

RVWO/4/2021
IA NO:GA/1/2021
IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

TAPAS DUTTA
Versus
STATE OF WEST BENGAL AND 3 ORS.

BEFORE:
The Hon'ble JUSTICE SABYASACHI BHATTACHARYYA
Date: 10th January, 2022.

(Via Video Conference)

Appearance:
Mr. Rajdeep Bhattacharya, Adv.
Mr. Tapas Dutta, Adv.
...for the petitioner

Mr. Debjit Mukherjee, Adv.
Mr. Susmita Chatterjee, Adv.
...for the State

Mr. Sabyasachi Chatterjee, Adv.
...for the Pvt. Respondent

The Court: Learned Counsel for the petitioner places reliance on '*Karnataka Housing Board vs. K.A. Nagamani*' reported at (2019) 6 SCC 424 and '*Ambience Infrastructure Private Limited vs. Ambience Island Apartment Owners and Others*' reported at (2021) 2 SCC 163 to argue the proposition that no appeal and/or revision within the purview of Section 21(b) of the Consumer Disputes Act, is maintainable before any other forum.

As such, it is contended that this Court acted patently without jurisdiction in passing the order dated February 11, 2021 by relegating the matter to an alternative forum.

Learned counsel appearing for the judgment-debtor/opposite party submits that there was no occasion of violation of any fundamental right or any tenet of natural justice in the order of the executing forum which was challenged before this Court. As such, it is contended that the principles which are to be invoked in exercising the discretion under Article 226 of the Constitution of India are not satisfied in the present case. As such, the dismissal of the writ petition by the order under review was justified.

Learned counsel appearing for the State submits that the provision of Section 21 of the said Act clearly envisages such an order as impugned by way of the writ petition before this Court as well. By further arguing that Section 27A of the Act contains a specific provision for appeal in connection with an order of penalty, learned Counsel for the State also contends that the remedy of appeal has very well been contemplated by the legislature even against an order of the nature which was challenged in the writ petition.

In reply, learned Counsel for the petitioner argues that the limited scope of the present hearing is whether the review application deserves to be allowed or rejected on merits. The merits of the main matter ought not to be gone into at this stage. Learned Counsel also seeks to place reliance on certain judgments of the Supreme Court pertaining to the scope of review.

However, in view of the proposed order, the detailed quotation of such judgments on the scope of review may not be necessary.

The plinth of the submission of the respondent/opposite party is that there was no occasion for this Court to interfere under Article 226 of the Constitution of India, since the criteria on which such jurisdiction is invoked was not satisfied in the present case.

However, the scope of the present hearing, as rightly contended by the petitioner, is limited to the merits and/or demerits of the order under review vis-a-vis the scope of review.

It is evident that the ratio laid down by the Supreme Court in *Karnataka Housing Board (supra)* and *Ambience Infrastructure Private Limited (supra)* clearly indicate that an order passed in an execution proceeding even before the consumer forum is not a continuation of the main consumer dispute and, as such, neither any appeal nor revision is maintainable against the same before the National Forum.

In such view of the matter, the order under review dated February 11, 2021 palpably suffers from an error apparent on the face of the record and, as such, ought to be recalled.

Accordingly, RVWO/4/2021 is allowed, thereby recalling the order passed by this Court on February 11, 2021 in WPO/22/2021.

The said writ petition shall be heard on merits afresh on the next returnable date, i.e., January 17, 2022.

It is made clear that all questions, including the question of maintainability of the writ petition on other grounds, shall be kept open for being taken by the parties at the time of final hearing of the writ petition.

The writ petitioner shall serve a notice of this order on the absentee respondents in the writ petition in order to ensure that all respondents are represented adequately on the next returnable date.

(SABYASACHI BHATTACHARYYA, J.)