Form J(1) **IN THE HIGH COURT AT CALCUTTA**

Criminal Revisional Jurisdiction

Appellate Side

Present :

The Hon'ble Justice Bibek Chaudhuri

CRR 2955 of 2022

Samasth Infotainment Pvt. Ltd. and Ors.

Vs.

The State of West Bengal & Ors.

For the Petitioners : Mr. Rajdeep Majumder
Mr. Moyukh Mukherjee
Mr. Pritam Ray
Mr. Abhijit Singh

Heard & Judgment on: 12.08.2022

Bibek Chaudhuri, J.

This is an application under Section 397/401 read with Section 482 of the Code of Criminal Procedure. Applying the ratio laid down in **Ibrat Faizan versus Omaxe Buildhome Private Limited (Civil Appeal No.3072 of 2022)**, decided on 13th May, 2022, this application is treated as an application under Article 227 of the Constitution of India for determination of issues of law involved in the instant revision.

Before embarking upon the legal issues it would be profitable to succinctly describe the factual background.

The opposite party Nos. 2 to 4 filed a consumer complaint which was registered as Case No.45 of 2021 against the petitioners before the District Consumer Disputes Redressal Commission (DCDRC) praying for the following reliefs:-

(a) A direction upon the Opposite Parties to hand over the possession of the said flats and car parking spaces after taking the balance consideration amount from the complainant. The complainants are ready to pay the balance amount as per agreement.

(b) A direction upon the Opposite Parties to do the Registration of the said flats and also the said car parking spaces

And

In the alternative Registration through the machineries of this Ld. Forum.

(c) A direction to the Opposite Party to pay a compensation amount for Rs.Thirty (30) lakhs for demanding GST, interest etc. illegally from the complainants;

(d) A direction upon the Opposite Parties to furnish the Completion Certificate to the complainants issued by the competent authority.

(e) For all costs.

(f) To what other relief or reliefs as your Honour may deem fit and proper.

The said case was disposed of ex parte by an order dated 28th February, 2022 by DCDRC passing the following order.

"That the complaint case be and the same is hereby allowed Ex-parte against the opposite parties with a cost of Rs.20,000=00 (Rs. Twenty thousand) only.

The opposite parties are directed to pay either jointly or severally compensation amount Rs.4,00,000/- [four lakh] only to the complainants within 60 days from the date of issuing this order for deficiency of service under Section 2[11] and unfair trade practice under Section 2[47] of the C.P. Act 2019.

All the opposite parties are again directed:-

[1] to complete the 3 BHK flats along with the 4 wheeler car parking spaces to hand over to the complainants;

[2] to issue possession letter with Completion Certificate in favour of the complainants; and

[3] to register the Deed of Conveyance in favour of the purchasers /complainants.

All these activities should be completed by the O.Ps. within 60 days from the date of issuing this order.

[4] The complainants are also directed to pay to the O.Ps. the balance amount of Rs.2,96,906.00 only on or before Registration of flats and car parking spaces but within 60 days from the date of issuing this order and they should bear the charges for Registration.

In case of failure to hand over the possession letter, completion certificate and to register the Deed of Conveyance by the O.Ps. even after getting the balance amount Rs.2,96,906.00 only, both the amount of compensation and costing will bear 7% p.a. simple interest till to the realisation.

Let copies of the order be supplied to all the parties concerned in either speed post /registered post free of cost as per rule.”

As the petitioners failed to pay compensation amount of Rs.4 lakhs within the stipulated period of time made in the order dated 28th February, 2022, the opposite parties /decree holders filed an execution proceeding which was registered as

E.A./15/2022. It is also important to record at this stage that the petitioners /judgment debtors being aggrieved by the order dated 28th February, 2022 preferred an appeal before the said Commission along with an application for condonation of delay under Section 5 of the Limitation Act. The said Commission issued notice to the decree holders directing them to show cause as to why delay in filing the appeal would not be condoned. Date is fixed by the said Commission for appearance of the decree holders/opposite parties and submission of application showing cause in the month of September, 2022.

In the meantime the DCDRC passed an order dated 5th August, 2022 issuing warrant of arrest against the petitioners and fixing 14th September, 2022 for execution report of warrant of arrest. The petitioners being aggrieved against the said order assailed the same before this Court.

The points of law involved in the instant revision for decision are:-

(i) Whether DCDRC can issue warrant of arrest against the judgment debtor in an execution proceeding;

(ii) Whether impugned order is at all revisable by this Court under the provision of Sections 397/401 of the Code of Criminal Procedure;

(iii) Whether an order passed by DCDRC is amenable to Section 482 of the Code of Criminal Procedure.

All three points of law are taken up together for discussion.

Section 38 of the Consumer Protection Act, 2019 lays down detailed procedure to be undertaken by the DCDRC on admission of complaint. For disposal of the points of law involved in the instant revision, it is necessary to mention Sub-section (9) of Section 38.

Section 38(9) of the Act states :-

"(9) For the purposes of this section, the District Commission shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908) while trying a suit in respect of the following matters, namely-

(a) the summoning and enforcing the attendance of any defendant or witness and examining the witness on oath;

(b) requiring the discovery and production of any document or other material object as evidence;

(c) receiving of evidence on affidavits;

(d) the requisitioning of the report of the concerned analysis or test from the appropriate laboratory or from any other relevant source;

(e) issuing of commissions for the examination of any witness, or document; and

(f) any other matter which may be prescribed by the Central Government."

Section 38(10) of the said Act states -

"(10) Every proceeding before the District Commission shall be deemed to be a judicial proceeding within the meaning of Sections 193 and 228 of the Indian Penal Code (45 of 1860), and the District Commission shall be deemed to be a criminal court for the purposes of Section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).

At the risk of repetition, I like to recapitulate that hearing of CC Case No.45 of 2021 is concluded by the DCDRC and ex parte judgment was passed on 28th February, 2022. The said judgment is still in force.

It is not in dispute that the decree holders filed an execution case against the petitioners /judgment debtor which was registered as EA/15/2022.

Section 71 of the said Act deals with the procedure regarding enforcement of order of District Commission, State Commission and National Commission. Section 71 runs thus:-

"Every order made by a District Commission, State Commission or the National Commission shall be enforced by it in the same manner as if it were a decree made by a Court in a suit before it and the provisions of Order XXI of the First Schedule to the Code of Civil Procedure, 1908 (5 of 1908) shall, as far as may be, applicable, subject to the modification that every reference therein to the decree shall be construed as reference to the order made under this Act."

Thus, it is absolutely clear that an order granting compensation, specific performance of an agreement recovery of goods and services etc. is executable under the provision of Order XXI of the Code of Civil Procedure. As per example, an order passed by the DCDRC directing the judgment debtor to pay compensation can be executed under Order XXI Rule 30 in the manner of execution of decree for payment of money. Such an order may be executed by putting the judgment debtor in civil prison, or by the judgment and sell of his property or by both. Therefore, in order to execute an order for payment of compensation by the judgment debtor, the Executing Court can issue warrant of arrest in order to compel attendance of the judgment debtor before the Commission and if the judgment debtor fails to pay the compensation amount, he may be put to civil prison. However, in such case, it is the bounden duty of the Commission to assess the cost of execution of warrant of arrest by police against the judgment debtor as well as the cost of keeping the judgment debtor in civil prison and the decree holder is required to be asked to put such amount for execution of decree by issuance of warrant of arrest and detention of the judgment debtor in civil prison. In the instant case, DCDRC did not take such recourse before issuance of warrant of arrest against the judgment debtor in EA/15/2022.

The decree holder has another course to follow which is delineated in Section 72 of the said Act. Section 72 runs thus:-

72. Penalty for non-compliance of order-(1) Whoever fails to comply with any order made by the District Commission or the State Commission or the National Commission, as the case may be, 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 twenty five thousand rupees, but which may extend to one lakh rupees, or with both.

(2) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the District Commission, the State Commission or the National Commission, as the case may be, shall have the power of a Judicial Magistrate of first class for the trial of offences under sub-section (1), and on conferment of such powers, the District Commission or the State Commission or the National Commission, as the case may be, shall be deemed to be a Judicial Magistrate of first class for the purposes of the Code of Criminal Procedure, 1973 (2 of 1974).

(3) Save as otherwise provided, the offences under sub-section (1) shall be tried summarily by the District Commission or the State Commission or the National Commission, as the case may be.

Plain reading of the above provision contained in Section 72 suggests that the Commission is empowered to initiate a proceeding for penalty of non-compliance of the order and such order is not limited to a final order granting relief in favour of the decree holder by the Commission. Even, in order to enforce attendance of the judgment debtor in a pending case, or appeal, the Commission can issue warrant of arrest and start proceeding under Section 72 of the said Act. This issue is made abundantly clear by the Hon'ble Supreme Court in a recent decision in L & T Finance Ltd. Vs. Pramod Kumar Rana & Anr. (Civil Appeal Nos. 5894-5895 of 2021) decided on 25th November, 2021.

Therefore, the provision of Sections 71 and 72 of the said Act are not mutually inclusive. It is open for the decree holder after disposal of a case or appeal, as the case may be, either to put the order of the Commission in execution or to pray for initiation of a proceeding for penalty for non-compliance of order under Section 72 of the said Act. If the decree holder approaches the Commission under Section 72, the proceeding is to be treated as an offence for which the offender is liable to imprisonment and / or fine or both. Sub-section (2) of Section 72 empowers the Commission with the power of a Judicial Magistrate of First Class for trial of offences under sub-section (1).

Thus, while comparing the provision contained in Section 71 and Section 72 of the said Act, it is ascertained that if the decree holder want execution of its order, they must take recourse of Section 71 and the execution will proceed in accordance with Order XXI of the Code of Civil Procedure.

In an execution proceeding, the commission having power of the executing Court cannot take recourse to Section 72 and take a shortcut and coercive method for execution of its order.

For the reasons stated above, this Court comes to an irresistible conclusion that in an execution application, the commission cannot issue warrant of arrest for enforcement of its order. The commission has, of course, the authority to issue warrant for detention of the judgement debtor in civil prison in accordance with the provision under the Code of Civil Procedure. It cannot issue warrant of arrest against the judgement debtor following the part 'B' of Chapter VI of the Code of Criminal Procedure.

In view of what has been stated above, this Court finds that the order dated 5th August, 2022 is palpably illegal.

The issue whether a commission can be said to be a Tribunal for the purpose of exercise of powers under Article 227 of the Constitution of India by the High Court is concerned, has been considered by a Constitution Bench of the Hon'ble Supreme Court in the case of ***Associate Cement Companies Limited –Vs. P. N. Sharma*** reported in ***AIR 1965 SC 1595*** and ***L. Chandrakumar –Vs. Union of India*** reported in ***(1997) 3 SCC 261***. In **Associate Cement Companies Limited** (supra) it is observed by the Hon'ble Supreme Court in paragraphs 44 and 45 as hereunder:-

"44. An authority other than a court may be vested by statute with judicial power in widely different circumstances, which it would be impossible and indeed inadvisable to attempt to define exhaustively. The proper thing is to examine each case as it arises, and to ascertain whether the powers vested in the authority can be truly described as judicial functions or judicial powers of the State. For the purpose of this case, it is sufficient to say that any outside authority empowered by the State to determine conclusively the rights of two or more contending parties with regard to any matter in controversy between them satisfies the test of an authority vested with the judicial powers of the State and may be regarded as a tribunal within the meaning of Article 136. Such a power of adjudication implies that the authority must act judicially and must determine the dispute by ascertainment of the relevant facts on the materials before it and by application of the relevant law to those facts. This test of a tribunal is not meant to be exhaustive, and it may be that other bodies not satisfying this test are also tribunals. In order to be a tribunal, it is essential that the power of adjudication must be derived from a statue or a statutory rule. An authority or body deriving its power of adjudication from an agreement of the parties, such as a private arbitrator or a tribunal acting under Section 10-A of the Industrial Disputes Act, 1947, does not satisfy the test of a tribunal within Article 136. It matters little that such a body or authority is vested with the trappings of a Court. The Arbitration Act, 1940 vests an arbitrator with some of the trappings of a Court, so also the Industrial Disputes Act, 1947 vests an authority acting under Section 10-A of the Act with many of such trappings, and yet, such bodies and authorities are not tribunals.

45. The word "tribunal" finds place in Article 227 of the Constitution also, and I think that there also the word has the same meaning as in Article 136."

Therefore, the National Commission can be said to be a 'Tribunal' which is vested by statute the powers to determine conclusively the rights of two or more contending parties with regard to any matter in controversy between them. Therefore, as observed hereinabove in the aforesaid decision, it satisfies the test of an authority vested with the judicial powers of the State and therefore may be regarded as a 'Tribunal' within the meaning of Article 227 and/or 136 of the Constitution of India. Also, in a given case, this Court may not exercise its powers under Article 136 of the Constitution of India, in view of the remedy which may be available to the aggrieved party before the concerned High Court under Article 227 of the Constitution of India, as it is appropriate that aggrieved party approaches the concerned High Court by way of writ petition under Article 227 of the Constitution of India.

The said observation is subsequently followed in ***L. Chandrakumar*** (supra). Therefore, for the purpose of application of Article 227 of the Constitution, DCDRC is treated to be a Tribunal and this Court has ample power under Article 227 of the Constitution as well as Section 482 of the Code of Criminal Procedure to pass appropriate order to prevent abuse of the process of the Tribunal.

For the reasons stated above, the order dated 5th August, 2022 passed by DCDRC is quashed.

The instant revision is accordingly **allowed**.

It is brought to the notice of this Court that District Consumer Disputes Redressal Commission in the State of West Bengal have been consistently passing similar type of orders which are palpably illegal. Therefore, the Learned Registrar (Judicial Service) is directed to circulate this order to all DCDRCs and State Consumer Disputes Redressal Commission for their information and future guidance.

(Bibek Chaudhuri, J.)