

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION  
NEW DELHI**

**FIRST APPEAL NO. 862 OF 2013**

(Against the Order dated 26/11/2013 in Complaint No. 10/2013 of the State Commission  
Goa)

1. VAIBHAVI DREDGING

A PROPRIETARY CONCERN OF SHRI ABISHEK UDAY  
NAIK, HAVING HIS OFFICE AT KARMA EMPRESS NO. 5  
TO 15, 1ST FLOOR, OPP. LAKSH JYOT COMPLEX, NEAR  
KTC BUS STAND MUNDVEL, VASCO DA GAMA,

GOA-403802

.....Appellant(s)

Versus

1. NATIONAL INSURANCE CO. LTD.

VASCO DIVISIONAL OFFICE, SUBRAYA CHAMBERS, F.L.  
GOMES ROAD,

VASCO DA GAMA

GOA-403802

.....Respondent(s)

**BEFORE:**

**HON'BLE MR. SUBHASH CHANDRA,PRESIDING MEMBER  
HON'BLE DR. SADHNA SHANKER,MEMBER**

FOR THE APPELLANT :

**Dated : 10 May 2024**

**ORDER**

For the Appellant (s) : Mr. G. Umapathy, Sr. Advocate with

Mr. Bhavani Shankar and Mr.Suvin

Kumaran, Advocates

For the Respondent(s) : Mr. K. K. Bhat, Advocate

**ORDER**

**PER SUBHASH CHANDRA**

1. This First Appeal under Section 19 of the Consumer Protection Act, 1986 (in short, the 'Act') is in challenge to the order dated 26.11.2013 of the State Consumer Disputes

Redressal Commission, Goa, Panaji (in short, the 'State Commission') in Complaint Case No.10 of 2013 dismissing the complaint.

2. Briefly put, the relevant facts of the case are that the Appellant, M/s Vaibhavi Dredging Pvt. Ltd is engaged in the business of dredging of ports using barges, tugs and dredgers. A barge owned by the Appellant, *Vaibhavi Hopper-II*, sank on 15.11.2012 at about 9:30 PM while undertaking dredging work on behalf of Western India Shipyard Ltd. The incident was reported to the Dy. Conservator of Marmagao Port Trust (MPT) on 16.12.2012. However, the claim was rejected by the Respondent on the ground that there was no concluded contract of insurance as on the date of the incident of sinking of the barge since the premium did not stand deposited by the Appellant with the Respondent. The Appellant challenged this decision of the Respondent by way of CC No.10/2013 before the State Commission which came to be dismissed vide order dated 26.11.2013 upholding the contentions of the Respondent. This order is impugned before us praying to allow the claim with damages and costs.

3. According to the Appellant, there was a concluded contract between Vaibhavi Dredging and the Respondent dated 12.12.2012 when the quarterly instalment of ₹55,000 by cheque dated 12.11.2012 had been deposited with the Respondent who had accepted 4 proposal forms acknowledged by one Shri Prasad Pole. Appellant claims that the Respondent issued two receipts towards payment of ₹55,000/- towards premium of the policy. On 16.11.2012 the Respondent was informed by way of a letter of the casualty and requested that the claim be registered, and a surveyor deputed for wreck removal which was duly acknowledged. However, the Respondents took the view that the receipts were 'provisional' and that the requisite documents were not brought by Shri Prasad Pole by the end of day and hence the policy contract was not concluded. Respondent contends that the said Prasad Pole was not an employee of the respondent but a middleman and even the provisional receipts had been obtained without disclosing that one of the barges had sunk on 15.11.2012 while the issuance of any policy would have been w.e.f. 16.11.2012 only.

4. We have heard the learned counsel for the parties and carefully considered the material on the record.

5. The contention of the Respondent is that the State Commission's order is reasoned and well considered, based on evidences and material on the record. It was contended that the document dated 15.10.2012 (scroll No. 1025, Scroll date 21.09.2012) in respect of Policy No.1100000072 with reference to cheque no.204357 drawn on Corporation Bank, Vasco dated 20.09.2012 pertaining to Cash Premium A/c could not be taken on record as it had neither been brought on record before the State Commission nor brought on record as an additional document after notice. The objection is upheld and this document is not taken on record. It was argued by the Respondents that there was no liability of indemnification on the Respondent since the policy of contract had not been concluded in view of the premium not having been paid to it. Reliance was placed on the judgment of the Hon'ble Supreme Court in *National Insurance Co. Ltd. Vs. Seema Malhotra & Ors.*, CA No. 1350 of 2001 decided on 20.02.2001, (2001) 3 SCC 151 wherein it was held that a contract of insurance consists of a reciprocal promise and therefore, if the insured fails to pay the promised premium or his cheque is returned dishonoured by the bank, the insurer is under no obligation to perform his part of the contract and the contract of insurance is void.

6. It is manifest that the State Commission considered the question whether there was a concluded contract between the Complainant/Appellant herein and the Opposite Party/Respondent on 12.11.2012 prior to one of the barges of the Appellant sinking on 15.11.2012 making the Respondent liable to indemnify the Appellant for the loss caused. Its finding was in the negative. The grounds for the same were that the said Prasad Pole was not the representation of the Respondent as established through evidence, including his examination and cross examination through interrogatories, to not be an insurance agent of the Respondent but a middleman. It was also evident from the record that this Prasad Pole sought to obtain the policies on 21.11.2012 with a cheque of ₹55,000/- but failed to do so. The letters dated 21.11.2012 produced were noted by the State Commission to bear signatures of this person, Prasad Pole, and not of anyone from the Respondent's office. The submission of the Appellant that it had been informed by the said Prasad Pole that the policies were accepted under scroll no.1049 dated 12.11.2012 has been held by the State Commission to have been a false statement since receipt with scroll no.1049 is actually dated 16.11.2012. The submission of Prasad Pole is that he was informed by the Development Officer of the Respondent that the proposals were accepted but could be collected only on 16.11.2012 due to intervening holidays.

7. No receipts or documents to establish receipt of the premium on 12.11.2012 have been brought on record. The State Commission has, therefore, held that in the absence of any endorsement by the office of the Respondent on the letters dated 12.11.2012 it was not established that they were delivered on behalf of the Complainant by the said Prasad Pole. The explanation provided by him was also far-fetched and not acceptable. On the other hand, the evidences on affidavit of the Respondent's cashier (Rama Z. Naik), Development Officer (Shri Noronha) and Divisional Manager (F.X. D'Souza) explained the sequence of circumstances in which the provisional receipts were first issued and thereafter cancelled as the requisite documents were not submitted by the end of day on 12.11.2012. For this reason, it was held that the Appellant had failed to establish that any transaction to conclude the contract took place on 12.11.2012 under which the Respondent had undertaken to indemnify the appellant against loss. Respondent also brought on record its letter dated 16.11.2012 intimating the Appellant the cancelation of the receipt and the return of the cheque for the premium which were handed over to Appellant's representative which reads as under:

*"We refer to the above and regret to inform you that your proposals of the above referred barges cannot be accepted because inspection condition survey has not been carried out. We are returning your cheque no. 650347 for Rs 55,000/- drawn on Corporation Bank, Vasco.*

*We regret the inconvenience caused to you."*

8. The State Commission has held in its order as under:

20. The subject cheque was returned to the complainant on 16.11.12 by letter, after having obtained an acknowledgement from the said Prasad Pole on behalf of the complainant. This was further confirmed by the OP by sending to the complainant letter dated 19.11.12 (copy at pg 173) wherein the OP categorically stated that the cheque was returned along with letter to Mr Prasad Pole on the

same day i.e., 16.11.12 who has duly acknowledged their letter and that in view of that they were forced to cancel the transaction at the close of working hours on 16.11.12. **Complainant has conveniently chosen not to mention in the complaint that the said cheque for Rs 55,000/- was returned to the complainant on 16.11. 12. If the cheque itself was returned to the complainant without encashing, could it be said that any transaction between the parties was complete?** The receipt which was initially issued in favour of the complainant and subsequently cancelled on 16.11.12 (copy at pg 163) clearly states that the receipt is valid subject to realization of the cheque when payment is made by cheque. **If the cheque itself is returned without encashing, what happens to the said receipt? The receipt itself would become invalid,** apart from the fact that it is otherwise cancelled by the OP. **Since no premium was accepted by the OP, there could not have been a completed contract of insurance between the complainant and OP on 16.11.12 and, in any event, as rightly stated on behalf of the OP, any contract would have come into existence only on 16.11.12 and the barge of the complainant had already sunk on 15.11.12.**

[Emphasis added]

9. In the instant case, it is manifest that the cheque pertaining to the premium of the policies had not been encashed as on 16.11.2012 and therefore, the contract of insurance could not be said to have been concluded. It is evident that the cheque had not been encashed by the Respondent on account of the fact that the inspection condition survey had not been carried out and the necessary documents produced before the Respondent. The contention of the Appellant that a provisional receipt had been issued cannot be considered to be the basis of the renewal of the insurance policy since the cheque itself had not been encashed. As rightly held by the State Commission, such a receipt is meaningless and does not convey any right. In view of the clear position of law under the Insurance Act and the Contract Act, as pointed out by the State Commission in its impugned order, and in light of the law laid down by the Hon'ble Supreme Court in *Seema Malhotra* (supra), it is evident that as on the date of the sinking of the barge i.e., 15.11.2012, the Appellant did not possess any policy of insurance that indemnified him against any loss with regard to the barges. The claim of the Appellant has, therefore, been rightly disallowed by the Respondent and the impugned order has correctly interpreted the legal position with regard to the arguments advanced by the Appellant in his complaint before the State Commission. We find no reason that warrants interference in the findings of the State Commission in the impugned order. In the light of the discussion above, the Appeal is liable to fail. The same is accordingly dismissed as without merits with no order as to costs.

10. Pending IAs, if any, stand disposed of with this order.

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**SUBHASH CHANDRA**  
**PRESIDING MEMBER**

.....  
**DR. SADHNA SHANKER**  
**MEMBER**