

CORAM : UJJAL BHUYAN, J.
DATE : NOVEMBER 08, 2019

Heard Mr. Patil, learned counsel for the petitioners.

“1 The Complaint of the Complainant is allowed.

2 The Opponents shall complete the construction of the building & by accepting the amount of consideration from the Complainant as per the agreement, the Opponents shall hand over the possession of the Flat & shall register the sale-deed.

3 The Opponents shall pay the amount of Rs.10,000/-

(Ten Thousand only) to the Complainant towards the metal torture.

- 4 The Opponents shall pay the amount of Rs.1000/- (One Thousand only) to the Complainant towards the cost of the complaint.”

6. With the grievance that the said order was not complied with for which respondents continued to suffer deficiency of service, respondents again filed complaint case No.259 of 2011 before the District Consumer Redressal Forum, Kolhapur.

7. Petitioners filed First Appeal No.A/11/914 before the State Consumer Disputes Redressal Commission, Maharashtra which was taken up alongwith another appeal, being First Appeal No.A/11/579 against the aforesaid order. It appears that at the appellate stage, parties reached a compromise. Following such compromise, the two appeals were disposed of on 21.06.2012 in the following terms:

“Both the appeals bearing nos.A/11/579 & A/11/914 are partly allowed.

The impugned order is maintained. However, to complete the construction of the flat and to hand over the possession, further time of 18 months from today is granted. Possession shall be habitable possession inter-alia including obtaining occupation/completion certificate, prior to handing over the possession. At the time of receiving the possession, the flat purchasers shall pay in lump sum the balance of consideration of 9 lakhs along with incidental charges as per agreement dated 11/09/2007. This amount shall not carry any interest.

In Appeal no.A/11/914 appellant to bear their own cost of the appeal and shall pay 25,000/- as costs to the respondents/org.complainants.

In A/11/579 both the parties shall bear their own costs.

Both the appeals stand disposed of accordingly.”

8. Respondents thereafter filed execution application for execution of the order dated 30.05.2011, which was registered as EP No.EP/11/259. In the execution proceeding, an order was passed by the District Consumer Disputes Redressal Forum, Kolhapur on 03.03.2018 permitting cross-examination of the complainants (respondents) by the

petitioners.

9. Aggrieved by the aforesaid, respondents filed Revision Petition No.62 of 2018 before the State Consumer Disputes Redressal Commission. The said revision petition was allowed on 22.03.2019 by directing the District Consumer Redressal Forum, Kolhapur to dispose of the execution application as early as possible while making it clear that a complainant under the Consumer Protection Act, 1986 cannot be treated like an accused in a criminal case and cannot be subjected to cross-examination in an execution proceeding for executing an order obtained by the complainant. It is against this order that the present writ petition has been filed.

10. Relevant portion of the order dated 22.03.2019 is extracted hereunder:

“[1] ... In other words, learned Forum below need not adopt technical approach as in the criminal trial such as to record complainant's evidence because a judicial order which is passed and which has attained finality in the complaint proceeding is cognizable by learned Forum below as it can take judicial notice of the same under the principles of Indian Evidence Act. The fact which is already proved or of which judicial notice can be taken of, need not be proved by the complainant. Therefore, impugned order to allow cross examination of the complainant, passed by the learned Forum below is contrary to section 27 of the Consumer Protection Act, 1986 for the reasons stated above. In our view, what is needed in such summary proceeding is to hear the accused, record his statement and to give him opportunity of hearing observing the principles of natural justice. Nothing more is required. Powers of Judicial Magistrate granted to the learned Forum are enabling powers and learned Forum must bear in mind the main object of the Consumer Protection Act, 1986 is to dispose of the execution proceeding speedily and expeditiously so that consumer need not await logical outcome of the final order for long time. That being so, we set aside impugned order and direct the learned Forum below to bear in mind the observations made above to dispose of the execution application bearing No.EA/11/259 by hearing the accused.

[2] At this stage, we are also informed that one of the accused i.e.Vinay Dattatray Dawjekar is no more living. Learned Forum below may allow amendment, if necessary

upon application made by the execution applicant to implead heirs or legal representative of Vinay Dattatray Dawjekar. Learned Forum below is at liberty to hear Balasaheb Hindurao Patil, Partner of Dudhsakhar Developers for to enforce the final order passed in complaint proceeding after recording statement of Shri.Balasaheb Hindurao Patil and finding as to whether final order is deliberately disobeyed by the accused or they failed to abide by the final order or omitted to abide by the final order without just and reasonable excuse. Accordingly, learned Forum to dispose of the execution application as early as possible. Revision petition is disposed of accordingly. No order as to costs. Parties to appear before the learned Forum below on scheduled date.”

11. On due consideration, Court is of the view that there is no error or infirmity in the order passed by the State Consumer Disputes Redressal Commission, Maharashtra.
12. This Petition is thoroughly misconceived and is liable to be dismissed.
13. Accordingly, the writ petition is dismissed.

(UJJAL BHUYAN, J.)

Minal Parab