

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

APPLICATION (APPW) NO. 126/2021 IN
CRIMINAL WRIT PETITION NO. 601/2019
(DECIDED ON 23.07.2020)

(M/s Aditya Developers Vs. Manish Ranganath Thorat)

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders

Shri A. C. & C. B. Dharmadhikari, Advocates for applicant.
Ms. Swati Pauranik, Advocate for respondent.

CORAM : VINAY JOSHI, J.
DATE : 24.09. 2021.

Heard.

2. This is an application seeking clarification of order of this Court dated 23.07.2020 passed in Criminal Writ Petition No. 601/2021. At the inception, it is to be noted that the entire tenor of the application is nothing but seeking review of the order which has been coloured as an application for seeking clarification of the order.

3. Be that as it may, the Criminal Writ Petition No. 601/2019 was filed by the applicant (M/s. Aditya Developers) challenging the order passed in

2

First Appeal No. A/18/365 by the State Consumer Disputes Redressal Commission (State Commission) dated 25.06.2019. To state in brief, application No. 13/55 was filed by the respondent Consumer under Section 27 of the Consumer Protection Act 1986 ('Act of 1986') against Ms/ Aditya Developers alleging non-compliance of its order dated 17.01.2017. The Additional District Consumer Disputes Redressal Forum, Nagpur (District Forum) vide its order dated 09.08.2018 has acquitted M/s Aditya Developers for the offence punishable under Section 27 of the Act of 1986 on the ground that the application was barred by limitation. Feeling aggrieved by said decision, consumer Manish Thorat filed First Appeal No. A/18/365 to State Commission. Upon hearing both sides, the State Commission was pleased to remit the matter back to the District Forum for passing fresh order on merits in accordance with law. The State Commission while remanding matter observed that the District Forum has not recorded judicial finding as to whether there is willful omission or deliberate disobedience by the opposite party i.e. M/s Aditya Developers.

3

4. While challenging the said order in Writ Petition, the issue of limitation as well as other factual aspects regarding executability of the order of District Forum was questioned. This Court has elaborately dealt with the matter. So far as the objection regarding limitation is concerned, this Court has expressed (para 14) that in writ jurisdiction said challenge cannot be entertained since the matter is remanded by the State Commission for fresh adjudication. As regards to other challenges are concerned, on due deliberation, this Court expressed that the view taken by the State Commission that there is no judicial finding on the material issue is well justifiable. With such observation, it is stated that no error was committed by the State Commission and therefore, the order of remand was not disturbed by dismissing the writ petition.

5. I have heard learned counsel for the applicant (M/s Aditya Developers) and gone through the entire application which was clothed as application for clarification though in-fact it was for seeking review of the order of this Court. The entire reading of application in no uncertain term conveys that the

4

applicant is agitating all the grounds which are available to him for justifying the order of dismissal of complaint filed under Section 27 of the Act of 1986 by the District Forum. Several grounds pertaining to the merits have been re-agitated ultimately seeking for dismissal of First Appeal No. A/18/365 passed by the State Commission. However, while making submission, it has been argued that after remand, the Trial Court i.e. District Forum may get influenced by the finding recorded by the State Commission which needs clarification. Though it is urged for clarification, however, the entire application is silent as to what sort of clarification is sought for. It is submitted that the State Commission while remanding the matter, directed to record judicial finding as to whether there is willful disobedience by the opposite party (M/s Aditya Developers). According to him, the initial order dated 17.01.2007 casts obligation on both sides therefore, the District Forum has to see whether there is breach on the part of consumer also. In-fact, interpretation of order dated 17.01.2007 is matter for fresh consideration.

5

6. Obviously, while assessing the matter from the point whether there is disobedience of order on the part of M/s Aditya Developers, the District Forum has to look whether Ms/ Aditya Develops was justified in non-compliance for valid reasons. So, it is integral part of assessing the matter to find out whether there is disobedience on the part of M/s Aditya Developers. Inasmuch as, the State Commission has directed to pass the order on merits in accordance with law. It has not restricted the scope to see the disobedience only from the view point of M/s Aditya Developers. The order passed by the State Commission is self-explanatory. In Writ Petition this Court has not expressed any opinion on the point of merit, however justified the order of remand for fresh consideration. Therefore, I do not find any error apparent in the order passed by this Court in Writ Petition.

7. The scope of review is quite limited. Mistake apparent on the face of the record cannot mean error which has to be fished out and searched. A review is by no means an appeal in disguise. Under clog of review or so-called clarification, this Court

6

cannot re-examine its own order by sitting in appeal therefore, I do not find any reason to entertain this application which in-fact, has no specific prayer at all.

8. In view of above, application being devoid of merits, stands rejected and disposed of.

JUDGE

Gohane.