

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

WRIT PETITION (ST) NO. 13632 OF 2019

1 Jyotsna Nitin Mehta & Anr. ... Petitioners

Vs

1 Mrs. Jyotsna Pravin Shah & Ors. ... Respondents

Mr. Samir A. Vaidya for the Petitioners.

Mrs. Ashwini A. Purav, AGP for the Respondent No.3-State.

**CORAM : S.C. DHARMADHIKARI &
G.S. PATEL , JJ.**

TUESDAY, 18TH JUNE, 2019

P.C. :

1 The order under challenge is passed by the State Consumer Disputes Redressal Commission, Maharashtra State, Mumbai. It is stated that a Miscellaneous Application No.509 of 2018 has been disposed of on 23rd April, 2019.

2 It is stated that the order of 23rd April, 2019, could not have been challenged before any higher forum under the Consumer Protection Act, 1986, on account of vacation.

3 Further, this petition has been filed as there has been no compliance with the earlier directions of this Court. There is no verification of the title of the attached property. Therefore, the petitioner's grievance that the property, not belonging to the sole proprietary concern or her husband, who is the sole proprietor, has been attached wrongfully and illegally, remains unredressed.

4 The argument is that in such circumstances, this Court, in its jurisdiction under Article 226 of the Constitution of India, could have intervened and granted relief. That is how it is contended by Mr. Vaidya that the petition is maintainable. We are unable to accept his contentions for more than one reason. The first order, copy of which is at Exhibit-D page 73, in categorical terms says that the flat under attachment belongs to Mr. Nitin Mehta and Mrs. Jyotsna Nitin Mehta jointly. However, an application was made by the petitioner before us contending that the said Nitin Mehta had paid the flat price and not Mrs. Jyotsna Mehta. Her name is shown as joint owner. The Tehsildar was directed to proceed with the attachment and attach the flat with due notice to the petitioner as well. The flat was kept under

lock and seal and the keys of the flat were to be handed over to the Registrar (Legal) of the State Consumer Disputes Redressal Commission. This was in terms of the directions issued in Execution Application No. EA/16/67.

5 Then, what we have is an attempt made to approach this Court in its writ jurisdiction and urging before this Court in Writ Petition No.12970 of 2018 that the direction to lock the flat is contrary to law. This Court, in the first instance in the above Writ Petition on 22nd November, 2018, perused the order passed by the State Commission and recorded the fact that the petitioner before this Court claims to be the independent owner. The order of the Commission was then referred and the petitioner was permitted to make an appropriate application before the Commission and point out the case. That application be moved within two weeks from the date of this order. On 22nd November, 2018, the order of status quo as prevailing on that day, was passed.

6 Subsequent thereto, on 7th December, 2018, this Court recorded the fact that the State Commission's order can be

challenged and before the National Commission. The Court recorded the argument that the writ petition was not maintainable. It is urged, and on similar lines as in the first round, that the petitioner-wife is not party to the proceedings filed by the consumer. The State Commission has taken note of the fact that the petitioner is the joint owner and yet the Tehsildar has been asked to attach the flat. This is causing inconvenience to the petitioner who has a share in the property according to her.

7 However, even this petition, namely, Writ Petition No.12970 of 2018 was not kept pending by this Court. The liberty was given to move an appropriate application in the pending proceedings before the State Commission. It is to enable the petitioner to make such an application that the interim order was continued.

8, It is argued that such an application was indeed made but by the impugned order, the State Commission is expressing its reluctance to assist the petitioner in any manner. The petitioner's request to raise the attachment has also not been

considered is the grievance.

9 To our mind merely, because such a grievance is made and it is projected that the National Commission set up under the Consumer Protection Act, functional at Delhi, is presently on vacation, we cannot entertain the second writ petition on the same cause of action. We have, in fact, noted that the State Commission is agitated because the consumer, in whose favour it rendered the decision, is yet to obtain the fruits of it. That is simply because on merits, the order of the State Commission is challenged before the National Consumer Commission and on the own showing of the petitioner, that appeal is pending. Once that appeal before the National Commission, being First Appeal No.40/2017 is pending, we cannot entertain this petition.

10 The petitioner would have to move an appropriate application either in the pending proceedings before the National Commission or it can make a proper request before the executing court which is executing the order passed on the complaint of the consumer.

11 Looked at from any angle, we cannot entertain this
petition. It is entirely misconceived and it is dismissed.

12 At this stage, Mr. Vaidya says that the order passed by
this Court on 7th January, 2019, and continued in the present
May vacation by a Division Bench of this Court in this writ
petition, should operate for a period of four weeks at least to
enable the petitioner to approach the National Commission or the
State Commission. The request is that at least two weeks
continuation be granted since the National Commission is on
vacation and because there is an attachment order and in
execution proceedings.

13 We do not think that an attachment order can be
stayed and in the manner done or sought by the petitioner.
Eventually execution proceedings have their own place in the
scheme of law. A decree or order of a competent court cannot be
frustrated and defeated when the law has given that very court
the authority to enforce and execute it. In the circumstances, we
do not think that in execution proceedings the petitioner can
come forward and request any interim orders. These are

requested without any proper proceedings, proper pleadings and correct particulars. We do not think that on incomplete materials, it will be safe to believe the oral submissions for granting any status quo or continuation thereof. The request is, therefore, refused.

G.S. PATEL, J.

S.C. DHARMADHIKARI, J.