

**HIGH COURT OF TRIPURA
AGARTALA**

WP(C) 117 of 2024

Smt. Nibedita Baidya,
wife of Sri Samaresh Chandra Baidya,
P.O. Dhaleshwar, P.S. East Agartala,
Sub-Division- Agartala, District- West Tripura,
PIN 799007, aged about 49 years

..... **Petitioner(s)**

Versus

- 1. The State of Tripura**
represented by the Secretary, Home Department,
Government of Tripura, having his office at
New Capital Complex, P.O. Gurkhabasti,
P.S. NCC PS, Sub-Division- Agartala,
District- West Tripura.
- 2. The Director General of Police,**
Home Department, Government of Tripura,
having his office at fire Service Chowmuhani,
P.O. Agartala, P.S. West Agartala,
Sub-Division- Agartala, District- West Tripura.
- 3. Smt. Aparna Karmakar,**
wife of Sri Sunil Chandra Karmakar,
resident of Jagannathpur, P.O. Khayerpur,
P.S. Budhjungnagar, District- West Tripura.
- 4. The Officer-in-charge,**
East Agartala Women PS, having office at
East Agartala PS, P.O. Agartala, P.S. East Agartala,
Sub-Division- Agartala, District- West Tripura.

..... **Respondent(s)**

For Petitioner(s)	:	Mr. Somik Deb, Sr. Advocate. Mr. P. Chakraborty, Advocate.
For Respondent(s)	:	Mr. M. Debbarma, Addl. G.A. Mr. RG Chakraborty, Advocate. Mr. B.K. Nath, Advocate. Mr. D. Paul, Advocate.

WP(C) 118 of 2024

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having his office at fire Service Chowmuhani,
P.O. Agartala, P.S. West Agartala,
Sub-Division- Agartala, District- West Tripura.
- 3. Smt. Kalpana Karmakar,**
wife of late Mihir Ranjan Mallick,
permanent resident of
care of Sri Sunil Chandra Karmakar, Jogannathpur,
Khayerpur, P.O. Khayerpur, P.S. Budhjungnagar,
District- West Tripura, presently residing at
34 C Ashok Row, Malancha Apartment,
Ganguli Bagan, P.S. Patuli, Kolkata.
- 4. Sri Goutam Mallick,**
son of late Mihir Ranjan Mallick,
permanent resident of
care of Sri Sunil Chandra Karmakar, Jogannathpur,
Khayerpur, P.O. Khayerpur, P.S. Budhjungnagar,
District- West Tripura, presently residing at
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For Respondent(s)	:	Mr. M. Debbarma, Addl. G.A. Mr. B.K. Nath, Advocate. Mr. D. Paul, Advocate.

WP(C) 119 of 2024

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P.O. Agartala, P.S. West Agartala,
Sub-Division- Agartala, District- West Tripura.
- 3. Sri Krishendu Deb,**
care of Smt. Bithika Datta Purkyastha, of
Kacharghat, Kailashahar, District- West Tripura,
presently residing at, care of Sri Prabal Sarkar, of
Indranagar, P.S. East Agartala,
District- West Tripura.
- 4. The Officer-in-charge,**
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East Agartala PS, P.O. Agartala, P.S. East Agartala,
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For Respondent(s)	:	Mr. M. Debbarma, Addl. G.A. Mr. RG Chakraborty, Advocate. Mr. B.K. Nath, Advocate. Mr. D. Paul, Advocate.

WP(C) 120 of 2024

Smt. Nibedita Baidya,
wife of Sri Samaresh Chandra Baidya,
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..... **Respondent(s)**

For Petitioner(s) : Mr. Somik Deb, Sr. Advocate.
Mr. P. Chakraborty, Advocate.

For Respondent(s) : Mr. M. Debbarma, Addl. G.A.
Mr. B.K. Nath, Advocate.
Mr. D. Paul, Advocate.

Date of hearing and
delivery of judgment and
order : 26.02.2024.

Whether fit for reporting : YES.

HON'BLE MR. JUSTICE T. AMARNATH GOUD
Judgment and Order(Oral)

These four writ petitions i.e. WP(C) 117 of 2024, WP(C) 118
of 2024, WP(C) 119 of 2024 and WP(C) 120 of 2024 are arising out of
common cause of action and also seeking common reliefs. Accordingly,
the same are clubbed together for hearing the arguments of both the
parties and the same are taken up for consideration and disposal in a
common judgment.

[2] The facts in brief are that, firstly, the writ petitioner in all the cases namely, Smt. Nibedita Baidya who is a builder engaged in the business of Real Estate Development promised to construct and handover each flat to the respondents (decree holders in the Court below) and have collected money under agreement and thereafter failed to fulfill the same. Secondly, the petitioner also promised the respondent in case No. WP(C) 117 of 2024 that she would provide alternative flat in some other property to which, the respondent was agreed to. The petitioner further failed to deliver the alternative flat to the respondent. Thirdly, the petitioner promised to refund the amounts collected and also failed to keep up the promise.

[3] Hence, the respondents/prospective purchasers were constrained to lodge complaint against the writ petitioner in District Consumer Disputes Redressal Commission, Agartala and the Court below after conducting thorough examination in accordance with law was pleased to decree the suit in favour of the complainants/prospective purchasers in case Nos. CC-414 of 2022, CC-114 of 2021, CC-86 of 2018 and CC-61 of 2019 respectively.

[4] Since the judgment debtor has not fulfilled the decree, the decree holders have preferred Execution Applications (EA Nos. EA/20/2023, EA/10/2023, EA/7/2022 and EA/20/2020 respectively) in the file of District Consumer Disputes Redressal Commission, Tripura West and in the said Execution Proceedings, the Court below issued notices and it is on record that the judgment debtor is absconding and is not available in the address indicated.

[5] The Court below to procure the presence of the judgment debtor passed orders in the EA cases which are impugned and under challenge in the present writ petitions.

[6] The petitioner by filing WP(C) No.117 of 2024 has challenged the order dated 12.12.2023 passed by the learned Court below [Execution Application No. EA/20/2023 in Complaint Case No. CC/414/2022 in *Smt. Aparna Karmakar vs. Smti. Nibedita Baidya*], the same is extracted hereunder:

"DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION, TRIPURA WEST
Court Room Proceeding

Execution Application No. EA/20/2023
In
Complaint Case No. CC/414/2022

Smt. Aparna Karmakar

Vs.

Smt. Nibedita Baidya

BEFORE :

HON'BLE MR. Goutam Debnath PRESIDENT
HON'BLE MR. Samir Gupta MEMBER

PRESENT :

Dated: 12 Dec 2023

Order

Ld. Counsel of the complainant is present.

Notice issued upon the OP has returned with a report that the Op is not available at the address.

The O.P. contested the original case from this address.

Hence issue warrant against the O.P. fixing 30/01/2024 for E/R

[HON'BLE MR. Goutam Debnath]
PRESIDENT

[HON'BLE MR. Samir Gupta]
MEMBER"

[7] By preferring WP(C) No.118 of 204, the petitioner has challenged the order dated 12.12.2023 passed by the learned Court below in Execution Application No. EA/10/2023 in Complaint Case No. CC/114/2021 (*Smt. Kalpana Mallick vs. Smt. Nibedita Baidya*), which is extracted as under:

"DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION, TRIPURA WEST
Court Room Proceeding

Execution Application No. EA/10/2023
In
Complaint Case No. CC/114/2021

Smt. Kalpana Mallick

Vs.

Smt. Nibedita Baidya

BEFORE :

HON'BLE MR. Goutam Debnath PRESIDENT
HON'BLE MRS. Dr Bindu Pal MEMBER
HON'BLE MR. Samir Gupta MEMBER

PRESENT :

Mr. B.K. Nath, Advocate for the Appellant 1

Dated: 12 Dec 2023

Order

Ld. Counsel of the complainant is present.

Notice issued upon the O.P has returned with a report that the O.P is not available at the address.

The O.P. contested the original case from this address.

Hence, issue warrant against the O.P fixing 30/01/2024 for E.R.

To 30.01.2024 for E.R.

[HON'BLE MR. Goutam Debnath]
PRESIDENT
[HON'BLE MRS. Dr. Bindu Pal]
MEMBER

[HON'BLE MR. Samir Gupta]
MEMBER"

[8]

On perusal of the case record in WP(C) No.119 of 2024, it is seen in the cause title of the writ petition that one Sri Krishendu Deb has been made party as respondent No.3 but, the order impugned in Annexure-5 of the said writ petition shows that the name of the Decree Holder against the petitioner (Judgment Debtor) in the Court below is one 'Sri Atanu Datta'. It has further been noticed that in case No. WP(C) No.120 of 2024, one Sri Krishendu Deb has already been made party as respondent No.3. However, for the purpose of reference, the order passed by the learned Court below in Execution Application No. EA/7/2022 in Complaint Case No. CC/86/2018 (*Sri Atanu Datta vs. Smt. Nibedita Baidya*) which is the order impugned in WP(C) 119 of 2024 (marked as Annexure-5 to the said petition) is reproduced below:

"DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION, TRIPURA WEST.
Court Room Proceeding.

Execution Application No.EA/7/2022

In

Complaint Case No.CC/86/2018

Sri Atanu Datta.

Vs.

Smt. Nibedita Baidya.

BEFORE:

HON'BLE MR. Goutam Debnath PRESIDENT

HON'BLE MRS. Dr. Bindu Pal MEMBER
HON'BLE MR. Samir Gupta MEMBER

PRESENT: Mr. A.T. Pal., Advocate for the Appellant 1
Mr.S.De, Advocate for the Respondent 1

Dated : 25 Apr 2023

Order

Learned Counsel for the Execution Petitioner denies to accept the cheque for Rs.1,50,000/- offered by the Judgment Debtor through her engaged Counsel Mr. Subhasis De.

This being the position issue fresh reminder against the J.Ds fixing 25.05.2023 for E.R.

To 25.05.2023 for E.R.

[HON'BLE MR. Goutam Debnath]
PRESIDENT
[HON'BLE MRS. Dr Bindu Pal]
MEMBER
[HON'BLE MR. Samir Gupta]
MEMBER"

[9] The petitioner by filing WP(C) No.120 of 2024 has challenged the order dated 29.04.2023 passed by the learned Court below in Execution Application No. EA/20/2020 in Complaint Case No. CC/61/2019 (*Shri Krishendu Deb vs. Smt. Nibedita Baidya and others*) and the same is extracted as under:

"DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION, TRIPURA WEST.
Court Room Proceeding.

Execution Application No.EA/20/2020
In
Complaint Case No.CC/61/2019

Sri Krishendu Deb. Vs. Smt. Nibedita Baidya. and others

BEFORE:

HON'BLE MR. Goutam Debnath PRESIDENT
HON'BLE MRS. Dr Bindu Pal MEMBER
HON'BLE MR. Samir Gupta MEMBER

PRESENT: Mr.M.K. Arya, Mr.S.Chakraborty., Advocate for the Appellant 1
Dated : 29 Apr 2023

Order

Today the Ld. counsel of the D.H. is present no step from the side of the J.D.

Hence W/A is issued upon the J.D. S.t the production of bail bond to the amount of Rs.1,00,000 or like amount with a condition J.D. should appear before this Commission in person.

To 06/06/2023 for E/R or appearance of the J.D.

[HON'BLE MR. Goutam Debnath]
PRESIDENT
[HON'BLE MRS. Dr Bindu Pal]
MEMBER
[HON'BLE MR. Samir Gupta]
MEMBER"

[10] Aggrieved by the orders impugned quoted above, the present writ petitions are filed seeking to set aside the said orders passed by the Court below.

[11] The main point which has been emphasized by the learned senior counsel Mr. Somik Deb appearing for the petitioner is that admittedly, the petitioner is a defaulter and a judgment debtor but, the order passed by the Court below is an order of arrest and the petitioner is claiming immunity under Section 56 of CPC and claims that the petitioner being woman, she cannot be arrested. For the purpose of reference, Section 56 of CPC is quoted below:

"56. Prohibition of arrest or detention of women in execution of decree for money.- Notwithstanding anything in this Part, the Court shall not order the arrest or detention in the civil prison of a woman in execution of a decree for the payment of money."

[12] Learned counsel appearing for the respondents-decree holders contended that as per Section 72 of the Consumer Protection Act, 2019, the present writ petitions filed by the petitioner are liable to be dismissed. In this regard, Section 72 of the Consumer Protection Act is extracted below for the purpose of reference:

"....72. Penalty for non-compliance of order.- (1) Whoever fails to comply with any order made by the District Commission or the State Commission or the National Commission, as the case may be, shall be punishable with imprisonment for a term which shall not be less than one month, but which may extend to three years, or with fine, which shall not be less than twenty-five thousand rupees, but which may extend to one lakh rupees, or with both.

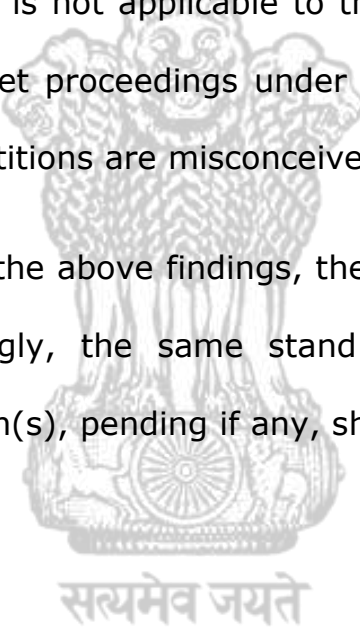
(2) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the District Commission, the State Commission or the National Commission, as the case may be, shall have the power of a Judicial Magistrate of first class for the trial of offences under sub-section (1), and on conferment of such powers, the District Commission or the State Commission or the National Commission, as the case may be, shall be deemed to be a Judicial Magistrate of first class for the purposes of the Code of Criminal Procedure, 1973(2 of 1974).

(3) Save as otherwise provided, the offences under sub-section (1) shall be tried summarily by the District Commission or the State Commission or the National Commission, as the case may be."

[13] Heard learned counsel for the respective parties. Perused the record.

[14] In view of the submissions made, this Court is of the opinion that the present writ petitions are premature litigations and also the same are not maintainable under Article 226 of the Constitution of India. The petitioner has not approached this Court with clean hands. Aggrieved by the proceedings, the remedy if so advised lies before other forum under the Consumer Protection Act thus, the petitioner could have availed the remedies. But, the proceedings which are under challenge are only to procure the presence of the petitioner since the petitioner is absconding being a defaulter and the judgment debtor. The argument advanced on behalf of the petitioner in claiming immunity under Section 56 of CPC at this stage, is not applicable to the facts and circumstances of the case as the docket proceedings under challenge are not order of arrest. Thus, the writ petitions are misconceived.

In view of the above findings, the writ petitions are liable to be dismissed. Accordingly, the same stand dismissed. As a sequel, miscellaneous application(s), pending if any, shall also stand closed.



JUDGE

Sabyasachi G.

SABYASACHI GHOSH

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