

**In the High Court at Calcutta
Civil Revisional Jurisdiction
Appellate Side**

The Hon'ble Justice Sabyasachi Bhattacharyya

C.O. No.724 of 2021

**M/S K.S. Property Service and others
Vs.
Sri Sajal Kanti Majumdar and others**

For the petitioners	:	Mr. Sattwik Bhattacharyya, Mr. Aashutosh Bhattacharyya
For the opposite party no. 1	:	Mr. Uttiya Roy
Hearing concluded on	:	09.08.2021
Judgment on	:	16.08.2021

Sabyasachi Bhattacharyya, J:-

1. The judgment-debtors in an award passed by the District Consumer Forum and upheld in appeal by the State Commission have preferred the instant application under Article 227 of the Constitution of India. By the impugned order dated March 10, 2021, the District Forum, in connection with Execution Application No.12 of 2019, modified its previous order dated March 5, 2021, whereby the Inspector-in-Charge (IC) of the Burdwan Police Station was restrained from taking any coercive measure against the judgment-debtors, and the IC was

directed to execute and submit E.R. and warrant of arrest against the judgment-debtors.

2. The short backdrop of the case is that the complainant/opposite party no.1 had lodged a complaint before the District forum against the petitioners. The District Consumer Dispute Redressal Forum at Muchipara, Burdwan, by its award dated August 31, 2018, had allowed the said complaint, bearing Consumer Complaint No. 66 of 2017 on contest with costs, directing the revisionist petitioners to make over delivery of possession of a plot of land by effecting execution and registration of a deed of sale in favour of the complainant after receiving the residue amount of Rs. 2,79,000/- from the complainant within 60 days of the award. In default, the present petitioners were directed to refund the entire amount of Rs. 15,21,000/- to the complainant within 60 days from the award, with interest at the rate of 18% per annum from the date of filing of the case till realisation. The revisionist petitioners were further directed to pay compensation of Rs. 5,000/- for mental pain, agony and harassment and litigation costs of Rs. 2,000/- to the complainant, also within 60 days from the award, failing which the complainant was at liberty to put the entire award into execution as per provisions of law.
3. The revisionist petitioners preferred First Appeal No. A/16/2018 before the Asansol Circuit Bench of the West Bengal State Consumer Dispute Redressal Commission. However, the State Commission, vide

its judgment of order dated March 27, 2019, dismissed the petitioners' appeal on contest without any order as to costs.

4. Being thus aggrieved, the petitioners preferred a challenge before the National Commission.
5. Meanwhile, the opposite party no.1 initiated a proceeding under Sections 25 and 27 of the Consumer Protection Act, 1986 (hereinafter referred to as "the 1986 Act"), thereby giving rise to Execution Application No. 12 of 2019. In the said combined application under Sections 25 and 27 of the C.P. Act, the award holder/opposite party no.1 sought for a direction on the judgment-debtors to refund the amount of Rs. 15,21,000/- with interest and the other amounts as directed by the District Forum; in default to pass an order under Section 25 of the C.P. Act for attachment of the judgment-debtors' property. For further default, the opposite party no. 1 prayed for an order against the judgment-debtors under Section 27 of the C.P. Act for imprisonment for the period of 3 years and costs under Section 27 against the judgement-debtors for non-compliance of the order.
6. The execution case was being fixed for hearing and, vide order dated October 25, 2019 (at page 123 of the Revisional Application), the District Forum recorded that none appeared on behalf of the judgment-debtors/petitioners and that, on August 26, 2019, the learned counsel had filed a petition undertaking to appear by Vakalatnama on behalf of the judgement-debtors but on the next date, that is, October 25, 2019, no such Vakalatnama had been filed. It

was further observed that the judgment-debtors were reluctant to comply with the order of the Forum, for which the Forum was of the opinion that warrant of arrest should be issued against the judgment-debtors. The decree holders filed requisites for executing the warrant of arrest and the office was directed to issue such warrant of arrest.

- 7.** An application under Section 47 of the Code of Civil Procedure was filed thereafter by the revisionist petitioners.
- 8.** Vide order no. 13 dated November 3, 2019 passed in E.A. No. 12 of 2019, the District Forum closed hearing on the same and fixed October 18, 2020 for passing order.
- 9.** On November 24, 2020, January 11, 2021, January 18, 2021 and January 29, 2021 the matter was adjourned on various grounds. Both the sides were directed to attend court on the next date fixed.
- 10.** Vide order no. 22 dated March 5, 2021, a direction was passed on a put-up petition, in the presence of the complainant as well as the judgment-debtors, on the I.C., Burdwan Police Station, restraining the I.C. from taking any coercive measure against the judgment-debtors till the next date, that is, April 23, 2021.
- 11.** However, vide order no. 23 dated March 10, 2021, the order dated March 5, 2021 was modified and the I.C. was directed to execute and submit E.R. in respect of the warrant of arrest issued against the judgment-debtor. The present revision has been filed against order no. 23 dated March 10, 2021.

- 12.** Learned counsel appearing for the judgment-debtors/petitioners contends that the District Forum acted without jurisdiction in directing warrant of arrest to be issued against the petitioners by invoking Section 27 of the C.P. Act, without first exhausting the procedure laid down in Section 25 of the said Act for execution of awards.
- 13.** Placing reliance on the judgment of *RajdeepLaha & others Vs. The State of West Bengal & ors.*, rendered by a coordinate Bench of this court in W.P. No. 17282(W) of 2019, learned counsel for the petitioners argues that the availability of an alternative remedy is not an absolute bar to exercise the jurisdiction of High Courts under Articles 226 and 227 of the Constitution of India.
- 14.** In the said judgment, it is contended, the learned Single Judge had held that the State Commission acted without jurisdiction in directing the Officer-in-Charge of the Jadavpore Police Station to assist the Advocate Commissioner in handing over possession of the owners' allocated portion as per Deed of Agreement dated November 8, 2007, under Sections 25 and 27 of the C.P. Act, since such direction could not be issued under the said provisions.
- 15.** The learned Single Judge interfered with such order and set aside the same under Article 227 of the Constitution of India.
- 16.** Learned counsel next places reliance on another co-ordinate bench judgment of this Court dated March 4, 2020, passed in *C.O. No.109 of 2020* in the case of *Hirak Nath Sounth Vs. Alok Kumar Sen and*

another, wherein the learned Single Judge had followed the ratio of *Rajdeep Laha*(supra) and set aside the order of issuance of warrant of arrest against the petitioner therein, who was not a party to the proceeding in which the final order was passed, and thereafter directed an attachment of his own residential house with a further direction of sale in default.

17. It was laid down in both the said judgments that the Commission, being a creature of the statute, cannot travel beyond the powers granted to it under the C.P. Act and cannot pass orders in the execution of a final order as if the same was a decree of the civil court.
18. Learned counsel next relies upon a Division Bench judgment of this Court, reported at 2019 (2) CHN 144 (*M/s Universal Consortium of Engineers (P) Ltd. and another Vs. State of West Bengal*), wherein the Division Bench reiterated that the availability of an alternative remedy in the Forum or a challenge before the National Commission was not an absolute bar to the exercise of the powers vested in this Court under Article 226 of the Constitution of India.
19. On the other hand, learned counsel appearing for the award-holder/opposite party no.1 cites *State of Karnataka Vs. Vishwabharathi House Building Co-op. Society and others*, reported at (2003) 2 SCC 412, in support of the proposition that Section 27 of the C.P. Act confers an additional power upon the Forum and the Commission to execute its order and is akin to Order XXXIX Rule 2A of the Code of Civil Procedure or the provisions of the Contempt of Courts Act or Section 51, read with Order XXI Rule 37, of the Code of

Civil Procedure. Section 25, it was held, should be read in conjunction with Section 27 and that the cardinal principle of interpretation of statute is that courts or tribunals must be held to possess power to execute their own order and to implement such order.

20. Learned counsel for the opposite party next cites another judgment of the Supreme Court, reported at 2015 (2) Cal, H.C.N. 33 (*Kamlesh Aggarwal Vs. Narin Singh Debdas and another*), wherein it was held that, apart from initiating proceedings under Section 27 of the Act, the alternative right is also available to the award-debtor to execute the order of the District Forum by invoking the provisions under Order XXI Rule 32 of the Code of Civil Procedure for seeking direction to the respondents to get a sale deed executed and registered. Such execution was permissible in law, it was held.
21. Learned counsel next cites an unreported judgment of a learned Single Judge of the Madras High Court (Madurai Bench) rendered on December 20, 2018 in *Sri Aadhithyya Finance and another Vs. K.S. Alagarsamy*, for the proposition that, in view of availability of an Arbitrator under Section 17(1)(b) of the C.P. Act, the petitioners therein were to approach the State Commission and not the High Court under Article 227 of the Constitution of India. When there is an effective and efficacious remedy available to the petitioners, the general powers under Article 226 and 227 of the Constitution, it was held, cannot be invoked.

- 22.** Learned counsel for the opposite party no.1 next cites a judgment of the National Consumer Disputes Redressal Commission, reported at *2015 (1) CPH 109 (Shreenath Corporation and others Vs. Nilkamal V. Patel and another)*, wherein the National Commissioner had held that the C.P. Act aims to protect the economic interest of a consumer as understood in common sense and the purpose of the Act is to provide speedy relief to the consumer. The Act has to be interpreted in consonance with the said objective and an unscrupulous defaulter, it was held, cannot deny the rightful dues of a consumer merely by filing an appeal, howsoever meritless it may be, to dispose of his assets, so as to avoid enforcement under Section 25 of the Act and then there can be the final provisions of Section 27 of the Act by pleading mere pendency of the appeal.
- 23.** It is further contended by learned counsel for the opposite party that, in view of the proposition laid down in the judgments cited by him, the powers conferred on the Forum under Section 27 of the C.P. Act was in addition to and not in derogation of the power of execution under Section 25 of the said Act. It is submitted that the District Forum was well within its jurisdiction in directing issuance of warrant of arrest in view of the recalcitrant attitude of the judgment-debtors in avoiding execution of the award.
- 24.** Learned counsel for the opposite party no.1 further argues that no application under Section 47 of the Code of Civil Procedure is maintainable in a proceeding for execution under Section 25 and 27 of the C.P. Act.

25. Learned counsel for the opposite party no.1 also relies on a Single-Judge decision of this Court rendered on November 14, 2019 in *Prakash Baran Mishra Vs. ICICI Lombard General Insurance Company and another*, in support of the proposition that, in view of availability of an alternative remedy under Section 21(b) of the 1986 Act to be exercised its revisional powers, the application under Article 227 of the Constitution was not maintainable.
26. In reply, learned counsel for the petitioners contends that the co-ordinate bench of this Court had considered both the Supreme Court judgments cited by opposite party no.1 in *Rajdeep Laha* (supra) and had arrived at the finding that the exercise of power under Section 27 of the C.P. Act was beyond jurisdiction.
27. It is further contended by the petitioners that the petitioners were merely agents of the land owners, who were to execute the sale deed as per the award of the District Forum and, as such, could not be subjected and arrest warrant for alleged violation of such award.
28. That apart, learned counsel for the petitioners submits, there was no necessity for issuing a warrant of arrest and when the petitioners appeared before the District Forum on repeated occasions.
29. Upon considering the respective contentions of the parties, a consideration of the respective scopes of Sections 25 and 27 of the C.P. Act becomes necessary.
30. The said provisions are quoted below:

“25. Enforcement of orders of the District forum, the State Commission or the National Commission.—(1) Where

an interim order made under this Act is not complied with, the District Forum or the State Commission or the National Commission, as the case may be, may order the property of the person, not complying with such order to be attached.

(2) No attachment made under sub-section (1) shall remain in force for more than three months at the end of which, if the non-compliance continues, the property attached may be sold and out of the proceeds thereof, the District Forum or the State Commission or the National Commission may award such damages as it thinks fit to the complainant and shall pay the balance, if any, to the party entitled thereto.

(3) Where any amount is due from any person under an order made by a District Forum, State Commission or the National Commission, as the case may be, the person entitled to the amount may make an application to the District Forum, the State Commission or the National Commission, as the case may be, and such District Forum or the State Commission or the National Commission may issue a certificate for the said amount to the Collector of the district (by whatever name called) and the Collector shall proceed to recover the amount in the same manner as arrears of land revenue.”

“27. Penalties.—*(1) Where a trader or a person against whom a complaint is made [or the complainant] fails or omits to comply with any order made by the District Forum, the State Commission or the National Commission, as the case may be, such trader or person [or complainant] shall be punishable with imprisonment for a term which shall not be less than one month but which may extend to three years, or with fine which shall not be less than two thousands rupees but which may extend to ten thousand rupees, or with both:*

(2) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the District Forum or the State Commission or the National Commission, as the case may be, shall have the power of a Judicial Magistrate of the first

class for the trial of offences under this Act, and on such conferment of powers, the District Forum or the State Commission or the National Commission, as the case may be, on whom the powers are so conferred, shall be deemed to be a Judicial Magistrate, of the first class for the purpose of the Code of Criminal Procedure, 1973 (2 of 1974).

(3) All offences under this Act may be tried summarily by the District Forum or the State Commission or the National Commission, as the case may be.”

- 31.** Section 27A of the Act provides an appeal against orders passed under Section 27, both on facts and on law, before the appropriate appellate forum.
- 32.** Certain key aspects of the matter come to light upon a consideration of the cited judgments and the respective contentions of the parties.
- 33.** It is evident from *Rajdeep Laha* (supra), followed in *Hirak Nath Sounth* (supra), although on a different footing, that the scope of Sections 25 and 27 of the 1986 Act was discussed therein and the learned Single Judge was of the clear opinion that the authorities, being creatures of statute, cannot travel beyond the provisions of the statute which created them. In *Rajdeep Laha* (supra), the learned Single Judge was pleased to find that the order was *de hors* the parameters of Sections 25 and 27 of the Act.
- 34.** Even a perusal of the aforesaid Sections, in conjunction, indicates that the scope of operation of Sections 25 and 27 are in addition to each other. While Section 25 contemplates the procedure for

enforcement of orders of the Forum, Section 27 deals with penalties for non-compliance of such orders.

- 35.** However, it cannot be overlooked that the parent provision for enforcement is Section 25 and not Section 27. In the event it is held that Section 27 can be resorted to even prior to exhausting the procedure laid down in Section 25 in applications for enforcement of such orders, Section 25 would be rendered superfluous and academic. There would not be any scope, in such a case, of invoking Section 25 at all. All award-holders would take recourse to the provisions of Section 27 directly, seeking imprisonment or fine as stipulated therein.
- 36.** However, such an absurd interpretation can be obviated if the respective scopes of operation of the said provisions are looked into, independently of each other.
- 37.** While Section 27 is of penal nature, it is not a remedy available to the award-holder for implementation of the decree as such but merely provides for punishment for non-compliance, in the nature of contempt under the Contempt of Courts Act or Order XXXIX Rule 2-A or Section 51, read with Order XXI Rule 37, of the Code of Civil Procedure.
- 38.** *State of Karnataka Vs. Vishwabharathi House Building Co-op. Society* (supra) reiterates such proposition and comes to the conclusion that Section 27 of the 1986 Act confers an additional power upon the

Forum to execute its order. However, in paragraph no. 57 of the same report, the scope of Section 25 was also discussed and it was observed that the same created a legal fiction to the effect that an order made by the District Forum or State or National Commissions will be deemed to be a decree or order made by a Civil Court in a suit. Such legal fiction, it was further held, had a specific purpose, that is execution of the order passed by the Forum or Commission.

39. A perusal of Section 25 itself indicates that the detailed procedure for enforcement of such an order is prescribed therein. There are several stages of enforcement. At the first instance, the Forum or Commission may order the property of the person, not complying with such order, to be attached as per sub-section (1) of Section 25. Sub-section (2) specifies that such attachment shall remain in force only for three months at the end which, if the non-compliance continues, the attached property may be sold and out of the proceeds thereof, the Forum or Commission may award such damages as it thinks fit to the complainant and shall pay the balance, if any, to the party entitled thereto.
40. Sub-section (3) goes one step further and provides that, where any amount also is due from any person in an order, made by the Forum/Commission, the person entitled to the amount may apply before the Forum/Commission, the latter then issuing a certificate of such amount to the Collector of the District. The Collector shall then

proceed to recover the amount in the same manner as arrears of land revenue.

41. In view of such multi-stage modalities, being clearly specified for enforcement of the award by recovery of the amount due in Section 25, it would be superfluous and unnecessary to invoke Section 27 for the purpose of such enforcement of such order by way of recovery of the amount due.
42. Penalties, as envisaged in Section 27, are not appropriate mode for recovery of the amount and implementation of the order of the Forum/Commission thereby. Rather, Section 27 deals with penal action against the award-debtor in case of violation, by way of imprisonment and/or fine.
43. Thus, whereas Section 25 is the specific provision provided in the statute for enforcement of the awards of Forum/Commission by recovery of money, Section 27 merely contemplates penal measures in addition thereto and does not culminate in implementing the order by recovering such amount.
44. Hence, the appropriate course of action for execution/implementation of an order is under Section 25, and not Section 27, of the 1986 Act.
45. As far as *Kamlesh Aggarwal* (supra) is concerned, the same was dealt with and interpreted in *Rajdeep Laha* (supra) by a co-ordinate bench of this Court. That apart, the ratio laid down therein does not throw light on the question raised in the present matter, that is, whether an

order can be executed by virtue of Section 27 without exhausting the provisions of Section 25 of the 1986 Act. Moreover, such ratio has been diluted in *Rajdeep Laha* (supra) on the ground of introduction of the subsequent Amendment to the Act.

46. Insofar as *State of Karnataka Vs. Vishwabharathi House Building Co-op. Society* (supra) is concerned, the same was rendered in a different context. The question which fell for consideration therein was the constitutionality of the Consumer Protection Act, 1986. In such context, the Supreme Court observed that Section 27 of the Act also confers an additional power upon the Forum to execute its order, over and above Section 25. However, it was not considered in the said judgment as to whether Section 27 can be invoked directly to bypass the provisions of Section 25 insofar as implementation of the order of the Forum/Commission is concerned.
47. In *Sri Aadhithyya Finance* (supra), the learned Single Judge of the Madras High Court (Madurai Bench) held that, where appellate powers are provided under the Consumer Protection Act, the general powers under Articles 226 and 227 of the Constitution of India cannot be invoked. However, such proposition has been diluted by the Division Bench of our Court, rendered in *M/s Universal Consortium of Engineers (P) Ltd.* (supra) as well as *Rajdeep Laha* (supra), passed by a co-ordinate Bench, both of which specifically came to the conclusion that an alternative remedy was not an absolute bar to the exercise of

the power of this court under Articles 226 and 227 of the Constitution of India.

48. In *Prakash Baran Mishra* (supra), this Court had decided the maintainability issue against the petitioner in view of availability of the alternative forum, in the facts and circumstances of the said case. However, it was notheld in the said judgment that the availability of an alternative remedy is an absolute bar to the exercise of the powers of the High Court under Articles 226 and 227 of the Constitution.
49. Insofar as *Shreenath Corporation* (supra) is concerned, the ratio laid down by the National Consumer Disputes Redressal Commission of New Delhi therein, although having persuasive value, cannot be said to be binding in the present context, insofar as the finding of the National Commission was within the periphery of the 1986 Act, which cannot circumscribe the powers conferred on the High Court under Articles 226 and 227 of the Constitution of India.
50. Moreover, the moot question which fell for consideration therein was whether the order of the State Commission becomes final in terms of Section 24 of the 1986 Act till the time appeals against the parent award are pending and consequently proceedings under Section 26 of the Act can be initiated.
51. In such perspective, the National Commission observed that the purpose of the Act was to provide speedy relief to the consumer and, merely by filing an appeal, howsoever meritless it may be, the award-

debtor cannot escape enforcement under Section 25 of the Act and the provisions of Section 27 thereof.

52. In paragraph no.9 of the said decision, a clear line was drawn in describing Section 25, which was stated to be for enforcement of the orders of the Forum/Commission and Section 27, which was observed to be a penal provision.
53. Thus, the said decision does not come to the aid of the proposition of the present opposite parties, that Section 27 can be used as an alternative to Section 25, insofar as implementation of an award of the Forum/Commission is concerned.
54. Moreover, in the present case, there was no parent order under Section 27 of the 1986 Act, to justify the issuance of a warrant of arrest against the decree-holder/petitioners. In the absence of an adjudication under Section 27, such issuance of warrant to ensure presence of any parties was *de hors* the law.
55. Over and above such illegality, the impugned order of issuance of arrest warrant against the petitioners is vitiated in view of the previous appearance of the petitioners in connection with the execution application before the Forum on several occasions. Once the defaulting party appears before the Forum, the justification behind the issuance of a warrant of arrest to ensure presence of such party pales into insignificance. The impugned order was passed beyond the jurisdiction of the Forum on such score as well.

- 56.** In the present case, a composite application under Sections 25 and 27 of the 1986 Act was made. However, the said two sections retain their independent scope of operation and cannot be used as substitutes of each other. The specific modality provided in Section 25 ought to have been exhausted by the Forum for execution of its order, before taking resort to issuance of a warrant of arrest unnecessarily.
- 57.** Even from a different perspective, the impugned order directing arrest warrant to be issued was not passed within the contemplation of Section 27, which envisages an order of imprisonment and/or fine and does not deal with issuance of arrest warrants to ensure appearance of parties, particularly when they have already entered appearance before the Forum.
- 58.** Hence, the impugned order was passed by the District Forum palpably without jurisdiction.
- 59.** Accordingly, C.O. No.724 of 2021 is allowed, thereby setting aside Order No.23 dated March 10, 2021 passed by the District Consumer Disputes Redressal Commission, Purba Bardhaman in rejecting/modifying its order dated March 5, 2021 passed in M.A. No.52 of 2020, in connection with E.A. No.12 of 2019.
- 60.** The warrant of arrest issued by the impugned order, thus, stands recalled.

61. The District Forum is requested, however, to expedite the hearing of the execution application as well as all connected interlocutory applications.
62. There will be no order as to costs.
63. Urgent certified copies of this order shall be supplied to the parties applying for the same, upon due compliance of all requisite formalities.

(**Sabyasachi Bhattacharyya, J.**)