

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

WRIT PETITION NO. 3646 OF 2016

Nitin Mehta & Ors.	...	Petitioners
V/s.		
Prashantkumar Vijaykumar Jain & Anr.	...	Respondents

**WITH
WRIT PETITION NO. 3648 OF 2016**

Nitin Mehta & Ors.	...	Petitioners
V/s.		
Shashankkumar Vijaykumar Jain & Anr.	...	Respondents

Ms.M.A. Ingale for the Petitioners.
Mr.V.V. Sonawane for Respondent No.1.
Mrs.M.M. Deshmukh, APP for Respondent No.2-State.

**CORAM : RANJIT MORE &
DR.SHALINI PHANSALKAR-JOSHI, JJ.**

DATE : 22nd FEBRUARY, 2017.

P.C. :

1] Heard Ms.Ingale, learned counsel for the Petitioners,
Mr.Sonawane, learned counsel for Respondent No.1 and
Mrs.Deshmukh, learned APP for Respondent No.2-State.

2] Both these petitions are filed for quashing the

proceedings under Section 27 of Consumer Protection Act initiated against the Petitioners vide Execution Application No.26 of 2009 in Ori. Complaint No.139 of 2006 and Execution Application No.27 of 2009 in Ori. Complaint No.140 of 2006.

3] The brief facts of the case are as follows;

Respondent No.1 filed a Consumer Complaint Nos.139 of 2016 and 140 of 2016 against the Petitioners claiming possession of the flat in-question or in the alternative, for compensation of Rs.40 Lakh for purchase of identical flat at the market rate and costs. These complaints was disposed of by the Division Bench of Maharashtra State Consumer Disputes Redressal Commission (State Commission) by the order dated 8th April, 2008. The operative part of the orders reads as follows;

“Order in Consumer Complaint Nos.139 of 2016

1. Complaint is partly allowed.
2. O.Ps are directed to hand over peaceful possession of flat no.1703 on 17th floor in B wing of Benzer Tower CTS No.167-A, Western Express Highway, Borivali (E), Mumbai to the complainant together with interest @9% p.a. for delayed possession from the date of respective payments till handing over possession of flat to the complainant.

OR

3. In the alternative, O.Ps are directed to pay to the complainant sum of Rs.4,40,000/- together with

interest @ 18% p.a. from the date of respective payments till realization to the complainant.

- 4. O.Ps are also directed to pay Rs.50,000/- as compensation for mental agony to the complainant and cost of Rs.5000/-.*
- 5. O.Ps shall comply the above order within 30 days from receipt of the order.*
- 6. Copies of the order herein be furnished to the parties”*

“Order in Consumer Complaint Nos.140 of 2016

- 1. Complaint is partly allowed.*
- 2. O.Ps are directed to hand over peaceful possession of flat no.1803 on 18th floor in B wing of Benzer Tower CTS No.167-A, Western Express Highway, Borivali (E), Mumbai to the complainant together with interest @9% p.a. for delayed possession from the date of respective payments till handing over possession of flat to the complainant.*

OR

- 3. In the alternative, O.Ps are directed to pay to the complainant sum of Rs.6,40,000/- together with interest @ 18% p.a. from the date of respective payments till realization to the complainant.*
- 4. O.Ps are also directed to pay Rs.50,000/- as compensation for mental agony to the complainant and cost of Rs.5000/-.*
- 5. O.Ps shall comply the above order within 30 days from receipt of the order.*
- 6. Copies of the order herein be furnished to the parties”*

4] The Petitioners has challenged these orders before the National Consumer Disputes Redressal Commission, New Delhi (National Commission) by filing Appeal Nos.453 of 2009 and 454 of

2009. The said appeals came to be dismissed by the order dated 1st March, 2012.

5] The Respondents also challenged the orders dated 8th April, 2008 passed by the State Commission by filing First Appeal Nos.245 of 2008 and 246 of 2008 for exercise of options before the National Commission. The National Commission has dismissed these appeals by making following observations in paragraph 6 of the order, which are as follows;

6. *“However, the question as to which of the two reliefs, the appellant would like to realize and enforce and which can be actually granted to them on the ground is for the executing forum to decide where such a prayer is made. We make it clear that we are not expressing any opinion on the availability and/or feasibility of the two alternative reliefs granted to the appellants and it would be open for the executing court to take a view in that behalf. With these observations, the appeals stand disposed of. The interim orders of this Commission dated 5.08.2008 restraining the opposite party builder to create any third party interest in the said flats allotted to the appellants shall remain in force for a period of eight weeks from the date of this order. Dasti to both the parties.”*

6] The Respondents, thereafter, initiated execution proceedings under before the State Commission and by the order dated 11th October, 2013, it is held that the Respondents/Original

Complainants are entitled to exercise of first option namely the relief pertaining to the possession of the flat.

7] Learned counsel for the Petitioners invited our attention to the various orders and submitted that the flat in-question was already transferred in the year 2003 by the Petitioners to third party. She also submits that the earlier orders passed by the State Commission shows that the parties were given liberty to adduce the evidence. She submits that the Petitioners are ready and willing to refund the amount to the Respondents as per the alternative option and, therefore, the execution proceedings will not survive and deserves to be quashed.

8] Learned counsel for the Respondents, however, strongly opposed the petition and submits that the first order of the State Commission, if read along with the observations made by the National Commission in paragraph 6, which is very clear, then liberty was given to the Executing Court and in pursuant of this liberty the Executing Court directed the Petitioners to hand over the flat to the Respondents.

9] Having considered the rival submissions, we are not

inclined to entertain these petitions by invoking the jurisdiction under Article 226 of the Constitution of India.

10] The State Commission by the order dated 8th April, 2008 directed the Petitioners to hand over the possession of the flat in question to the Respondents or in the alternative to refund the amount with interest. Both the parties namely the Petitioners as well as Respondents aggrieved by this order had approached National Commission. National Commission has dismissed the Petitioner's appeal. However, in Respondent's appeal, National Commission made observation that it is for the Executing Court to decide about the exercise of the option. In pursuant of this observation, the Executing Court came to the conclusion that Respondents are entitled to exercise first option namely pertaining to the possession of the flat.

11] The Executing Court also observed that the choice was given to the Respondents/Complainants and option was never given to the Petitioners/Builder. It was also held that inspite of the order of the status-quo, the Petitioner had created third party interest in the flat in-question.

12] Taking totality of the facts and circumstances, we do not find any error in the impugned orders and no reason to interfere in the impugned orders.

13] Therefore, both the Writ Petitions stands dismissed.

[DR.SHALINI PHANSALKAR-JOSHI, J.]

[RANJIT MORE, J.]