

**IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE**

PRESENT:

THE HON'BLE JUSTICE AJOY KUMAR MUKHERJEE

C.O. 1663 of 2021

**M/s Somadhan Properties
Vs.
Pulak Kumar Bera**

For the Petitioner : Mr. Pratip Mukherjee
Mr. Omar Farun Gazi
Mr. Amarnath Agarwal

For the Opposite parties : Mr. Amit Ranjan Pati
: Ms. Priyanka Das

Heard on : 26.09.2022

Judgment on : 04.11.2022

Ajoy Kumar Mukherjee, J.

1. Being aggrieved and dissatisfied with the order No. 14 dated 06.04.2021 passed by the learned presiding member of the West Bengal State Consumer Disputes Redressal Commission, Kolkata in Execution application No. EA/79 of 2018 arising out of the Complaint Case No. CC/292/2015, present revisional application has been preferred. Petitioner contended that the opposite party herein filed complaint case No. CC/292/2015 before the Hon'ble

West Bengal State consumer Disputes Redressal Commission, Kolkata and said complaint case was decreed against present petitioner on 19.02.2018 by the said Commission, Kolkata. The opposite party herein had filed the execution application being EA 79/2018 before the said commission and the commission vide order no. 3 dated 08.01.2019 was pleased to issue warrant of arrest against petitioner in said execution application no. 79/2018 and the said order is followed in order no. 5 dated 27.03.2019. The petitioner was accordingly arrested on 27.05.2019 and was produced before the commission and commission remanded the petitioner and on 29.05.2019 the commission was pleased to release the petitioner on PR Bond of Rs. 5,00,000/-. Subsequently petitioner was again arrested on 05.01.2019 and was produced before the commission and the commission again remanded the petitioner in custody. On 26.11.2019 the state commission was pleased to release the petitioner on PR Bond of Rs. 50,00,000/-. By the impugned order no. 14 dated 06.04.2021 the commission was pleased to issue warrant of arrest against the petitioner arising out of the aforesaid complaint case no. CC 292/2015.

2. Mr. Pratip Mukherjee learned counsel appearing on behalf of the petitioner submitted that the commission did not consider the Covid-19 Pandemic situation and the nationwide lockdown which continued for more than 8 months during the first wave and also the situation arose during second wave. Continuous lockdown in the nation and out-break of pandemic Covid - 19, the Global economy was seriously affected and it was not possible for the petitioner to arrange for Rs. 7,00,000/- in every two months . The commission without considering the said situation had mechanically proceeded to issue an

order of warrant of arrest for production of the petitioner in satisfaction of the judgment and decree passed by the commission in CC 292/2015.

3. Mr. Pratip Mukherjee further submits that it is no more *res integra* that the Hon'ble State Commission has no power to issue a direction for issuance of warrant of arrest in view of judgment in WP No. 17282 (W) 2019 passed by this court and Hon'ble commission has exceeded his jurisdiction in passing the impugned order dated 06.04.2021. He further contended that the impugned order is bad in law as no opportunity was given to petitioner herein. In this context he also relied upon the observation made by this court in aforesaid **Rajdeep Laha and others Vs. The State of West Bengal and others** W.P. No. 17282 (W)/2019.

4. The learned counsel appearing on behalf of the opposite party submits that under section 13(5) of Consumer protection Act 1986, every proceeding before the forum shall be deemed to be a judicial proceedings within the meaning of section 193 and 228 of the I.P.C. and district forum shall be deemed to be a civil court for the purpose of section 195 chapter XXVI of the Code of Criminal Procedure. He further contended that accordingly the commission was justified in issuing the warrant of arrest against the petitioner, who has intentionally avoided the forum by not paying the amount as directed by the commission and as such the order impugned does not require any interference.

5. Needless to say that sections 25 and 27 of the Act provides for speedy enforcement of the orders of the forum or commission, which are in the nature of execution proceedings of the orders made by the Redressal authority.

Section 25 of the Act provides for enforcement of such orders by a civil process, as if they are decree or order of civil court, whereas section 27 of the Act confers a quasi criminal sanction for their enforcement by way of punishment with imprisonment or imposition of monetary penalties. Accordingly section 25 should be read in conjunction with section 27. There is no other provision for execution in the act nor there is any rule. Section 25 is divided in two parts, the first part relates to interim order passed under the authority of section 13 (3B) while second part relates to recovery of money ordered to be paid to the applicant by the adversary. Sub-section (1) & (2) speak of attachment and sale of the property of the opposite party who has contravened the interim order. The relevant provisions for attachment and sale are provided in order 21 rule 41 to 106 of civil procedure code. No procedure for either attachment or sale has been provided in section 25 of the consumer protection Act which is also not subsequented by any rule. In the present case where the opposite party who is bound by the interim order, failed to comply with the order during the period of its substance, the commission in my opinion should have passed the order for attachment of his property. Though sub-section (1) of section 25 does not indicate whether the attachment can be passed ex-parte or not, still it is desirable that the commission should pass an order of attachment after giving an opportunity to the opposite party of being heard.

6. In a similar context in **L & T Finance Limited Vs. Pramod Kumar Rana and another** reported in **(2021) SCC OnLine SC 1124** the national commission was pleased to issue bailable warrant for producing the opposite party before the National Commission on 18.10.2021. In the said proceeding

Hon'ble Apex Court was pleased to held “ *Be that it may, even the review application against the order dated 26.08.2021 is pending before the Tribunal . Therefore, in the facts and circumstances of the case, issuance of the bailable warrants against Shri Dinanath Mohandas Dubhashi, the Director of original opposite party No. 2 was not warranted at this stage. Bailable warrants are to be issued as a last resort and only in a case where it is found that the opponent parties are not co-operating at all and that they are avoiding appearance before the national Commission deliberately and/or they are not represented at all either through their authorized representative or through their counsel.*”

7. In view of aforesaid provisions of law and in view of the clear finding of the Apex Court, that bailable warrants are to be issued by the commission as a last resort, I am of the view that the commission was not justified in issuing bailable warrant without exhausting process of attachment for not complying the order of the commission regarding payment of money as ordered by the commission.

8. In view of above and for the reasons stated above the order no. 14 dated 06.04.2021 passed by West Bengal State Consumer Disputes Redressal Commission, Kolkata directing issuance of bailable warrant against the present petitioner is hereby set aside. However, it will be open for the commission to pass further order including attachment of property after giving opportunity to both the parties to represent their case relating to non-payment and or for non appearance before the commission. It will also be open for the state commission to pass necessary direction to require presence of the present petitioner, if required, in future after compliance of the provisions

contemplated in section 25 of the consumer protection Act read with the relevant provisions of the Code of the Civil Procedure. It is made clear that I have not expressed anything in favour of either of the parties, on the allegations made in the application and present application is allowed to the aforesaid extent only.

9. C.O. 1663 of 2021 is accordingly allowed.

However there will be no order as to costs.

Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(AJAY KUMAR MUKHERJEE, J.)