

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

WRIT PETITION NO. 7362 OF 2019
(Dr. Vineet Vishwasrao Higankar & Ors. Vs. Rita Keshav Gawande)
WITH
WRIT PETITION NO. 6848 OF 2019
(Dr. Vineet Vishwasrao Higankar & Ors. Vs. Meena Ravindra Pande)
WITH
WRIT PETITION NO. 7364 OF 2019
(Dr. Vineet Vishwasrao Higankar & Ors. Vs. Shakuntala Keshav Gawande)

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

Court's or Judge's orders

Mr. A.B. Patil, Advocate for Petitioners
Mr. A.B. Deshpande, Advocate for Respondent

CORAM : MANISH PITALE, J.

DATE : 09th JUNE, 2022

By these three writ petitions, the petitioners have challenged common order dated 14/11/2017, passed by the State Consumer Disputes Redressal Commission (Maharashtra), Circuit Bench, Nagpur (hereinafter referred to as the "State Commission"). The grievance of the petitioners is that the State Commission ought not to have given directions while disposing of the appeals, which have the effect of causing unnecessary harassment to the petitioners in the context of orders passed by the District Consumer Forum, when neither of them was party in the original complaint filed by the complainants.

2. The brief facts leading up to filing of the present petitions are that the respondents / complainants had approached the District Consumer Forum with a grievance against one Nishant Sales and Services (PCP). The District Consumer Forum considered the complaints on merits and allowed the same by orders passed on different dates in the years 2008 and 2009. The original opposite party i.e. Nishant Sales and Services (PCP), was directed to pay certain amounts along with interest to the respondents / complainants. It is an admitted position that the said orders passed by the District Consumer Forum attained finality and that applications were preferred by the respondents / complainants under Section 27 of the Consumer Protection Act, 1986, for the reason that the orders of the District Consumer Forum were not complied with. In the said proceedings, the petitioner No.1 was sought to be made liable for satisfying the orders passed by the District Consumer Forum in favour of the original complainants.

3. In that context, the petitioner No.1 had raised an objection and eventually challenge was raised before the State Commission, contending that his name ought to be deleted from the execution proceedings initiated before the Executing Forum i.e. the District Consumer Forum in the context of the orders passed in favour of the original complainants. By a common order dated 08/02/2012, the Revision Petitions filed by the petitioner No.1 were allowed

by the State Commission and it was directed that his name shall be deleted from the execution proceedings.

4. Thereafter, fresh execution proceedings were initiated by the respondents / complainants before the Executing Forum. In these execution proceedings, all the three petitioners were sought to be made liable, which was objected to by them. This resulted in orders passed by the Executing Forum in the year 2014, deleting the names of the petitioners from the execution proceedings initiated by the respondents / complainants. These orders were challenged by way of filing appeals before the State Commission, wherein the impugned common judgment and order came to be passed. The appeals stood disposed of as per specific directions given by the State Commission. The Executing Forum was directed to entertain the execution applications against original parties impleaded in the complaints and persons concerned on the basis of record and from the material submitted before the Executing Forum. There was an observation made while issuing such direction that statements of the respondents / complainants shall be recorded for identifying the opposite party and further that the District Consumer Forum will hear the accused persons, who stood deleted in the execution proceedings, so that the final award is executed as contemplated under law. It appears that due to the aforesaid observations, the Executing Forum issued notices to the petitioners herein as they were the accused persons whose names had been deleted by the order of the Executing Forum.

5. Initially, the petitioners filed Revision Petition before the National Consumer Disputes Redressal Forum (hereinafter referred to as “National Commission”). But, the said Revision Petitions were dismissed by the National Commission by order dated 29/08/2019, holding that the Revision Petitions were not maintainable, in the light of the law laid down by the Hon’ble Supreme Court in the case of **Karnataka Housing Board Vs. K.A. Nagamani** reported in **AIR 2019 SC 2290**. As a consequence, the petitioners filed the present writ petitions, wherein notices were issued and stay of further proceedings before the Executing Forum was granted.

6. Mr. A.B.Patil, learned counsel appearing for the petitioners in these petitions submitted that the State Commission could not have passed common judgment and order in the light of the earlier order passed by the State Commission itself, wherein name of the petitioner No.1 was specifically directed to be deleted from the execution proceedings. It was submitted that the petitioners No.2 and 3 were identically situated to petitioner No.1, in as much as they had nothing to do with the proceedings in the original complaints filed by the respondents / complainants and, therefore, the impugned judgment and order deserve to be set aside. It is further submitted that directions given in the impugned order cannot be said to be innocuous for the reason that there is a specific observation made that the Executing

Forum is to hear the petitioners whose names were deleted from the execution proceedings, as a result of which the Executing Forum has issued notices to the petitioners and they are being harassed for no reason at all. It is further submitted that a perusal of the papers placed on record would show that the true character and status of original opposite party i.e. Nishant Sales and Services (PCP), was not clear and in such a situation, when the petitioners were not even parties to the original proceedings, they could not be proceeded against before the Executing Forum. On this basis, it was submitted that the impugned common judgment and order deserved to be set aside.

7. On the other hand, Mr. A.B. Deshpande, learned counsel appearing for the respondents in all the petitions submitted that the State Commission in the impugned common judgment and order had simply directed that a proper enquiry be conducted to ensure that the persons responsible for satisfying the orders passed by the District Consumer Forum in the original complaints are brought to book and the respondents as the original complainants are able to enjoy the fruits of the orders passed by the District Consumer Forum in their favour. It was further submitted that if the directions given in the impugned common judgment and order were to be appreciated in the correct perspective, no grievance could be made by the petitioners, particularly because there was sufficient material to show that they were and are directly connected with the original opposite party and hence,

responsible for satisfying the orders passed in favour of the original complainants. An effort was made to refer to the said material before this Court.

8. This Court has considered the facts leading up to filing of the present writ petitions. A perusal of the impugned common judgment and order would show that as the State Commission has correctly shown its concern for identifying the persons responsible for satisfying the orders passed in favour of the original complainants. It is observed that identity of such persons needs to be ascertained, so that the orders of the District Consumer Forum that have attained finality, stand executed and satisfied. To that extent no fault can be found with the impugned common judgment and order passed by the State Commission. The tenor of the order appears to be that a proper enquiry ought to be conducted by the Executing Forum so that the complainants are able to enjoy the fruits of the orders passed in their favour. But, a perusal of the paragraph No.7 of the impugned common judgment and order would show that while directing that such an enquiry ought to be conducted by the Executing Forum, wherein statements of the original complainants are to be recorded, it is further directed that the accused concerned, whose names were deleted from the execution proceedings, also ought to be heard so that the final award is executed as contemplated under law.

9. This Court is of the opinion that the aforesaid observation is unnecessary and in fact, it is not in harmony with the entire tenor of the impugned common judgment and order. The enquiry contemplated as per the impugned common judgment and order must necessarily entail first ascertaining the true nature and character of the original opposite party i.e. Nishant Sales and Services (PCP), as to whether it was a proprietary concern or a partnership firm or any other legal entity and it is only thereafter that the individuals concerned with such entity could be held responsible. This is because in the original complaint, it has been only stated that the opposite party is Nishant Sales and Services (PCP), without any further details.

10. Thus, it is only after detailed enquiry into the aforesaid aspect of the matter concerning the true character of the original opposite party that individuals can be identified who can be arrayed as accused before the Executing Forum under Section 27 of the aforesaid Act. In the absence of such an enquiry reaching a conclusion as to the true legal character of the opposite party, the petitioners before this Court cannot be directly put to notice as responsible in the Executing Forum for satisfying the orders passed in favour of the original complainants. If it is found after the enquiry is conducted by the District Consumer Forum as the Executing Forum as regards the true character of the original opposite party and sufficient material is placed by the original complainants before the Executing Forum showing any

connection of the petitioners with the said original opposite party, the District Forum would obviously be entitled to proceed in accordance with law. So long as such an enquiry is yet to be completed in terms of the impugned common judgment and order, there is no propriety in the Executing Forum issuing notices to the petitioners.

11. Therefore, in the interest of justice, the impugned common judgment and order deserves to be modified and appropriate directions need to be given. Accordingly, the writ petitions are disposed of in the following manner :

- i. The impugned common judgment and order passed by the State Commission is modified by holding that the direction given in paragraph No.7 that during the course of the enquiry, the Executing Forum shall hear the accused persons, who were deleted in execution proceedings, is set aside. It is directed that the enquiry contemplated under the impugned common judgment and order shall first ascertain the true legal character of the original opposite party on the basis of material that may be placed on record by the original complainants.
- ii. It is only after ascertaining the aforesaid aspect of the matter that the Executing Forum will proceed to identify the individuals, who can be said to be responsible for

liability of the original opposite party in the complaints filed before the District Consumer Forum.

- iii. In view of the above, the Executing Forum is directed not to issue notices to the petitioners on the presumption that they are necessarily associated with the original opposite party, for it is the responsibility of the original complainants to place on record necessary material in support of such an assertion.
 - iv. The statements made on affidavits before this Court on behalf of the respondents / complainants shall be taken into account by the District Forum while proceeding in the aforesaid manner in terms of the impugned common judgment and order, as modified herein above.
12. With these clarifications, the writ petitions are disposed of.

JUDGE