

IN THE HIGH COURT AT CALCUTTA**(Civil Revisional Jurisdiction)****Appellate Side**

Present:

The Hon'ble Justice Bibhas Ranjan De**C.O. 242 of 2023****Mantulal Acharya @ Mangtoo Lal Acharya.****Vs.****Prasun Adhikari & Ors.**

For the Petitioner :Mr. Pratip Mukherjee, Adv.
Mr. Kiran Saha, Adv.

For the Opposite party no. 3 :Mr. Avijit Bhuina, Adv.
Mr. Md. Bani Israil, Adv.

Heard on : April 26, 2023

Judgment on : May 10, 2023

Bibhas Ranjan De, J.

1. Petitioner/Decree holder filed a complaint being no. CC/582/2015 before the District Commission alleging consumer dispute arose out of non-compliance of agreement executed between the petitioner and the opposite parties

(owner and developer) by not delivering possession of that in favour of the petitioner.

2. District Commissioner disposed of that complaint promulgating the order as follows:-

“ That the CC No. 582/2015 is allowed ex parte against o.p. no. 1 and allowed on contest with cost against the o.p. no.2 The o.p. no. 2 is directed to provide the vacant possession of the flat in question to the complainant and the o.ps. should execute, register the deed of conveyance in favour of the complainant after receiving the balance consideration price from the complainant by the o.p. no. 2 in respect of the flat measuring about 310.4 Sqft. The complainant further directed to vacate the temporary room provided to the complainant before providing execution of the said deed. The complainant is also entitled to get compensation of Rs. 10,000/- (rupees Ten Thousand) only for harassment and mental agony along with Rs. 5,000/- (Rupees Five Thousand) only within 30 days from the date of communication of this order, i.d. an interest @ 8% p.a. shall accrue over the entire sum due to the credit of the complainant till full realization.”

3. Opposite parties/judgement debtors did not comply the order passed by District Commission. In effect petitioner/decreed holder put the same into execution being case no. EA/14/2019.

4. It was alleged that District Commission sitting in execution travelled beyond the decree by recording an order directing

decree holder to take the measurement of the flat in question and to prepare a site plan before the execution the deed. For the reasons petitioner/decree holder preferred and appeal being no. A/467/2019 before the State Consumer Disputes Redressal Commission (hereinafter referred to as State Commission).

- 5.** On the top of the cause Title of Memo appeal “Section 27A” has been depicted, that is why, presumably, Hon’ble State Commission only centered around the provision of Section 27 of the Consumer Protection Act (hereinafter referred to as “Act”) and finally recorded the order that the appeal under Section 27A is not maintainable in absence of any order of conviction recorded under Section 27 of the Act.
- 6.** Learned Advocate, Mr. Pratip Mukherjee appearing on behalf of the petitioner/decree holder, in the beginning, has drawn my attention to the jurisdiction of this Court under Article 227 of the Constitution of India by referring to some decisions of this Court in Co. No. 1831 of 2011, Co. No. 2602 of 2017 & Co. No. 1663 of 2021. This Court, in all those cases, exercised jurisdiction under Article 227 of the Constitution of India.

7. In CO. No. 2602/2017 Hon'ble Mr. Justice Sabyasachi

Bhattacharyya laid down the settled principle as under:-

“It is settled law that availability of alternative remedy is not an absolute bar, nor does it take away the jurisdiction of judicial review under Articles 226 and 227 of the Constitution of India; however, High Courts generally exercise self-imposed restriction in exercising such power when an equally efficacious alternative remedy is available. It has been held conclusively in the landmark judgment of Whirlpool (supra) that the alternative remedy has been consistently held by the Supreme Court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged. Again, in Auro Developers (supra), this Court has held that inter alia when an order has been passed by an authority without jurisdiction, the power of judicial review under Article 227 of the Constitution can be exercised to correct such wrong.”

8. Mr. Mukherjee contended that the Hon'ble State Commission sitting in appeal committed wrong by ignoring the issue raised in the Memo of appeal and came to erroneous finding that appeal was not maintainable under Section 27A of the Act.

9. In opposition to that learned advocate Mr. Md. Bani Israil supported the order/judgement recorded by the Hon'ble State Commission in the appeal filed under Section 27A of the Act in absence of any order of conviction under Section 27 of the Act.

- 10.** After going through the entire contents of the memo of appeal it appears that the appeal was preferred assailing order dated 04.06.2019 alleged to have been passed by the Executing Court (District Commission) after travelling beyond the decree.
- 11.** But the Hon'ble State Commission decided the appeal only on the caption of Section 27 & 27A of the Act ignoring the issue of travelling beyond decree by the Executing Court raised in appeal.
- 12.** In fact "label" or the "nomenclature" of the application or petition should not matter and after analyzing the substance and contents of the application, if it is possible to grant the relief under some other provision of the statute, such a relief should not be denied.
- 13.** Therefore, Hon'ble State Commission ought to have decided the issue of "travelling beyond decree" alleged in the memo appeal ignoring the nomenclature of the memo of appeal in terms of clear mandate of Section 15 of the Act providing jurisdiction of hearing appeal to the State Commission against any order passed by the District Commission.

14. Thereby, the order dated 20.12.2022 Hon'ble State Commission stands set aside.
15. In the aforesaid view of the matter First Appeal No. A/467/2019 be remanded to the Hon'ble State Commission with the request to rehear the appeal on the issue raised therein after giving opportunity of hearing to the parties to the appeal.
16. Revision application stands allowed on contest without any order as to costs.
17. All parties to this revisional application shall act on the server copy of this order downloaded from the official website of this Court.
18. Urgent Photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

[BIBHAS RANJAN DE, J.]