

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRI WRIT PETITION NO. 4067 OF 2019

Sanjay Mishra

...Petitioner

Versus

The State of Maharashtra & ors.

...Respondents

Mr. U. P. Warunjikar, for the Petitioner.

Ms. Sangita Shinde, APP for the State/Respondent no.1.

Ms. Arpana Perira, for Respondent nos.2 and 3.

**CORAM: RANJIT MORE &
N. J. JAMADAR, JJ**

DATED: 23rd AUGUST, 2019

PC :-

1. Heard.
2. Respondent nos.2 and 3 have filed Complaints being No.190/2010 and 191/2010, respectively, before the Additional Consumer Disputes Redressal Forum ("Consumer Forum", for short), Mumbai Sub-urban District, against the petitioner, his father and Purvanchal Co-operative Credit Society Limited, Ghatkopar (West), Mumbai, for recovery of amounts of Rs.2,00,000/- and Rs.5,00,000/-, respectively, along with interest. It was the case of respondent nos.2 and 3 before the Consumer Forum that they kept said amounts in fixed deposits in Purvanchal Co-operative Credit Society Ltd. It was the case of respondent nos.2 and 3 that the

petitioner's father was a Director of the said Credit Co-operative Society and the petitioner was looking after the affairs of the said Credit Society.

3. Both the complaints were disposed of by the Consumer Forum by a common judgment and order dated 20th January, 2014. The petitioner, his father and the said Credit Society were, jointly and severally, directed to pay to respondent nos.2 and 3, the respective principal amount along with interest at the rate of 10% p.a. from the date of maturity till realization of the amount. The appeals filed by the petitioner and his father, being Appeal No.A/14/195 and A/14/196, against the said order, came to be dismissed by the State Consumer Commission, by order dated 11th June, 2015.

4. Respondent nos.2 and 3 in order to execute the order of the Consumer Forum adopted the remedies under Sections 25 and 27 of the Consumer Protection Act, 1986 ("the Act"). Under Section 25(3) a certificate of recovery to recover the aforesaid due amount from the petitioner, his father and the Credit Society, was obtained. However, the recovery certificates could not be executed. Respondent nos.2 and 3, thereafter, adopted procedure under Section 27 of the said Act. The petitioner or his father did not respond to those

proceedings despite repeated summons. Thereafter, Bailable and Non-Bailable Warrant were issued by the Consumer Forum. In pursuance of warrant issued by the Consumer Forum, the petitioner was arrested on 16th May, 2019 and produced before the Consumer Forum, which remanded him to custody, pending decision of execution applications.

5. The petitioner, thereafter, made an application before the Consumer Forum for enlargement on bail. The petitioner had also shown readiness and willingness to pay an amount of Rs.1,00,000/- and Rs.2,50,000/- to respondent nos.2 and 3, respectively, however, his prayer for bail was rejected as respondent nos.2 and 3 opposed the same. The petitioner, thereafter, preferred revision petitions before the State Commission, which also came to be dismissed.

6. The petitioner has, thus, approached this Court invoking the writ jurisdiction under Article 226 of the Constitution of India, *inter alia*, challenging the provisions of Section 27 of the Act being *ultra virus* Articles 14 and 21 of the Constitution of India. The petitioner has also challenged the aforesaid orders of the Consumer Forum as well as the State Commission.

7. Mr. Warunjikar submits that, at this stage, he does not

press the prayer challenging the constitutional validity of Section 27 of the Act.

8. Mr. Warunjikar, the learned Counsel for the petitioner makes a statement that the petitioner is ready and willing to deposit an amount Rs.7,00,000/- in this Court and he also states that he has no objection if the amount is allowed to be withdrawn by respondent nos.2 and 3.

9. Mr. Warunjikar has, in fact, tendered two Demand Drafts bearing D.D. No.308345 of Rs.5,00,000/- and D.D. No.308346 of Rs.2,00,000/-, dated 21st August, 2019, issued by Corporation Bank, Ghatkopar Branch, Mumbai, in favour of the Registrar, High Court, Bombay.

10. Mr. Warunjikar further submits that the petitioner will attend each and every date of the execution proceedings, under Section 27 of the Act, before the Consumer Forum. The statement is accepted as an undertaking to this Court.

11. In view of the above circumstances and since the petitioner is in jail since 16th May, 2019 in execution proceedings, under Section 27 of the Act, especially when the petitioner has tendered Demand Drafts in order to deposit principal amount of Rs.7,00,000/- and gave a solemn undertaking to remain present in the execution proceedings,

on each and every date, we dispose of this petition by passing the following order:

: Order :

- (1) The Registry to accept the Demand Drafts bearing D.D. No.308345 of Rs.5,00,000/- and D.D. No.308346 of Rs.2,00,000/-, dated 21st August, 2019, towards the payment of the principal amount under the complaints bearing No.190/2010 and 191/2010.
- (2) Respondent nos.2 and 3 are allowed to withdraw the amount of Rs.2,00,000/- and Rs.5,00,000/- respectively, deposited by the petitioner, by way of above Demand Drafts in the Registry of this Court.
- (3) The petitioner be released on bail, on furnishing PR Bond of Rs.10,000/-, each, in pending execution proceedings, bearing Execution Application No.17 of 2014 and Execution Application No.19 of 2014, arising out of complaints bearing No.190/2010 and 191/2010, before Additional Consumer Disputes Redressal Forum, Mumbai Sub-

urban District, under Section 27 of the Consumer Protection Act, 1986.

- (4) The petitioner shall remain present on each and every date before the Consumer Forum in Execution Application No.17 of 2014 and Execution Application No.19 of 2014.

12. All concerned shall act on an authenticated copy of this order.

[N. J. JAMADAR, J.]

[RANJIT MORE, J.]