

4th August,
2021
(AK)
15

C.O. 343 of 2020
IA No: CAN 1 of 2021

Smt. Manju Rani Patra
Vs.
Smt. Anjali Adak and others

(Via video conference)

Mr. Partha Pratim Roy
... For the Petitioner.

Despite service, none appears for the opposite parties.

Affidavit-of-service filed in court today be kept on record.

Learned counsel for the petitioner contends at the outset, on query of this court regarding jurisdiction of this court, that no revision under Section 21(b) of the Consumer Protection Act, 1986 is maintainable against an appellate order passed by the State Commission in connection with an execution proceeding before the district forum.

Learned counsel places reliance on the judgment of *Karnataka Housing Board vs. K.A. Nagamani* , reported at *AIR 2019 SC 2290* in support of such proposition.

By drawing analogy therefrom, learned counsel contends that, equally, a revisional application is not

maintainable before the State forum against an order passed by the district forum in an execution proceeding.

It is further contended that the impugned order was passed palpably without jurisdiction inasmuch as the District forum directed acceptance of penalty amount of Rs.2,75,500/-, payable by the award debtors/opposite parties, despite the sum awarded amounting to a much higher amount (Rs.3,62,500/- as per the petitioner's allegation).

However, it is evident from the ratio laid down in *Karnataka Housing Board* (supra) that the same is not applicable to the present case at all.

One cannot proceed on the premise of surmise on what a judgment could connote, although the facts of the reported citation were entirely different.

Undoubtedly, the Supreme Court held in the said report that no further revision lies against an appellate order passed by the State forum, arising out of an execution proceeding before the District forum.

However, such ratio cannot be used as an analogy to the State forum, since in the reported case itself, the State forum had been moved in appeal, the jurisdiction of which was not negated by the Supreme Court.

That apart, since the remedy of a revision before the State forum is equally efficacious and effective as the present application, if not more, it would not be advisable to entertain this application under Article 227 of the

Constitution of India, since such an order would open a flood-gate of challenges before this court unnecessarily, despite availability of an equally efficacious alternative remedy.

Although such remedy is not absolutely barred, it has been held by the Supreme Court time and again that the High Courts should apply a self-imposed restriction in exercising jurisdictions, where alternative remedies are available, and such interference is restricted to the small window of the rarest of rare cases.

No such exceptional case having been made out in the present instance, C.O. 343 of 2020 is dismissed as not maintainable, with liberty to the petitioner to approach the appropriate State forum challenging the order impugned herein.

Liberty is granted to the learned advocate for the petitioner to take back the certified copy of the impugned order, upon furnishing of a duly attested copy thereof as required by procedure.

CAN 1 of 2021 is also dismissed accordingly.

There will be no order as to costs.

Urgent website certified copies of this order, if applied for, be given to the parties upon compliance of all necessary formalities.

(Sabyasachi Bhattacharyya, J.)