

19.06.2023  
Court No. 652  
Item nos.5  
sn

**C.O. 1688 of 2017**

**Saroj Kumar Roy Chowdhury  
Vs.  
Suresh Kumar Shaw & Ors.**

Mr. Biswasroop Bhattacharyya  
Mr. Dipayan Kundu  
..for the petitioner

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Mr. Sounak Bhattacharyya  
Mr. Sounak Mondal  
..for the opposite party nos1&2  
Mr. Debangana Bhattacharjee  
Mr. Arijit Banik  
Ms. Swarnali Saha  
..for the respondent no.3

Being aggrieved by an order dated 26<sup>th</sup> April, 2017 passed by the Consumer Disputes Redressal Commission, West Bengal, in First Appeal No.A/1273 of 2016 arising out of an order dated 23<sup>rd</sup> December, 2016 in Case No. E.A./46/2015, present application has been preferred.

The petitioner contended that the opposite party nos. 1&2 instituted a proceeding before the learned District Consumer Redressal Forum at Alipore being C.C. No. 244 of 2014, by impleading the petitioner as the opposite party nos.2 and Respondent No. 3 as the opposite party no.1. In the said petition of complaint, the principal grievance of the complainant was non-registration of the sale deed in respect of the covered car parking space

measuring about 575 sq.ft. super built on the ground floor of premises no. 42 of 132/A, Ballygunge Road, Bediadanga with proportionate share of land.

By judgement dated 28<sup>th</sup> November, 2014, the District Consumer Redressal Forum, South 24 Parganas disposed of aforesaid proceeding being CC No. 244 of 2014 *ex parte* against the promoter, being respondent no.3 herein, and on contest against the petitioner herein being the opposite party no.2 in the proceeding. A direction was given to execute and register the Deed of Conveyance and also to deliver possession of the said property in question in 'as it is' condition within one month from that date, failing which the complainant was at liberty to put the decree into execution.

Assailing the aforesaid judgement and order dated 28<sup>th</sup> November, 2014, the petitioner as Appellant filed an appeal under Section 15 of the Consumer Protection Act, 1986.

The State Commission by a judgement dated 29<sup>th</sup> July, 2016, dismissed the appeal on contest. A Revision was preferred under Section 21 of the Consumer Protection Act from the judgement dated 29<sup>th</sup> July, 2016, by the petitioner herein, before the National Consumer Disputes Redressal Commission. By a judgement dated 4<sup>th</sup> October, 2016, the Revision petition was dismissed by the National Consumer

Disputes Redressal Commission. Incidentally, during the pendency of the aforesaid proceedings, the respondent nos.1&2 herein put the order dated 28<sup>th</sup> November, 2014 in execution being aforesaid E.A No. 46/2015. In execution of such decree, deed of conveyance has been executed on 22<sup>nd</sup> December, 2016.

By an order dated 23<sup>rd</sup> December, 2016, an order was passed in connection with M.A. 349 of 2016, for extending police help in the matter of giving physical possession of a 'flat in question' in terms of said order.

The petitioner submits that 'flat' was never the subject matter of dispute and it covered in connection with car parking space measuring about 575 sq.ft.

Assailing the order dated 23<sup>rd</sup> December, 2016 passed in the said execution case No.46 of 2015, the petitioner preferred an appeal under Section 27A of the Consumer Protection Act, 1986 which was registered as 1273 of 2016.

By a judgement dated 26<sup>th</sup> April, 2017, the State Forum dismissed the appeal.

Being aggrieved by the said order, the petitioner has contended that the learned State Forum did not consider as to how the order dated 28<sup>th</sup> November, 2014, which has been put in

execution, could be executed in connection with the provisions enumerated in the Consumer Protection Act, since the forum has no authority to pass orders for execution and registration of a deed in favour of the complaints and such jurisdiction is vested under the W.B Building (Regulation of Promotion of construction and transferred by promoters Act) Act, 1993. The State Commission committed gross failure of justice in failing to appreciate that Act of 1993 has a overriding effect in respect of other acts as would appear under the Act.

The learned Forum has passed the order which suffers from gross irregularities and without application of judicial mind and without considering the facts and circumstances in the present Case. The West Bengal Building (Regulation of Promotion of Construction and Transfer by Promoters) Act, 1993, which is a special statute formed for the benefit of purchasers of flats and would therefore exclude general statute namely Consumer Protection Act, in so far as the purchasers of flats are concerned. Accordingly, the petitioner prayed for setting aside the order.

Learned advocate appearing on behalf of the opposite party no. 3/promotor submits that Revision lies before National commission against the order impugned and an application under Article 227 of

the Constitution of India cannot be preferred against the impugned order. In this context, he relied upon judgements of this Court in the matter of **Prabir Chatterjee Vs. Sunirmal Chakraborty reported in SCC online Cal 2713 and C.O.3851 of 2015(Prakash Baran Mishra Vs. ICICI Lombard General Insurance Company & Anr. He also referred Supreme Court judgement in Civil Appeal no. 4631 of 2019(Karnataka Housing Board Vs. K.A. Nagamani).**

Mr. Sounak Bhattacharyya, learned advocate appearing on behalf of the opposite party nos. 1&2 submits that all the questions raised by petitioner herein regarding jurisdiction has been tested up to National Commission cannot be reagitated in an execution proceeding and it is settled law that executing court cannot go beyond the decree. He further submits that it is admitted position to both the parties that the deed executed by way of execution relates to 'B' schedule property to the deed dated 22<sup>nd</sup> December 2016, which pertains to a covered parking space measuring 575 sq. ft super built area in the ground floor. But entire problem cropped up due to inadvertence mistake committed by executing court in its order dated 23.12.2016, where he directed the O/C, Kasba P.S to extend their co-operation in the matter of giving physical

possession of the “flat in question” instead of writing “Covered parking space measuring 575 Sq.ft super built area in the ground floor. Unfortunately State Forum also did not take note of such mistake and while dismissing the appeal omitted to direct the Forum to make aforesaid correction in the order dated 23.12.2016. Accordingly he prayed for direction for making necessary correction and further direction to execute the decree at the earliest.

I have considered the submission made by all the parties. Whether under the consumer protection Act, District Forum has authority to direct to execute deed and to deliver possession or not, has already been tested up to National Commission and Executing Court cannot go beyond the decree to rehear or adjudicate the issues raised by learned Advocate for the petitioner. In such circumstances, there is nothing wrong in the impugned order to direct police to deliver possession by executing the said order with the help of Police. However dispute cropped up and execution proceeding is pending for at least last eight years due to unmindful casual approach on the part of District Forum in a lackadaisical manner, in putting the word “flat” in the order dated 23.12.2016, when it is both side case that the execution of deed or delivery of possession in terms of the deed, relates to ‘Covered Parking

space' and it never related to any "flat". Such inadvertence and absence of taking care while passing the order, deprives the award holder to get the fruits of order for so many years.

The contention of opposite party that this court has no jurisdiction to entertain the issue, when aggrieved party has his remedy before National Commission, has got no leg to stand. In case of grave dereliction of duty, High Court always has the power to entertain such Application, where irregularity in putting the subject matter as 'flat' in the order is apparent from the face of the order, which caused miscarriage of justice. The mere existence of alternative remedy cannot preclude the High Court from exercising its power under Article 227 of the Constitution of India to interfere in an order, which got handicapped due to importing foreign subject matter in the operative portion of the order.

The Civil Revisional Application being C.O.1688 of 2017 is accordingly disposed of invoking this court's power under Article 227, with a direction upon the District Consumer, Dispute Redressal Forum, South 24 Parganas to make necessary fresh order after deleting the word "flat" and by substituting the words "covered parking space, measuring 575 sq.ft super built up area on the ground floor of premises No. 42/132/A, Bediadanga

Second Lane, P.S- Kasba, Kolkata 39” in the impugned order dated 23.12.2016 and to make every endeavour to conclude the entire execution proceeding within a period of six months from the date of communication of the order.

Urgent photostat copy of this order, if applied for, be given to the parties upon compliance of necessary legal formalities.

**(Ajoy Kumar Mukherjee, J.)**