



BANK IS LIABLE FOR THE SAFE CUSTODY OF TITLE DEEDS OF MORTGAGED PROPERTIES

An interesting case arose before the National Consumer Disputes Redressal Commission (NCDRC) in the complaint filed by one Mr. Manoj Madhusudhanan against ICICI Bank Limited (Opposite Party No.1) and Blue Dart Express Limited (Opposite Party No.2) under section 21(a)(i) of the Consumer Protection Act, 1986 (CP Act). The complaint before the NCDRC under the CP Act was against Opposite Party No.1 on the fact that the Opposite Party No.1 had lost the original documents of title of the property mortgaged by the complainant to secure a housing loan. The original documents were retained by the Opposite Party No.1, after registration of the mortgage with the relevant authorities and was couriered to its storage facility for safe custody.

The Opposite Party No.2, the courier company, admitted that the documents were lost in transit and could not be traced and contended that as per the contractual obligations as per the Agreement executed between Opposite Party No.1 and Opposite Party No.2, there is a clear delineation of liabilities and hence they are not liable.

Findings by the NCDRC

It was observed by the NCDRC that the Opposite Party No.1 was only responsible for the custody and security of the original title documents pertaining to the housing loan sanctioned to the complainant and held that the deficiency in service on the part of the Opposite Party No.1 stands proved. It is the obligation of the Opposite Party No.1 to ensure safe custody of the original title documents and it cannot seek to shift the liability to the courier company, i.e., the Opposite Party No.2.

Compensation to Consumer

On the basis of the above findings, the NCDRC held that the Opposite Party No.1 was guilty of deficiency in service and directed Opposite Party No.1, the ICICI Bank to obtain for the complainant the certified copy of the title deed documents of the mortgaged property from the relevant authorities at their cost and pay a compensation of Rs.25 Lakhs to the complainant and also pay Rs.50,000/- as litigation cost.

Word of Caution:

Therefore, when a Bank collects the title deeds from the borrowers as part of creation of charge, there must be a clear inventory of all such documents and a proper acknowledgement must be issued to the borrowers as evidence for the borrower that the documents were actually deposited with the lender. Since it is the responsibility of the bank to provide safe custody of the borrower's title documents, it is necessary that proper systems and procedures are followed to ensure that the documents are properly kept in safe custody. If the title documents were to be transported for safe keeping elsewhere, banks should ensure that proper and specific agreement is negotiated and executed with logistics provider, with clear identification of the nature of the parcel, its contents, value etc.,.The law of agency works on the principle of "Qui Facit Per Alium Facit Per Se" meaning "he who acts through another is deemed to act himself". Hence, lenders of mortgage loans are primarily responsible for safe keep of the documents representing the title to the properties mortgaged by the borrower and they cannot shift the blame on their agents.