(1999) 04 BOM CK 0085

Bombay High Court

Case No: Complaint No. 32 of 1998

Indrayani Paper Products Pvt. Ltd.		APPELLANT
	Vs	
National Insurance Co. Ltd. and others		RESPONDENT

Date of Decision: April 20, 1999

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 20 Rule 18, 54
- Consumer Protection Act, 1986 - Section 2(1)

Citation: (1999) 3 ALLMR 27 : (2000) 2 BomCR 32

Hon'ble Judges: Smt. Rajyalakshmi Rao, Member; G.R. Bedge, J; A.A. Halbe President, J

Bench: Full Bench

Advocate: A. Chaudhari, T.C. Jain, for the Appellant;

Judgement

@JUDGMENTTAG-ORDER

A.A. HALBE, PRESIDENT, J.

This complaint raises some important questions of law viz., (i) whether the impermissible action of the legally constituted authority while exercising its jurisdiction can be upheld to be legal and binding, and (ii) whether on account of such action bordering on the excessive exercise of jurisdiction, the damage caused to the party is liable to be compensated by the Insurance Company.

2. We may initially draw the broad picture of the event that took place which gave rise to this complaint. The complainant Indrayani Paper Products Ltd. commenced it production in the one acre of land from S. No. 135/1- Kofmauza Jamtha, Taluka & District Nagpur in the Year 1994. For that purpose, the complainant had put up the necessary building structure, installed machinery, collected raw material for manufacture of paper. However to the great surprise of the management, on 26-11-96, the party comprising Court Bailiff, Policemen and 30-40 persons

essentially comprising of anti social elements came down on the premises, drove away the workers and Managers from the Factory and thereafter, pulled down the entire structure of the Mill, uprooted the machinery destroyed the stock in trade and virtually caused the total destruction to the complainant Mill. The operation of the demolition commenced at about 5.30 p.m. on 26-11-96 and it ended in the dawn of 27-11-96. This according to the complainant, was the high handed act of the terrorists resulting in colossal loss to the premises of the Factory and production of paper. The complainant, therefore, moved the Police for necessary action. The premises were insured under the various Insurance Policies with the National Insurance Co. Ltd. The insured complainant called upon the Insurance Company to assess the damage caused wholesale to the premises and the stock in trade and claimed the compensation of Rs. 24 lakhs from the Insurance Company.

3. The Insurance Company engaged the services of the surveyor and assessed the damage at Rs. 14,75,744/-. But by the letter dt. 21-11-97 the Insurance Company repudiated the claim under the Exclusionary Clause of the Insurance Policy to the details of which, we shall turn later. The brief stand of the Insurance Company was that the entire incident was occasioned on account of the exercise of legal process by the Court Bailiff in consonance with the order passed in the Special Darkhast No. 414 of 1996 arising out of Civil Suit No. 238/73. Since this was not acceptable to the complainant, the complainant filed the above claim limiting the claim to Rs. 20 lakhs claimable from the Insurance Company.

4. The Insurance Company stoutly denied all the claims made by the complainant. The Insurance Company contended that the entire demolition took place in pursuance of the order passed by the Civil Court in Darkhast No. 414/96. This was sequel to the M.J.C. No. 237/78 and hence under the Policy Clause (c) under the title "Riot, Strike, Malicious and Terrorist damage clause" which reads as under, the claim of the complainant is not admissible:

"The insurance does not cover loss or damage occasioned by permanent or temporary dispossession resulting from confiscation, commandeering or requisition by any lawfully constituted authority,"

(ii) We may at this stage observe that there is no reference by the Insurance Company to the proviso to this Clause (c) which reads as follows:

"Provided nevertheless that the Company is not relieved under the above Clause (c) of any liability to the insured occurring before dispossession or during temporary dispossession."

5. The Insurance Company took shelter under the above clause and contended that since the entire demolition was under the orders of the Civil Court, the Insurance Company is not liable to satisfy the claim. The claim of Rs. 20 lakhs has also been denied. It is further contended that since this is the complaint which is essentially based on civil dispute, the matter should be referred to the Civil Court and that the

State Commission should not take upon itself to go in to the merits of the claim. It is also contended that the proper course for the complainant is to file a case in the Court of the J.M.F.C. and further, claim compensation from the appropriate persons involved in demolition. The report of the Surveyor has also no relevance in the matter as the Surveyor is entitled to assess the loss but cannot consider the entitlement of the claim under various clauses of the Insurance Policy. The competent officer of the Insurance Company has to go in to all the facts and in this case, the Insurance Company has investigated the entire claim and has bona fide rejected the claim by their letter dt. 21-11-97 and for these reasons, the claim should be dismissed.

6. Now, in this case, we may observe that in the R.A. No. 223/96 and C.R.A. No. 5/97, the High Court in its elaborate judgment has gone into all the aspects of the disputes in regard to the property over which the factory has been set up along with adjoining properties and the High Court has allowed both the revision applications, which is preferred by the complainant. The High Court has quashed all the orders of the Court and has observed that the Civil Court exceeded its jurisdiction when as a matter of fact, the entire matter was within the competence of the Collector, Nagpur. The Civil Court has no authority to issue any warrant of possession which has been executed by the bailiff by demolition of the entire premises of the complainant. The High Court also quashed the proceedings in Darkhast No. 414/96 on the file of the Civil Judge, ST. Dn., Nagpur. This, therefore, makes it mandatory on us to briefly go through the judgement of the High Court in the above revision applications.

(ii) There was a partition suit being Special Civil Suit No. 238/73 wherein the N.As. Nos. 1 to 12 were the original complainants. They claimed partition of the lands as well as the house against their relations & heirs of Abdul Jalil Sk. Usman. The property comprised of agricultural land and the house property and by the preliminary decree dt. 27-4-78 in the above suit, the plaintiffs who were the Non-applicants in the above revision-applications were declared to have 7/32nd share in the entire property. The property comprises of S. Nos. 47, 202, 205, 206/1-KH and 206/1-k of Mauza Jamtha admeasuring 20.60 acres. On the basis of preliminary decree, the M.J.C. No. 237/78 was filed by the N.A./plaintiffs for appointment of a Commissioner for partition the house. There was similar move for partition of the lands assessed to land revenue and we may state that u/s 54 read with Order 20, Rule 18 of Civil Procedure Code, the proceedings regarding partition of the lands has to be carried out by the Collector. The partition of the lands assessed to the land revenue has to be done by the Collector whereas the partition of the immovable property has to be done by the Commissioner appointed by the Civil Court. The net position is that the lands had to be partitioned by the Collector and as soon as the Precept by the Civil Court is issued to the Collector, the decree proceedings stand closed as far as the Civil Court is concerned. In this case nothing could be done till 1984 because of the various stays of the Superior Courts. We may,

however, straightway, come to the land over which the Factory is situated. Now, in that regard, it has to be stated that on S.No.-206/1-KH and 206/1-K, it was found that there was Factory of the complainant. It seems that the defendant in the Original Suit, Abdul Jalil, by registered sale deed dt. 25-2-74, sold 20 acres from out of the above Survey Numbers to Anandrao Belkhode who is one of the applicants. Sadanand Hajare purchased 6-05 acres of agricultural land from S.NO.-206/1-kh (new No. 135/1-K) along with one Dr. Mukund Vaidya by deed dt. 8-3-1988. Shri Sadanand Hajare and Shri Mukund Vaidya then partitioned the said piece of land and Dr. Vaidya retained only one acre of land while Shri Hajare retained 5.05 acres out of the said field property. Shri Hajare then sold 2 acres of land to one Shri Pandurang Wakodikar out of that S. No. 135/1K and applied for conversion of one acre of that Survey Number for non-agriculture use i.e. for Industrial purposes, to the Collector, Nagpur and the Collector, after due procedure for conversion of land, by order dt. 29-3-93 allowed the conversion of 1 acre of land to non-agriculture use. It is stated that the necessary procedure under the Land Revenue Code was followed. On 5-5-93, Sadanand Hajare executed a registered sale deed of the one acre of land converted to N. As. use to the complainant after taking necessary permission from the Government Department and the complainant set up the above Factory which commenced its production from January, 1994.

7. However, the Decree Holders in the Original Suit desired the partition of the lands and the Civil Court directed the Collector to effect the partition and the same was to be done by the Tahsildar. Here, we must emphasise that with the Precept sent to the Collector, the jurisdiction of the Civil Court came to an end under the above provisions of section 54 read with Order 20, Rule 18. The decree drawn under Order 20, Rule 18 is technically a final decree so far as the Civil Court is concerned and as indicated above, u/s 54, partition has to be done by the Collector under the provisions of section 45 of he Maharashtra Land Revenue Code, 1966.

8. However, the Civil Court again revived the above M.J.C. proceedings on the basis of the report of the Tahsildar that the land over which the Factory is constructed and other adjoining lands could be allotted to the share of the original plaintiffs and that the Civil Court should pass the necessary orders accordingly. This was an error on the part of the Revenue authorities because the Revenue authorities have to complete the process of partition of lands without making any back reference to the Civil Court. Surprisingly, the Civil Court in Darkhast No. 414/96 issued the warrant of possession of the above lands including the land over which the Factory is constructed. Now, in pursuance of this warrant of possession, the bailiff along with the Police party and about 300-40 persons, entered the premises of complainant''s Factory and demolished the entire structure, removed the stock in trade in the adjoining lands. The complainant has supported all these allegations by various photographs which clearly convince us that the Factory was rendered totally demolished and that the recommencement of production was a stupendous affair.

9. Now we may turn to some of the observations of the High Court which clearly spell that the Civil Court acted illegally, arbitrarily and in ignorance of law while issuing the warrant for possession. The High Court has observed that the act of partition of the property to assess the land revenue has been performed by the Civil Court and so also the delivery of the possession has been given by the Civil Court. The Civil Court had no jurisdiction to reopen the partition made by the Collector and had no power to examine his work or to direct him to make fresh partition.

(iii) Section 54 read with Order 20, Rule 18 of C.P.C. authorises the Civil Court, only to declare the rights of parties interested in the property and place the execution of the decree entirely in the hands of the Collector. How the partition is to be made, is well within the authority of the Collector. The Civil Court''s jurisdiction comes to an end after it declares the shares of the parties and beyond that it is not concerned with the property lands. In fact, the civil suit terminates so far as the Civil Court is concerned on the passing of the preliminary decree. It was none of the business of the Civil Court to give directions to the Tahsildar to give possession of land from S. No. 206/1K and 206/1KH. It is further pertinent to note that the Civil Court usurped illegally & in complete violation of the provisions of the law, the jurisdiction of the Collector, u/s 54 by entertaining the Darkhast No, 414/96 for issuing a warrant of possession and for the delivery of land from Gat No. 135/2. The Civil Judge, Sr. Dn., Nagpur has totally transgressed and overlooked the provisions of section 54 of the C.P.C. in contravention of the Jaw laid down by the High Court for number of years, which is being cited & quoted in the judgment,

(iv) The High Court held that all the proceedings below were bad and void in law. The orders in Darkhast No, 414/96 were bad and nullity in law. Therefore, there was inherent lack of jurisdiction not only that, it amounts to illegal usurpation of jurisdiction by the Civil Court.

(v) The High Court further held that the transferees (in present case the complainant), during the pendency of the suit or partition of parts of the estate assessed to the payment of land revenue to the Government which is the subject matter of the suit, have locus standi to appear before the Revenue authorities in proceedings u/s 54 and ask for equitable partition of the lands even though they had not been impleaded as parties to the suit in the Civil Court. The transferee has the right to ask for allotment of lands sold to the complainant by the defendants and as far as possible, the Collector shall allot the lands to those parties to the partition suit.

11. With these clear cut observations of the High Court, we find in further proceedings, before the Additional Collector, Nagpur and the Divisional Commissioner, Nagpur, it has been held that the land in possession of the complainant should have, as far as possible, been allotted to the share of that party to the suit so as not to disturb both the title & the possession of the transferees. We may here state that the judgment of the High Court was delivered on 20-1-97 and

that inspect of the judgment, the Insurance Company repudiated the claim on 24-11-97 by taking shelter under the above clause of the Insurance Policy. The Supreme Court did not tinker with the High Court Judgment.

12. We may, therefore, look in to the interpretation of the said Clause of the Insurance Policy. Under the various Insurance Policies, the common clause relied upon by the Insurance Company is as indicated above, "loss or damage occasioned by dispossession resulting from confiscation, commandeering or requisition by any lawfully constituted authority"

13. The learned Advocate for the Insurance Company has contended that with multifarious common policies containing the same clause, it can be emphatically urged that the demolition was in pursuance of the orders in the Spl. Darkhast No. 414/96 and if that be so, the Insurance Company has to be absolved from the liability because the insurance cover does not extend to such dispossession arising out of the act of lawfully constituted authority. We believe that such an argument cannot prevail in this case because the Civil Court which is indeed a lawfully constituted authority, had no jurisdiction whatsoever to issue warrant of possession which brought out the above sordid episode of demolition and dispossession. It is improper to argue that the authority which is a legally constituted authority to decide civil disputes can recover house tax by distress warrant. It would be also illegal to say that the Collector in exercise of its powers under the Cr.P.C. for Law & Order can sentence the miscreants to a period of imprisonment. We are very firm in holding that the powers exercised by the lawfully constituted authority, must be the powers which are within the jurisdiction of that authority. The said authority cannot have extra jurisdictional power and if such situations are entertained, the havoc that would be wrought, may be colossal and damning. The social order would be thrown in peril. The Civil Court should have directed the Collector to effect the partition of lands and should not have issued the warrant of possession. The High Court, in very clear terms, observed that the action of the Civil Court was illegal, arbitrary and void at law. We believe that with such observations, it is difficult to countenance the submission of the Insurance Company that the demolition took place, in exercise of the powers of lawfully constituted authority. The legal position has well been spelled out in the judgement of the High Court. The relevant observations have been recorded by us in the foregoing paragraphs and in that light, we hold that the Insurance Company cannot be allowed to take shelter under the above exclusionary clause.

14. Again under the above clause, what is contemplated is monetary loss and damage occasioned by dispossession, it does not contemplate the physical damage. Dispossession may require the party to obtain other premises on payment. Dispossession may entail loss of business; dispossession may restrict the business of the concerned. But, by no stretch of imagination, the demolition of the premises of the complainant can be protected under the above clause.

(ii) Apart from that the proviso which we have reproduced above, the Clause (c) that the physical damage to the property shall not be excluded from the insurance cover. Here is case where the insured has not been only dispossessed but has suffered total demolition of the premises and the stock in trade and hence we are of the view that on both the counts, claim of the Insurance Company to absolve itself from the liability, has to be emphatically rejected. We, therefore hold that the stand taken by the Insurance Company is totally unwarranted. It is unfortunate that inspite of the High Court judgment and inspite of the fact that the Insurance Companies who are assisted by legal personnel, should repudiate the claim knowing fully well that the Civil Court had acted illegally and beyond its jurisdiction. The observation of the High Court should have been studied properly when the decision for repudiation was taken. We, therefore, censure the attitude of the Insurance Company in this case. The Insurance Company has practically acted in defiance of the judgment of the High Court. We may here state that the Supreme Court has refused to entertain the appeal against judgement of the High Court and the order of the High Court stands concluded once for all. The Orissa State Commission in the case of Muralidhar Sarangi v. New India Assurance Co. Ltd, reported in 1993(1) C.P.J 281, has observed that a malicious act which is one which is an act prohibited by law and is done with intention to cause loss to another also includes the act of others. Insurance which is a beneficial provision has to be liberally construed in favour of the insured. The net result is that the claim of the insured to be entertained and quantified.

15. We may now dwell on the quantum of compensation. It is not in dispute there were three policies which were covering the premises, its stock in trade, electrical fittings, plant and machinery, furniture etc. The risk was for Rs. 27 lakhs and for Rs. 2.5 lakhs. The relevant policies are on record. However, we find that in the letter dt. 15-4-97, the complainant has assessed the damage to the machinery at Rs. 6.43 lakhs, electrical instruments Rs. 70,000/- damage to the building Rs. 2,29,000/- and damage to the furniture Rs. 10,000/- total Rs. 9,52,000/ -. It seems that the Insurance Company has also taken into consideration, the loss to other articles and in their letter of revocation dt. 24-11-97, it is admitted by the Insurance Company that the loss was assessed by the Surveyor Shri Joglekar, at Rs. 14,75,744/-. In the judgment of the High Court, there is reference to the amount of Rs. 15 lakhs which have been claimed by the complainants and desired to be deposited by the decree-holders. All said and done, we feel that with these documents on record, the claim of Rs. 20 lakhs cannot be entertained. We quantify the damage at Rs. 15 lakhs.

16. We are also inclined to grant the compensation on account of the traumatic shock, harassment and the torture that might have been suffered by the management of the complainant Factory. The litigation is long drawn. The complainant has been dragged off and on by the Insurance Company by being called upon to furnish documents. Event demolitions as described by the complainant are few to come across. The Management saw the Factory being pulled

down by large number of people in presence of the Police. This was nothing but an illegal act on the part of the executing machinery. We therefore, quantify the compensation on this count at Rs. 2 lakhs. We further directed that this entire sum of Rs. 17 lakhs shall carry interest of 18% which shall be payable by the Opposite Party Insurance Company from 1-12-97 till actual payment. We further award cost of Rs. 20,000/- to the complainant. Accordingly, we pass the following order :

ORDER

17. The complainant to recover (i) Rs. 17,00,000/- (Rs. Seventeen lakhs) with 18% interest thereon from 1-12-97 till actual payment plus

(ii) Cost of Rs. 20,000/- (Rs. Twenty Thousand) from the Opposite party Insurance Company.

18. Complaint allowed.