

**(2013) 07 NCDRC CK 0057**

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION**

**Case No:** None

Anand Diamonds Pvt. Ltd.

APPELLANT

Vs

NATIONAL INSURANCE CO. LTD.

RESPONDENT

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**Date of Decision:** July 5, 2013

**Citation:** 2013 0 NCDRC 508 : 2013 3 CPJ 546

**Hon'ble Judges:** J.M.MALIK , S.M.Kantkar J.

**Advocate:** RAHUL SHARMA

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**Judgement**

1. THE complainant has made a vain attempt to make bricks without straw. Dacoity/robbery has to be proved not assumed. Can robbery of goods is a good defence to save yourself from the vigours of the Law under the SARFAESI Act. We have heard the counsel for the complainant at length.

2. THE complainant, Anand Diamonds Pvt. Ltd. is owned by Mr. Rajesh Anand and his wife Mrs. Chandni Anand. The complainant company is a manufacturer and a wholesaler of jewellery dealing in both diamonds and gold. The business activities are transacted from their premises No. 1980, Ist Floor Katra Khushal Rai, Kinari Bazar, Chandni Chowk, Delhi-110006.

The complainant approached the Bank of Inida -OP No. 2, which granted credit limits for a credit amount of 4.5 crores. The complainant mortgaged two immovable properties in favour of the Bank in February 2008. As agreed and stipulated, hypothecated stocks of jewellery were got insured with the Respondent No. 1. The insurance amount went on increasing and on 23.03.2010, it was increased to Rs. 12 crores vide insurance policy.

3. ON 26.03.2010, 4 unknown persons entered into the business premises of the complainant. They showed the visiting card of M/s Sri Ram Jewellers, Sadar Bazar, Gurgaon. When they were being shown the jewellery and other articles they committed the robbery on gun point after trying the staff present on the side and ensuring that none was able to raise alarm. They looted gold/gold jewellery and diamond jewellery lying in the premises which were worth Rs. 11.41 crores and its value stands increased to Rs. 25 crores at the time of filing of this complaint. The police was informed immediately. FIR was lodged for offences under sections 392/397 read with Section 34 of IPC. The intimation was furnished to the National Insurance Company Limited-OP-1. The complainant filed claim in the sum of Rs. 11.41 crores with the OP-1. However, despite several reminders no claim was granted.

4. HOWEVER , the OP continued paying the installment/interest to the OP-2 till 31.03.2011 in the hope of claim being paid. In the meantime Bank of India -OP-2 declared the account of the Complainant as N.P.A. on account of non-payment on 29.09.2011. OP-2 issued a noticed dated 21.10.2011 U/S-13(2) of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short, "SARFAESI Act) thereby calling the complainant to pay the entire amount of Rs. 1,49,76,125.03/- alongwith the interest within 60 days.

The police filed a closure report as the police could not find any clue about the culprits on 26.02.2011. On 17.10.2011, OP-1 filed an application U/S 173(8) of Cr.P.C. raising doubts on the police investigation. The said application was dismissed by the learned M.M.

5. THE request made by the complainant to the bank that under these circumstances he was unable in clearing the debts and its claim will be settled when the claim is granted by the Insurance Company was rejected. On 30.07.2012, the complainant filed a complaint against the OPs. Notice was issued in that complaint. Thereafter, the OP-1 illegally and arbitrarily vide letter dated 24.09.2012 repudiated

the claim of the complainant, by falsely contended that no incident of robbery took place in the shop of the complainant. The complainant desired to withdraw the complaint so as to include the facts mentioned in the repudiation letter. The complaint was dismissed as withdrawn with the liberty to file another complaint on the same cause of action. Consequently, this fresh complaint has been filed.

6. WE have heard the counsel for the complainant at the time of admission of this complaint. He contended that the police investigation clearly goes to show that the above said incident had taken place. He further explained that the investigator was an Ex-Delhi Police Officer, also supported that the incident had taken place.

As a matter of fact, the repudiation letter is very crucial. It is wee bit lengthy one but to understand this case completely it has become necessary to reproduce it fully. The letter of repudiation dated 24.09.2012 runs as follows:-

"Kindly refer to your claim under the Jewellers Block Policy No. 354301/46/09/3700000372 regarding the loss on account of alleged robbery on 26.03.2010. The claim has been examined and considered by the competent authority of the company in detail in terms of the Jewellers Block Insurance Policy terms, conditions and exceptions. Various observations have been made by Sh. Vinod Sharma, Surveyor. In his Survey Report indicating that there are many inconsistencies and contradictions in the alleged material event, as reported by you. To recap, based on the Surveyor "s observations as well as our own: 1. On enquiring from the other shopkeepers in the same building/ on the ground floor/neighbourhood, it was found that nobody noticed the said looting nor were aware of it, till the same was reported in a newspaper. Even the Police visit was taken as a routine matter. 2. The area in which the Insured location/ establishment is located is a highly and thickly populated area and to escape with the bags, is very difficult for any Robber/s. No four wheeler can enter the area from a long distance, and even for two wheelers also it is very difficult to drive in that locality/area. 3. You, as the Insured and your staff, instead of raising the alarm, went to the Police post located at some distance on foot. 4. Nearby/neighboring Shopkeepers came to know about the event and the quantum of loss of Rs. 8-10 Cr. from the Newspaper only, when news was published after 5 days. 5. There was no media reporting of the alleged event from 27th March till 31st March 2010. It came only in a Hindi Newspaper, "Nav Bharat Times ". 6. During the Surveyor "s visit to your establishment on 31st March, Mr. Rajesh Anand was not available and the staff and father of Mr.Rajesh Anand told that Mr. Rajesh Anand had gone to the Police Station as they wanted him for some identification. However, when the Surveyor

immediately went to the Police Station and met the SHO and IO, they had to state that they never called Mr. Rajesh Anand, on that day. 7. There is an increase in the sum insured of Rs.7.5 cr. immediately before the alleged event and alleged loss. Throughout the year 2009-10, stocks as per stock statements to Bank was more than Rs.12 Cr. However, you had opted for a sum insured of only Rs.1.50 crores at inception, increased it by another Rs.3.00 crores on 24.02.2010, and another Rs.7.5 Cr. on 23.3.2010, which was suddenly increased to Rs.12 cr on 23.03.2010, just 3 days before loss. There is no convincing justification for the said increases, particularly of Rs.7.50 crores from your side. 8. The entire stocks from the shop were reportedly looted/taken away by the alleged miscreants. Reportedly, not even a single piece was left. As per your statement 4 persons took away the jewellery in 4 bags. The total weight of jewellery reportedly stolen is approximately 50.00 Kgs. It does not appear to be convincing that nobody noticed the 4 persons carrying 4 bags of jewellery, weighing approx. 50.00 kg each. 9. There is a contradiction in the statement regarding masks used by the miscreants. At the time of looting, they used mask, in between. Definitely while escaping they must have taken out the masks. Why these were used in between the looting is inexplicable, particularly considering the fact that they had not used masks, while entering the shop. 10. Even in small jewellery shops, CCTV is installed. The CCTV installed by you was reportedly having no recording facilities. It is only used to have a watch on the entry from the staircase. At the time of incident, CCTV was not working. There is contradiction regarding CCTV. You did not reply/clarify/confirm properly that the CCTV in question, sans the recording facility was not working at the time of the alleged incident. 11. As per your statement, miscreants/robbers remained in shop for half-an-hour. However, surprisingly no customer came in between. And you claim to be one of the leading showrooms in that area? 12. During the Surveyor 's visit, he was told that due to firing from pistol of miscreant, glass got broken. Subsequently, in all statements, police report, this information was changed and it is mentioned that insured, Sh. Rajesh Anand threw the tray on one miscreant, which hit the glass and same got broken. 13. The Investigator appointed by us (Sh. L.D. Arora) failed to obtain information regarding stocks in possession of your employee, Shri Makkan Lal, who was on official duty, outside the office at the time of alleged incident. Sh. Makkan Lal was having 4 boxes of jewellery with him, which, he was carrying for Hall Marking. 14. You could not explain why Sh. Makkan Lal, who untied the rope/s of the person/s tied up, did not call the police from his Mobile. 15. As per the Surveyor, when he went to Police Station and met SHO and concerned IO, during Internal/Initial investigation, at that time, they, i.e. the Police were doubtful about the occurrence of event and quantum of loss. 16. There is a contradiction in your reply regarding how the police was informed. As per one statement of yours, your employee Sh. S.K. Aggarwal walked to the nearby PCO and informed the Police at 100 No. However, during the Surveyor 's visit, he was told that Sh. S.K. Aggarwal went on foot, to the Police Station which is at about 10 minutes walking distance. Further, as per the Surveyor, and to which we also agree, the employee concerned

could have immediately gone down and informed the police from the ground floor shops. In fact, such employee or Mr. Rajesh Anand himself could have raised an alarm, soon after being untied right from outside the shop, even which was not done. Why such alarm was not raised, and why the Police was not informed from the ground floor shop/s itself, is not clear. 17. The nearby shop keepers were not even aware of such an incident, till it was reported in a Hindi Daily, five days after. 18. Mr. Rajesh Anand did not clearly explain the number of mobile phones he is/was having. As per the Surveyor 's information, Mr. Rajesh Anand was having two mobile connections and mobiles. 19. You made a vague reply regarding intimation to the local Market/Traders " Association. 20. You did not give proper reply regarding loans from Banks by the family members/close relatives of the Director (Mr.Rajesh Anand). The Police reportedly verbally informed the Surveyor that the Director and/or his family members have taken various loans from different Banks and are in default. The observations made by the Surveyor in his Survey Report, clearly show that there are many anomalies, inconsistencies and contradictions in the event ,as purportedly reported by you. Such an event or even attempt of threat is not remotely possible in a plea like where the Insured location/premises is located. There is a contradiction with regard to the incident of gunshot also. There is no mention of the incident of gun shot in the FIR and the final report. If there was a gunshot, the whole neighbourhood should have been upon the shop. Even a violent breakage of the glass, should also have brought the whole neighbourhood, down to your shop. The absence of a CCTV or it 's non-functioning, if installed, the statement that the glass/mirror got broken due to the throwing of a plate by an employee at one of the perpetrators, the role of the Peon, Mr. Makkan Lal, the story about some of the stocks having been taken for Hall Marking ", the "No objection " statement given by you, for closure of the case by the P.S. and issuance of the Final Untrace/Closure Report, all clearly indicate that you were not keen for proper and further investigation of the case by the Police, even which further confirms our suspicions that the event of the alleged Robbery was stage-managed. It is obvious that you were keen to recover the insurance claim amount from the Insurance Company, as you were in financial distress. It is obvious that no such alleged robbery ever took place. The alleged event took place, within 3 days of the SI being enhanced. Incidentally, you were maintaining stocks of high value, as much as around, 15 crores even, but had insured only for 1.50 crores, in the previous year 's policy and also at the inception of the renewal of the policy, which is material to this claim. All facts considered, including the circumstantial evidence, the inconsistencies, the anomalies, the contradictions, we are of the considered opinion that this claim is based on fraud/fraudulent means. Neither such an event as alleged ever took place nor have you suffered any such loss, as claimed due to any alleged Robbery. Condition No. 9 of the Policy contract provides: "If the claim be fraudulent or if any fraudulent means or devices be used by the insured or any one, acting on his behalf to obtain any benefit under this policy, or if any destruction or damage be occasioned by the willful act or with the connivance of the insured, all benefits under

this policy shall be forfeited. " Besides Condition No. 9, there is breach of Condition no. (ii) and condition no. 10 of the policy of insurance. The said two conditions i.e. no. (ii) and 10, deal with "the duty of the Insured to act, as if uninsured " and "due diligence and reasonable dispatch " respectively. We accordingly hereby regret our inability in unequivocal and categorical terms to admit any liability, whatsoever, in respect of this claim of yours, in terms of the terms and conditions of the governing Policy contract ".

7. IT is surprising to note that the counsel for the Complainant could not explain all these reasons noted in the repudiation letter. He could not deny all these facts. He was asked to produce the Hindi Newspaper which was allegedly published five days after the incident. He admitted that he has not attached that Hindi Newspaper with the complaint. He however, argued that, that paper finds mention in the documents produced by him.

8. SECONDLY , the police also did not take any effective action. It is difficult to fathom why the case was sent as untraced. Why the police was not able to detect , even a single clue. The repudiation letter clearly shows that the case of the complainant is an inchoate mix of irreconcilable opposites. Such like stories can be created at any time. Arrest of the robbers or recovery of any article would have done the trick. No evidence was adduced, no proof, from where these ornaments were purchased, was produced.

Last but not the least, it is difficult to fathom as to why Bank of India was made a party in this case. Bank of India has nothing to do with the Insurance Policy. They have no privity of contract with the complainant or with the Insurance Policy. It appears that in order to save themselves from provisions of SARFAESI Act, this false case was instituted. Bank has to do nothing with the loss. No relief has been claimed against the bank. Attempt was made to punish them for proceedings against the complainant U/S- 13(2) of the SARFAESI Act. The Complaint has no merit and the same is dismissed in limine.