

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 1433 OF 2017

Rajesh Moti Sujan

...Petitioner

Versus

State Consumer Dispute Redressal
Commission, Maharashtra And Ors.

...Respondents

....

Mr.Anil Lulia i/b. S.Y. Thorat, Advocate for the Petitioner.

....

CORAM : R. G. KETKAR, J.

DATE : 07th FEBRUARY, 2017

P.C.

1. Not on board. At the request of Mr.Lulia taken up for admission.
2. Heard Mr.Anil Lulia, learned Counsel for the petitioner, at length.
3. By this Petition under Article 227 of the Constitution of India, the petitioner has challenged the order dated 20.1.2017 passed by the State Consumer Disputes Redressal Commission Maharashtra (for short, 'Commission') in Execution Application No.EA/14/28. The Execution Application was filed on 14.8.2014 under Section 27 of the Consumer Protection Act, 1986 (for

short, 'Act'). By the impugned order, the Commission has directed the petitioner to remain present on the next date and comply with the final order failing which the Commission will take further steps in the matter.

4. It appears that respondent No.3 herein has instituted Complaint No.211/1997 before the Commission against the petitioner who was opposite party No.1 and respondent No.2 who was opposite party No.2. Written statements were filed by the petitioner and respondent No.2. The complaint was disposed of on 12.9.2002. Operative part of the order reads thus:

“1. O.P. No.1 is ordered and directed to refund a sum of Rs.7,50,000/- to the complainants with interest @ 18% p.a. with effect from 25th August, 1995 till realisation.

2. O.P. No.1 shall also pay cost in this complaint to the complainants quantified at Rs.50,000/-.

3. As far as O.P. No.2 is concerned, it is held that he is not liable to make good loss to the complainants.

4. Complaint stands disposed of.

5. Copies to be furnished to the parties.”

5. It appears that respondent No.1 filed Execution Application No.28/2014 on 14.8.2014 under Section 27 of the Act as the petitioner and respondent No.2 did not comply the order. By the impugned order, the Commission has expressed its intention for passing final order under Section 27 of the Act The Commission has, therefore, kept the matter to ensure presence of the petitioner failing which the Commission will have to take further steps in the matter.

6. Mr. Lulia submitted that appeal under Section 27-A will lie only against the final order passed under Section 27 of the Act. I do not find any merit in this submission. Section 27-A of the Act reads thus :

“27-A. Appeal against order passed under section 27.-- (1) Notwithstanding anything contained in the Code of Criminal Procedure 1973 (2 of 1974), an appeal under section 27, both on facts and on law, shall lie from--

- (a) the order made by the District Forum to the State Commission;
- (b) the order made by the State Commission to the National Commission; and
- (c) the order made by the National Commission to the Supreme Court.

(2) Except as aforesaid, no appeal shall lie to any court from any order of a District Forum

or a State Commission or the National Commission.

(3) Every appeal under this section shall be preferred within a period of thirty days from the date of an order of a District Forum or a State Commission or, as the case may be, the National Commission:

Provided that the State Commission or the National Commission or the Supreme Court, as the case may be, may entertain an appeal after the expiry of the said period of thirty days, if, it is satisfied that the appellant had sufficient cause for not preferring the appeal within the period of thirty days.”

7. Mr. Lulia relied upon the decision of Division Bench of Andhra Pradesh High Court in ***M/s. Megacity Builders v. A.P. State Consumer Dispute Redressal Commission, Hyderabad and another, AIR 2004 Andhra Pradesh 49*** to contend that against the interim order passed by the Commission under Section 27 of the Act, Petition under Article 226 of Constitution of India can be presented. In that case the respondent had instituted complaint before the District Forum-II, Hyderabad alleging certain deficiencies of service by the petitioner M/s. Megacity Builders. On 17.8.2000, the District Forum disposed of the complaint and issued directions to the petitioner. The appeal preferred by the petitioner before the Andhra Pradesh

State Consumer Commission was dismissed on 21.3.2001. The Revision Petition was dismissed by the National Consumer Disputes Redressal Commission, New Delhi. SLP preferred by the petitioner was dismissed by the Apex Court. In other words, the order passed by the District Forum attained finality.

. Respondent No.2 therein filed complaint under Section 27 of the Act against the petitioner for not complying the order dated 17.8.2000. The petitioner resisted that complaint on the ground that the owner of the building had instituted suit in the Court of First Senior Civil Judge, City Civil Court, Hyderabad for perpetual injunction and the Civil Court issued injunction restraining the petitioner from transferring or alienating the flats allotted to her share and consequently the petitioner was not in a position to comply with the order passed against the petitioner. On 22.10.2002, the District Forum disposed of the complaint. Aggrieved by that decision, second respondent invoked jurisdiction of the State Commission under Section 17(b) of the Act for setting aside the order passed by the District Forum and punishing the petitioner, amongst other reliefs. On 11.12.2002, the State Commission set aside the order of the District Forum and convicted the petitioner therein and sentenced him to suffer

imprisonment for a period of two years. It is against that order, the petitioner approached the Andhra Pradesh High Court invoking Article 226 of the Constitution of India. Respondent No.2 raised preliminary objection as to maintainability of Writ Petition under Article 226 of the Constitution of India.

. In paragraph-16, Division Bench referred to Section 21 of the Act. In paragraph-17, Division Bench referred to definition of 'complaint' in Section 2(1)(c) and 'consumer dispute' in Section 2(1)(e) of the Act. In paragraph-18 reference was made to Section 21(b). In paragraph-19 it was observed that by no stretch of imagination, the order passed by the State Commission disposing of the petition filed by the 2nd respondent can be characterized as raising any "consumer dispute". The application itself was filed by 2nd respondent before the State Commission under Section 27 of the Act which deals with penalties. The proceedings initiated under Section 27 of the Act cannot be treated as a complaint under the provisions of the Act. In paragraph-20 it was observed that the remedy under Section 21 is not available against the order passed under Section 17(b) of the Act by the State Commission. In paragraph-19, Division Bench observed that the proceedings initiated under Section 27

of the Act cannot be treated as complaint under the provisions of the Act. In paragraph-20 it was further observed that the remedy under Section 21 is not available against the order passed under Section 17(b) of the Act by the State Commission. Said decision was rendered by the Division Bench on 16.10.2003.

8. As noted earlier, in the present case respondent No.1 filed execution application on 14.8.2014 under Section 27 of the Act as the petitioner and respondent No.2 did not comply the order dated 12.9.2002 passed by the Commission in Complaint No.211/1997. In view thereof, the decision of M/s. Megacity Builders (supra) does not assist the petitioner in any manner and if one is permitted to say so, with utmost respect, attention of Division Bench was also not invited to Section 27-A of the Act which is added w.e.f. 15.3.2003 though the case in M/s. Megacity Builders (supra) was decided on 16.10.2003.

9. In view thereof, it is not possible to accept this submission. Section 17 of the Act deals with the jurisdiction of the State Commission. Section 19 lays down that any person aggrieved by an order made by the State Commission in exercise of its powers conferred by sub-clause (i) of clause (a) of section

17 may prefer an appeal against such order to the National Commission within a period of thirty days from the date of the order in such form and manner as may be prescribed . Section 27 provides for penalties, which lays down that where a trader or a person against whom a complaint is made (or the complainant) fails or omits to comply with any order made by the District Forum, the State Commission or the National Commission, as the case may be, such trader or person or complainant 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 two thousands rupees but which may extend to ten thousand rupees, or with both. Section 27-A provides for an appeal against the order passed under Section 27 of the Act.

10. Perusal of Section 27-A, extracted hereinabove, shows that notwithstanding anything contained in Cr.P.C. an appeal under section 27, both on facts and on law, lies before the National Commission when the order is made by the State Commission. Section 27-A does not make any distinction between interim order and the final order. In view thereof, it has to be held that the Petition is not maintainable before the High

Court challenging the order passed by the Commission. Hence, Petition fails and the same is dismissed on the ground of maintainability reserving liberty to the petitioner to approach appropriate forum. It is made clear that I have not examined the merits of the case. Order accordingly.

(R. G. KETKAR, J.)

Deshmane (PS)