

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

CRIMINAL WRIT PETITION NO. 593/2022

(M/s. K. B. Associates thr. Its Partner Sau. Rohini Nilay Band, Developer Vs. Dr. Sau. Arti Abhay Kelkar & anr.)

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

Court's or Judge's orders

Mr. S. P. Bhandarkar, Advocate for petitioner.
Mr. T. D. Mandlekar, Advocate for respondent No.1.
Mr. H. D. Dubey, APP for respondent No.2.

CORAM : VINAY JOSHI, J.
DATED : 12/09/2022.

Heard.

2. The petitioner-developer has impugned herein the order dated 25.08.2022 passed by the State Consumer Disputes Redressal Commission ('the State Commission') in Appeal Execution Application No. AEA/22/24 by which the State Commission declined to suspend the execution of sentence during the pendency of appeal filed under Section 27-A of the Consumer Protection Act, 1986 ('the Act of 1986')

3. It is a disput between the developer and consumer who was promised to provide a tenement with all amenities as has been set out in the agreement dated 19.06.2006. Initially, as there was total deficiencies in service, the consumer has applied to the District Consumer Disputes Redressal Commission ('District Forum') who has allowed the complaint by which directed the petitioner-developer to comply his

obligations within stipulated period. The said order dated 07.06.2014 has attained finality. Since the order was not complied, the consumer has invoked penalty clause under Section 27 of the Act of 1986. The District Forum vide order dated 21.06.2022 has convicted the petitioner by imposing the punishment. The said order was carried in appeal before the State Commission where the appeal is still pending. During the pendency of appeal, the petitioner-developer has applied for grant of stay and suspension of sentence. The State Commission has declined to suspend sentence vide order dated 25.08.2022 which is the subject matter of this criminal writ petition.

4. In response to the notice, the consumer has appeared and filed reply in detail stating that the amenities which were promised under the agreement have not been provided and thus, the petitioner is not entitled for suspension. On the other hand, the petitioner would submit that after passing of the impugned order, the petitioner-developer has endeavoured to comply the undertaking for which he has produced certain photographs. According to the petitioner-developer, he has made every endeavour to provide all the amenities which according to him would meet the undertaking. The respondent would submit that after impugned order, the petitioner made certain progress like painting, some work, however by all means, he has not complied obligation of providing each and every amenities.

5. Primly, it appears that it is disputed question of fact that whether the amenities undertaken have been supplied or not. The appeal is very much pending. It emerges that after passing impugned order dated 25.08.2022, there has been a progress in the shape of providing amenities. In the circumstances, it is desirable that the Appellate Forum shall consider the subsequent development and pass appropriate order afresh regarding grant of stay and suspension. The Appellate Forum, if possible, can also decide the appeal expeditiously.

6. Having regard to the above facts, the impugned order dated 25.08.2022 is hereby quashed and set aside. The petitioner shall file afresh formal application for stay and suspension with additional documents showing compliance of his obligations. The other side is at liberty to respond the same with supported documents. The State Commission if unable to decide the appeal in proximity, shall decide the application for stay and suspension afresh after considering the development and pass necessary orders. Both the parties undertake to appear before the State Commission on 14.09.2022 with necessary documents. The interim order dated 26.08.2022 will remain in force till the suspension application is decided.

7. Petition stands disposed of in above terms.

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signed by
JITENDRA
BHARAT
GOHANE
Date:
2022.09.13
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+0530

Gohane

(VINAY JOSHI, J.)