in the name of any unknown person, rather it is in the ownership of the husband of the proprietor of the firm, where business was being carried on. No such issue was raised when the building was insured and premium was charged by the insurance company. The surveyor had assessed loss to the tune of ₹ 7,63,893/- and the amount payable by the Insurance Company was determined at ₹ 6,87,504/-, after deducting 10% thereof as salvage value. In our opinion, amount of ₹ 6,87,504/- is also payable to the petitioners.

In the case in hand, the incident of fire had taken place on the intervening night of 13/14.5.2015. As a result of loss of stock, the petitioners had to close down their business. The bank instead of pursuing the case with the Insurance Company for getting insurance claim settled, started proceedings against the petitioners under the SARFAESI Act. Notice was issued on 19.5.2016 to recover ₹ 49,56,211.84. The petitioners were compelled to pay a sum of ₹ 27,25,000/- to save their only residential house from being auctioned. Had the claim of the Insurance Company been received within reasonable time after the loss was suffered, the object for which the insurance policies are taken would have been achieved. May be the petitioners would have continued in business. However, not only that the business had to be discontinued, but the petitioners have been burdened with interest on the outstanding amount by the bank for all this period for which the petitioners cannot be said to be at fault. Hence, it is directed that the Insurance Company shall pay the aforesaid amount of compensation of insurance claim i.e. ₹ 51,62,191/- for loss of stock and ₹ 6,87,504/- on account of damage to the building along with interest, at the same rate which the bank had charged interest from the petitioners. The bank shall inform the rate of interest charged from the petitioners to the Insurance Company within one week from the date of receipt of copy of the order. The amount shall be paid by the Insurance Company to the bank within a period of one month from the date of receipt of copy of the order. After the amount is received by the bank and adjusting any outstanding in the account, the balance shall be at the disposal of the petitioners, who can either withdraw the same or continue banking with the respondent- bank.

The writ petition is disposed of accordingly.

(Rajesh Bindal)
Judge

1.11.2017
vs

(Gurvinder Singh Gill)
Judge

Whether speaking/ reasoned Yes/No
Whether Reportable Yes/No