

17.07.2023
Court No. 19
Item no.15
CP

C.O. 956 of 2020

Arup Chatterjee
Vs.
Sri Jayanta Ray & anr.

Mr. Tanmoy Mukherjee
Mr. Atish Ghosh
Mr. Arindam Chandra
Mr. Tanmoy Sett
Ms. Antara Dey

.....for the petitioner.

Mr. Pratip Mukherjee
Mr. Diptomoy Talukder
Mr. Swapan Bhattacharya
Ms. C. Chatterjee
Mr. Abhiraj Tarafdar

...for the opposite party.

Mr. S. Pal Choudhuri
Ms. Diya Nandi

....for the opposite party no. 2.

The revisional application has been filed by the opposite party no. 1 of the complaint case, being aggrieved by an order passed in First Appeal being A/32/2017 dated December 16, 2019, passed by the learned State Consumer Disputes Redressal Commission.

The appeal arose out of an order dated September 20, 2016, passed by the learned District Consumer Disputes Redressal Forum in Execution Case No. EA/190/2013. The learned District Forum, upon finding that the judgment debtor had failed to

comply with the directions, had issued a warrant of arrest. The said order was challenged by filing an appeal being A/32/2017. The learned trial judge refused pass order, on the merits of the execution, on the ground that the executing court could not go beyond the decree.

Mr. Tanmoy Mukherjee, learned advocate appearing on behalf of the petitioner, submits that neither the District Forum nor the State Commission had the jurisdiction with regard to the subject matter of the complaint case, inasmuch as, transfer between two individuals of a previously constructed house or a flat would not attract the provisions of the Consumer Protection Act. The seller would not be a service provider and the buyer would not be a consumer. He also relies on the decision of the Hon'ble Apex Court in the matter of Sarup Singh & anr. Vs. Union of India & anr., reported in (2011) 11 SCC 198, in support of the contention that when a decree was a nullity, the said point could be raised even at the stage of execution or in collateral proceedings.

Mr. Pratip Mukherjee, learned advocate for the complainant, submits that the petitioner did not challenge the original order giving rise to the execution case. Thus, objection as to the execution of the order passed should not be entertained.

Having considered the order impugned and the rival contentions of the parties, this court finds that the learned Commission did not take into account the contentions of the petitioner, but mechanically rejected the appeal on the ground that the executing court could not go behind the decree.

The issue with regard to jurisdiction of the District Consumer Forum and the question of non-applicability of the Consumer Protection Act, was not taken into consideration by the commissioner. The decisions of the Hon'ble Apex Court laying down the principle that the executing court could not go behind the decree was relied upon, but the point as to whether the executing court could pass necessary orders for execution when the decree was challenged on the ground of nullity, was not discussed.

Under such circumstances, the order impugned is set aside.

The issuance of warrant of arrest which was originally without jurisdiction, is also set aside. The matter is remanded to the learned Commission for a rehearing of the appeal filed under Section 17(1)(b) read with Section 27A. All points raised therein shall be considered afresh, and in accordance with law.

It is made clear that the said appeal shall be disposed of expeditiously. All objections with regard

to the executability of the decree shall be decided in the said proceeding.

The revisional application is accordingly disposed of.

There shall be no order as to costs.

Parties are to act on the server copy of this order.

(Shampa Sarkar, J.)