IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.13859 Of 2019
(Through hybrid mode)

Magma Fincrop Limited .... ***Petitioner***

Mr. R.Roy, Advocate

-versus-

Mr. Fagu Oram .... ***Opposite Party***

Mr. T.Nanda, Advocate

CORAM: JUSTICE ARINDAM SINHA

ORDER
25.03.2022

Order No.
06.

1. Mr. Roy, learned advocate appears on behalf of petitioner and submits, the writ petition is directed against order dated 20^{th} June, 2016 passed by District Consumer Disputes Redressal Forum, Sambalpur, in execution, as confirmed in revision order dated 11^{th} December, 2017 passed by State Consumer Disputes Redressal Commission, Cuttack. He relies on judgment of the Supreme Court in **Karnataka Housing Board vs. K.A. Nagamani** reported in (**2019**) **6 SCC 424** to submit, the writ petition is maintainable.

2. He submits further, by order dated 30^{th} April, 2015 made by the Commission in First Appeal no.741 of 2012 (Sri Fagu Oram (Retd. Post Master) Vs. General Manager, M/s. Reliance General Insurance

Company Limited and another) there was direction upon his client to pay the insurance pay out to opposite party therein after deducting its dues.

3. Mr. Nanda, learned advocate appears on behalf of opposite party and submits, it will appear from both impugned orders that there was finding on fact regarding his client having repaid the loan and, therefore, there does not survive contention that the financer could deduct anything from the insurance pay out. Both, the District Forum and State Commission, had, therefore, directed payment of the deducted amount of Rs.1,01,427/- with interest. He submits, there be no interference.

4. It appears from impugned order dated 20th June, 2016 passed by the Forum that the execution proceeding arises out of order dated 31st July, 2012. This order was impugned in the First Appeal and dealt with on said order dated 30th April, 2015. By said order following was said.

> *"According to the respondent – finance a sum of Rs.1,91,477.46 was pending due against the appellant towards delayed payment charges as on 18.4.2011. The District Forum rightly accepted the statement unilaterally prepared by the appellant particularly when the amount of payment was not irregular including the month.*
>
> *In view of the argument advanced by counsel of parties, in our considered opinion, the settled amount ought to have been brought to the notice of the appellant, before it was paid to the financer-respondent no.2. Respondent no.2 is directed to pay the balance amount with interest at the rate of*

> *9 % per annum from the date it received the settled amount from respondent no.1, after deducting their dues to the appellant. Accordingly, the appeal is allowed to this extent and the impugned order is set aside."*

It is not clear from above extract there was adjudication on the claimed outstanding of Rs.1,91,477.46/- said to be due from opposite party to petitioner (financer) on account of delayed payment charges. What appears is, admittedly there was no outstanding on principal. However, the amount Rs.1,91,477.46/-, claimed by the financer to be outstanding does not match with retained amount of Rs.1,01,427/-, retained from the insurance pay out on the balance made over to opposite party. It must also be added that elsewhere in the appellate order, it carries no adjudication on calculation of the alleged outstanding on delayed payment. If anything, procedure adopted by the Commission in adjudication of the first appeal appears to be illegal and irregular but that has not been impugned in this writ petition.

5. In the circumstances, the executing Forum made adjudication and came to conclusion that nothing was due and payable on account of the loan. It directed payment of the withheld amount along with interest. In revision the direction was upheld.

6. Court has perused both impugned orders. Parties were represented. The orders carry reasons to show adjudication. There is no ground made out for interference in judicial review.

7. The writ petition is dismissed.

(Arindam Sinha)
Judge

Prasant