

**Circuit Bench of Calcutta High Court
at Jalpaiguri**

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sm **05.11.
2019**

C.O. 67 of 2019

**Avik Sanyal & Anr.
Versus
Subrata Dhar & Ors.**

**Mr. Sunil Kumar Sarkar.
.....for the petitioners.**

**Mr. Balai Banerjee,
Mr. Ajit Ghosh,
Mr. Dipayan Pathak.
.....for the opposite parties.**

Let affidavit of service be kept with the record.
Affidavit-in-opposition filed by the opposite parties is
taken on record.

The order dated 8th August, 2019 passed in
Complaint Case No. CC/19/2018 Subrata Dhar &
Ors. Vs. Avik Sanyal & Anr.

By the impugned order the Court rejected an
application of the revisionist who is a respondent in
the complaint.

The short facts of the case in this revisional
application are that the revisionists constructed 21
flats on land owned by them and sold to 21 different
persons. Two years after the sale, the flat owners
experienced water accumulation on the roof terrace of
the building. It is also found that only one septic tank
was there as opposed to two, proposed to be
constructed in the said building.

Six flat owners owning four flats approached the State Consumer Dispute Redressal Commission, West Bengal Siliguri Bench under the provisions of Consumer Protection Act, 1986 seeking relief for deficiency in service against the revisionist. It is also evident and clear that the relief sought, if allowed would benefits all the 21 flat owners.

The other beneficiaries of the order have not been made parties to the complaint. It is therefore, mandatory for the complainant to seek permission of the said Commission for instituting the said Compliant and proceeding therewith in terms of the provision of Section 21B (4) read with Section 13 (6). Section 13 (6) attracts the provisions of Order 1 Rule 8 of the Code of Civil Procedure. The revisionist relies the case of Rameshwar Prasad Shrivastava & Ors Vs. Dwarkadhis Projects Pvt. Ltd & Ors. reported in AIR 2019 Supreme Court 169. Particularly the paragraphs 11, 12 and 13 thereof are set out herein.

“11. A closer look at Section 2(I)(b) would show that under sub-clause (i) it is the consumer himself, as aggrieved persons who could be the complainant and maintain an action. Under sub-clause (iii), a voluntary organization or association may espouse the cause of such aggrieved person. Under sub-clause (iii) either the Central Government or the State Government may take up the matter as complainant. We are, however, concerned with the expression appearing in sub-clause (iv) which reads “one or more

consumers whether there are numerous consumers having the same interest”. This very expression finds incorporated in sub-clause (c) of Section 12 (1) with an addition following said expression, namely”....with the permission of the District Forum, on behalf of, or for the benefit of, all consumers so interested”.

12. Section 12 (1) thus in its substantive part says that a complaint may be filed with the District Forum by any of the four categories as mentioned in sub-causes ‘a’ to ‘d’. Since sub-clause (c) contemplates filing of such complaint. “....with the permission of the District Forum”, we will have to see the context and in what manner such permission is required to be taken in terms of the provisions of the Act. The answer is available in Section 13(6) of the Act which inter alia lays down that where the complaint is referable to Section 2 (1) (b) (iv), the provisions of Rule 8 of Order 1 of the First Schedule to the CPC, 1908 (Act 5 of 1908) shall apply subject to the modification that every reference therein to a suit or decree shall be construed as a reference to a complaint or the order of the District Forum thereon. The mandate, “shall apply” is quite significant.

13. the language used and the text in Section 13(6) is clear that wherever a complaint is filed by a complainant in the category referred to in Section 2(1)(b)(iv), the provisions of Order 1 Rule 8 CPC shall apply with the modification that reference to suit or decree shall be construed as reference to a complaint or order of the District Forum.

The expression “with the permission of the District Forum” as appearing in Section 12(1)(c) must be read along with Section 123(6) which provides the context and effect to said expression. In our view Sections 12(1)(c) and 13(6) are not independent but are to be read together and they form part of the same machinery.”

The aforesaid decision clearly applies to the instant case and the complaint filed by the opposite parties could not have been entertained without the leave under Order 1 Rule 8 and after following the procedure prescribed thereunder.

In those circumstances, the impugned order stands set aside and the matter is remanded back to the State Commission, Siliguri to consider granting leave to the opposite parties, if applied for, after following the procedure prescribed under Order 1 Rule 8 of the Code of Civil Procedure.

With the aforesaid observation the Revisional application stands disposed of. There would be no order as to cost.

Urgent Photostat certified copy of this order, if applied for, be given to the parties upon compliance of requisite formalities.

(Rajasekhar Mantha, J.)

