

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

CRIMINAL APPLICATION (APL) NO.1039/2021

Shri Sachin s/o Ramdas Mittal and another

...Versus...

Mrs. Rashmi w/o Milind Bujone

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

Court's or Judge's orders

Shri A.S. Samdekar, Advocate for applicants
Shri Vivek Awchat, Advocate for respondent

CORAM : AVINASH G. GHAROTE, J.

DATE : 25/04/2022

1. Heard Shri Samdekar, learned Counsel for the applicants and Shri Awchat, learned Counsel for the respondent.
2. The application challenges the orders dated 12/04/2018 and 02/03/2021, by which, in a proceeding under Section 27 (1) of the Consumer Protection Act, 1986 (for short, "the C.P. Act, 1986" hereinafter), issuance of summons to the applicants, who are the respondents therein, are sought to be quashed.
3. Shri Samdekar, learned Counsel for the applicants, submits that before issuing the summons, there is no finding rendered by the learned Forum, regarding the

default, being wilful or without sufficient means, and therefore, the impugned orders need to be quashed and set aside. Reliance is sought to be placed upon *Dayle De'souza Vs. Government of India through Deputy Chief Labour Commissioner, (C) and others, AIR 2021 SC 5626* and *Maksud Saiyed Vs. State of Gujarat and others, (2008) 5 SCC 668* in support of the said contention.

4. Shri Awchat, learned Counsel for the respondent opposes the application and submits that the applicants, have suffered an order from the District Consumer Forum, dated 06/02/2017 (pg.10), in which, in a consumer complaint case filed by the respondent, the learned Consumer Forum has directed the applicants to refund an amount of Rs.15,61,000/- with interest @ 9% per annum from 17/07/2013, till its refund along with Rs.20,000/- for harassment and Rs.10,000/- costs. He, therefore, submits that on account of non-compliance with the aforesaid order, proceedings under Section 27 (1) of the C.P. Act, 1986 were initiated, in which, by the impugned orders, summons have been issued to the applicants and there is nothing wrong with the impugned orders, considering which, the application needs to be dismissed.

5. It is not disputed that the present respondent had filed Complaint Case No.CC./95/2016 against the present

applicants on account of the applicants having executed an agreement on 03/09/2011, for sale and purchase of a flat to be built by the present applicants for a total consideration of Rs.19,00,000/-. A finding has been rendered that an amount of Rs.15,61,000/- was received by the present applicants from time to time from the respondent and since they had failed to comply with the said agreement, the respondent/original complainant was liable to refund the aforesaid amount under the final order dated 06/02/2017.

6. It is this final order dated 06/02/2017, which has been put for enforcement in Execution Application (EA) No.32/2018 by the respondent, in which, the impugned orders summoning the applicants have been passed, for non-compliance of the order dated 06/02/2017.

7. *Prima facie*, the existence of the final order dated 06/02/2017, passed by the learned District Forum is not in dispute. It is also admitted by learned Counsel for the applicants, that this order has not been challenged in any further proceedings before the State Commission or the National Commission in appeal under the provisions of the Consumer Protection Act, 1986, as a result of which, the same has become final and binding upon the applicants. It is also not disputed by learned Counsel for the applicants that compliance with the order dated 06/02/2017 has not been

done by the applicants, except for deposit of an amount of Rs.2,00,000/- or odd before the learned Consumer Forum in E.A. No.32/2018. It is thus apparent that the order dated 06/02/2017 has not been complied with. Non-compliance of an order passed by the Forum/Commissions has been made a penal offence under the provisions of Section 27 (1) of the C.P. Act, 1986, punishable with imprisonment up to three years and fine up Rs.10,000/-. The provisions of Section 27 (2) of the C.P. Act, 1986, which are *pari materia* with the provisions of Section 72 (2) of the Consumer Protection Act, 2019 mandate that for the trial of offences under Section 27 (1) of the C.P. Act, 1986, the learned Forum/Commissions have been deemed to be Judicial Magistrate First Class, also under the Code of Criminal Procedure and Section 27 (3) of the C.P. Act, 1986 further mandates that such a trial has to be of a summary nature. That being the position, in my considered opinion, in view of the admitted position that there has been no compliance with the order dated 06/02/2017, passed by the learned Forum, except for deposit of the aforesaid amount, as stated on record, no fault can be found in the impugned orders, which merely issue summons to the respondents. A perusal of the complaint under Section 12 of the Consumer Protection Act (pg.47) indicates, that in para 2, the status of the applicant nos.2 and 3 as Directors of the applicant no.1 has been stated, so also in para 5 thereof, it has been specifically averred that the applicant no.2 being one of the

Directors of the company, was a signatory to the registered agreement of sale dated 03/09/2011. The final judgment dated 06/02/2017 indicates that the present applicants did not appear before the District Forum in spite of notice having been served upon them and therefore, there is no statement of defence or any pleas raised by them. It is, therefore, apparent that any plea regarding the default being not wilful or the applicants having not complied with the order dated 06/02/2017 in spite of having sufficient means are not the pleas, which are available to the present applicants at the stage of issuance summons by the learned Forum, where it is only to consider whether there is an order and it is not complied with, both of which positions, are extant, in the present case. Reliance upon *Dayle De'souza* and *Maksud Saiyed* (supra) by the learned Counsel for the applicants are clearly misplaced for the reason that the proceedings in the instant matter are not governed by the Code of Criminal Procedure, but by the provisions of Section 27 (2) and (3) of the C.P. Act, 1986, which specifically prescribe for trial of offences under Section 27 (1) of the C.P. Act, 1986 in a summary manner, considering which, they have no applicability to the present matter.

8. In view of the above discussion, I do not find any perversity in the impugned orders, as the trial of the offence under Section 27 (1) of the C.P. Act, 1986 is still in the offing

and in case it is so permissible in law, all the pleas, which are raised in the present application, for quashing, may be available to the applicants in the proceedings under Section 27 (2) of the C.P Act, 1986. The criminal application is therefore dismissed.

(AVINASH G. GHAROTE, J.)

Wadkar