IN THE HIGH COURT OF ORISSA AT CUTTACK

<u>WP(C) No.19904 of 2016</u>
(Through Hybrid mode)

State Bank of India	....	***Petitioner***

Mr. Kali Prasanna Mishra, Advocate

versus-

M/s. Sahoo Brothers and others	....	***Opposite Parties***

Mr. M. Balakrishna Rao, Advocate
Mr. A. A. Khan, Advocate

CORAM: JUSTICE ARINDAM SINHA

<u>ORDER</u>
08.09.2022

<u>Order No.</u>

09. 1. Mr. Mishra, learned advocate appears on behalf of petitioner (bank). He submits, impugned is award dated 27th July, 2016, by which the Permanent Lok Adalat (PLA) held, his client had committed gross negligence in taking of the policy and ordered his client to pay Rs.5 lakhs to its constituent, opposite party no.1.

2. He submits further, clause (b) in section 22A of Legal Services Authorities Act, 1987 does not include as 'public utility service', banking. He also draws attention to prayers made by opposite party no.1 before the PLA to demonstrate there was no claim made against his client. As such, he

submits, impugned award is clearly without jurisdiction and liable to and should be set aside and quashed.

3. Mr. Rao, learned advocate appears on behalf of opposite party no.1 and submits, his client obtained credit facility from the bank by hypothecating his stock. The bank debited his client's account on insurance premium, for insuring the stock. The bank committed error in giving particulars of address of the stockyard. As a result, claim made upon theft of stock was repudiated by the insurance company. On query from Court he submits, value of the stock insured was at Rs.63 lakhs.

4. Mr. Khan, learned advocate appears on behalf of the insurance company and on query from Court submits, Rs.6,44,796/- was claim made by the insured (bank). On investigation his client found that premises from which the stock was alleged to have been stolen, was not insured. He submits further, the police initially reported that the allegation of theft was false but on opposite party no.1 having challenged the same, there was finding of theft.

5. Perused impugned order. Facts appear to be that the constituent in availing credit facilities from the bank had secured repayment by hypothecating its stock. The bank took the insurance policy in respect of its security and on payment of the premium, debited the constituent's account. Particulars in the proposal, the PLA found, were filled in by the bank.

There was theft of some stock. On claim made, the insurance company repudiated it saying that the theft did not occur in the stated business premises. The PLA found gross negligence on part of the bank and accordingly the award.

6. Mr. Mishra's submission is accepted. Not only was no prayer made against the bank before the PLA, banking is also not a public utility service mentioned under clause (v) in section 22A. It is clear that the PLA, in trying to deliver justice on finding gross negligence on part of the bank, sought to impose penalty. Clearly, the PLA was outside its jurisdiction.

7. Impugned award is set aside and quashed. However, fact cannot be lost sight of that in the turn of events, opposite party no.1 has incurred loss in respect of the theft. The loss stands quantified at the claim made by the bank upon the insurance company at Rs.6,44,796/-. In the circumstances, opposite party no.1 will be entitled to claim set off against demand of the bank for repayment in respect of the credit facility, at said sum against principal outstanding as on 31st August, 2009 (date of theft).

8. Mr. Rao submits, in event the account stands closed, liberty be given to his client to claim said sum from the bank. Opposite party no.1, in such circumstances, must find remedy as available in law.

9. The writ petition is disposed of.

(Arindam Sinha)
Judge

RKS