

**IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE**

PRESENT:

THE HON'BLE JUSTICE AJOY KUMAR MUKHERJEE

**C.O. 3300 of 2019
With
I.A. No. CAN 1 of 2023
Adams Lift & Escalator Pvt. Ltd.
Vs
Mousumi Roy & Anr.**

For the petitioners : Mr. Jayanta Sengupta
Ms. Shalini Mukherjee

For the opposite parties : Mr. Biswaroop Bhattacharya
Mr. Pratik Majumder

Heard on : 14.06.2023

Judgment on : 23.06.2023

Ajoy Kumar Mukherjee, J.

1. Order dated 21st August , 2019 passed by the West Bengal State Consumer, Dispute Redressal Commission, Kolkata (in short state Commission) in appeal No. 587 of 2019, has been assailed by filing present application under Article 227 of the Constitution of India. Petitioner contended that the award holder/opposite party herein is customer of the petitioner herein, who filed an application under section 12 of the Consumer Protection Act , 1986 (in short Act of 1986) before the learned District Forum , South 24 Parganas at Baruipur, wherein the District Forum directed petitioner herein to complete the installation of the elevator/lift at

the premises of the opposite party/complainant and to hand over the elevator/lift in working condition and to provide the lift license from the appropriate authority for proper use of the same within 60 days from the said order. It has also been directed that the complainant /opposite party herein shall pay the balance amount of lift /elevator installation cost of Rs. 3,000,000/-within that period. It was further held that opposite party shall pay compensation of Rs. 50,000/- for harassment and mental agony and of Rs. 20,000/- towards litigation cost and it was further ordered that if the elevator/lift is not installed within the aforesaid period, petitioner herein will bear further cost of Rs. 20,000/-, towards punitive damages, which will be deposited in the Consumer Legal Aid Fund.

2. Being aggrieved by the said order the petitioner herein preferred an appeal before the State Commission and said appeal got dismissed by the State Commission with a cost of Rs.10,000/- being payable by the appellant to the respondents and thereby affirmed the order of the District Forum. The petitioner herein preferred an appeal before the National Commission being RP No. 520 of 2019 and National Commission has disposed of the said appeal on 14th May, 2019, whereby the Revision petition was dismissed as the National Commission was of the view that the order impugned does not call for any interference in exercise of their revisional jurisdiction.

3. Opposite party/deGREE holder filed execution case being EA 100/2018 before the District Forum for execution of the aforesaid order. The petitioner/ award debtor states that after passing the final order by the National Commission, the petitioner tried his level best to comply the order of the District Forum, but due to some problems generated in compliance of

the said order, he could not install the lift/elevator. In the meantime by the order dated 17.01.2019, warrant of arrest has been issued by learned District Forum on the ground that no order of stay has been granted by the National Commission. Even after dismissal of the revisional application, the warrant of arrest is in fact and still in force. Petitioner further alleged that due to continuance of said warrant of arrest order, the entire business operation of the petitioner company get closed. However, for the purpose of the compliance of the said order, the petitioner issued letter to decree holder Smt. Mousumi Roy on 30.05.2019 and on 06.06.2019, which she received but declined to co-operate. The petitioner/judgment debtor submits that he filed several petitions before the District Forum stating his willingness to comply the order but he could not carry out the same in view of non access to the site.

4. The petitioner being aggrieved by the order dated 18.07.2019 read with other orders dated 17.01.2019, 15.03.2019, 20.04.2019, 20.05.2019, 20.06.2019 passed by learned District Forum, had preferred appeal under section 27A of the Act of 1986 with a prayer that the commission may be pleased to allow Applicant/company to comply the final order passed on 14th February, 2017 by directing the District Forum to grant stay in respect of the order of warrant of arrest, pending since 17.01.2019, so that he can comply the order dated 14th February, 2017 and also for directing the complainant/opposite party herein to co-operate with the men and agents of petitioner/company, so that his men and agent can get free access to the pre-scheduled site to get the lift installed.

5. Petitioner further alleged that Hon'ble State Forum heard the appeal but dismissed the same by an order dated 21st August, 2019, without recording any submission in connection with problems faced by the petitioner herein in complying the said order and on the contrary imposed further cost of Rs. 25,000/- upon award debtor/petitioner.

6. Now being aggrieved by the said impugned order dated 21st August, 2019 passed by the State Forum in Appeal no. 587 of 2019, petitioner herein contended that keeping the warrant of arrest pending against the petitioner is an arbitrary and capricious action and Forum proceeded arbitrarily with material irregularity, without appreciating the requirements of the statutory provisions. The Forum below acted in a perfunctory manner without any application of judicial mind and without recording any reason. It failed to consider that the petitioner/company's willingness to comply the order which could not be carried out due to non-access to the site. The District Forum as well as the State Forum have failed to exercise their jurisdiction as it dehorse the settled principle of law, thereby caused grave injuries and prejudice to the petitioner's right and passed the erroneous order. Accordingly the petitioner has prayed for keeping in abeyance the order of warrant of arrest and to stay all further proceedings of Execution case No. 100 of 2018.

7. Learned counsel appearing on behalf of the opposite party vehemently opposed the prayer made by the petitioner and contended that there was direction upon the petitioner herein for installation of elevator/lift within a period of 60 days from the order. The petitioner herein instead of installation of lift /elevator, initiated appeal and revision one after another and the

petitioner never had any intention to comply the order. Moreover the cost amount of Rs.1,25,000/- imposed by different Authorities upon the petitioner has not been paid by the petitioner. The court below finding audacity on the part of petitioner herein, in disregarding the order which was confirmed upto the National Forum and also seeing petitioners audacity in not paying the cost amount to the opposite party herein which was awarded by the State Commission and National Commission, Commission below was justified in passing order impugned whereby the District Forum has issued warrant of arrest against the present petitioner. In fact, out of total cost of Rs. 7,50,000/-, the petitioner has already received Rs. 4,50,000/-long back, but he failed and refused to install the lift /elevator, nor has paid the cost imposed upon the petitioner and as such the order impugned does not call for any interference.

8. The issue which has been raised in the present application is whether the commission below was justified in not keeping the order of warrant of arrest in abeyance to allow the petitioner to carry out the work. Before entering into said issue let me consider the relevant provisions in this context under the Act of 1986. Section 25 and 27 are the relevant provisions in this context which are reproduced below.

“Sec 25 Enforcement of orders of the District Forum, the State Commission or the National Commission.—

(1) Where an interim order made under this Act is not complied with, the District Forum or the State Commission or the National Commission, as the case may be, may order the property of the person, not complying with such order to be attached.

(2) No attachment made under sub-section (1) shall remain in force for more than three months at the end of which, if the non-compliance continues, the property attached may be sold and out of the proceeds thereof, the District Forum or the State Commission or the National Commission may award such

damages as it thinks fit to the complainant and shall pay the balance, if any, to the party entitled thereto.

(3) Where any amount is due from any person under an order made by a District Forum, State Commission or the National Commission, as the case may be, the person entitled to the amount may make an application to the District Forum, the State Commission or the National Commission, as the case may be, and such District Forum or the State Commission or the National Commission may issue a certificate for the said amount to the Collector of the district (by whatever name called) and the Collector shall proceed to recover the amount in the same manner as arrears of land revenue.”

“Sec 27 . Penalties

(1)] Where a trader or a person against whom a complaint is made [or the complainant] fails or omits to comply with any order made by the District Forum, the State Commission or the National Commission, as the case may be, such trader or person [or complainant] shall be punishable with imprisonment for a term which shall not be less than one month but which may extend to three years, or with fine which shall not be less than two thousands rupees but which may extend to ten thousand rupees, or with both:

[(2) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the District Forum or the State Commission or the National Commission, as the case may be, shall have the power of a Judicial Magistrate of the first class for the trial of offences under this Act, and on such conferment of powers, the District Forum or the State Commission or the National Commission, as the case may be, on whom the powers are so conferred, shall be deemed to be a Judicial Magistrate of the first class for the purpose of the Code of Criminal Procedure, 1973 (2 of 1973).

(3) All offences under this Act may be tried summarily by the District Forum or the State Commission or the National Commission, as the case may be.”

It is worthy to be mentioned that prior to 2002 Amendment, under the old section 25, enforcement of every order passed by the Forum or commission were executed in the same manner as if it were decree or order made by a court. Old section 25 of the Act conferred discretion on the Forum to enforce their order as decree of civil Court only in the event of their inability to execute in themselves. Now every order under the said old provision mentioned in sec 25 were meant and include every “final order” as there was no separate provision for enforcement of any interim order. The scheme of the earlier order was to treat every final order passed by a Forum or commission as a decree made by a civil court and to send the order to the civil court for execution in accordance with the provisions of Civil Procedure

Code. However, under the present amended provision there appears to be no procedure for either attachment or sale in respect of “final order” as has been provided in section 25 of the Act. Sub-Section (1) and (2) of section 25 speaks about attachment and sale of the property of opposite party, who has contravened the “interim order”. Said two sub-sections has got no connection in respect of any final order. Even sub-section (3) of Section 25, though not confined to any interim order but this Sub-Section (3) of Section 25 makes provision for execution of money award. Needless to say that in terms of section 14 of the Act of 1996, Consumer Forum may pass different types of order beside execution of money awards. But section 25(3) does not provide machineries for enforcement of those rights other than money award as Sub-section (3) clearly begins with the sentence “Where any amount is due from any person under an order made by District Forum, State Commission or the National Commission as the case may be, the person entitled to the amount may make an application.....”. Accordingly section 25(3) is silent about execution of every other orders, for example, orders passed in terms of clause (a) (b) (e) (f) (g) (h) (ha) and (hc) of section 14.

9. On the other hand section 27 has nothing to do with execution of the order of the Forum. In fact section 25 is the only provision in the Act of 1986 relating to execution. Section 27 in fact creates a distinct offence and also provides for punishment for committing the said offence. On careful reading of the section it appears that section 27 deals with one offence i.e. failure or omission to comply with any order made by Forum by a trader or a person against whom a complaint has been lodged. Punishment has also been

prescribed under that section for committing such offence but it no way speaks how the orders of Forum except money award can be executed. In fact these two sections constitute independent remedies and they are also independent of each other. While section 25 deals with enforcement of order by a civil process in case of interim order and money awards, section 27, confers a quasi criminal sanction for enforcement by way of punishment with imprisonment or imposition of monetary penalties. Then again under section 27(2) the concerned Forum or the Commission have been vested with power of Judicial Magistrate, First Class, only for a limited purpose i.e. “for the trial of offence under the Act”. Said section 27(2) stipulates that if there is a complaint against a person or a trader for non compliance of an order made by the Forum or the commission, the accused trader or person shall be punished with imprisonment or fine or with both. So this sub-section (1) and (2) of section 27 makes it clear that non-compliance of any order passed by Forum/Commission amounts to an offence and for which a complaint can be lodged by the aggrieved person and if such complaint is lodged then under sub-section (2) the Forum/Commission shall have the same power that of a Judicial Magistrate for the purpose of the trial of offence. The term “trial of offences under the Act” has been specifically used by the legislature under that sub-section (2) of section 27. Section 27(3) provides for making summary trial of such cases.

10. Accordingly in strict sense this Section 27 has not dealt with execution of the order of Forum as ordered in the present context. In fact the only provision for execution under the said Act i.e section 25 has two distinct parts and as I have stated above that the first part relates to interim

order passed by the authority under section 13(3) (B) i.e. about interim order and section 25(3) is restricted only to enforce order where any amount is due from any person. It is doubtful whether such lacuna in section 25 in not providing execution proceeding for final orders under section 14 except monetary award, can be shielded by way of invoking section 27. In strict interpretation of sub-section (3) of section 25, the orders which are not related to payment of any amount due, can hardly be executed in accordance with the provisions of Sub-Section (3) of Section 25, though non compliance of final order like present one, can be treated as an offence and aggrieved party may lodge complain under section 27 of the Act but there is hardly any reason to believe that a criminal prosecution under section 27 is a part of execution proceeding because imprisonment and/or fine in many cases, like the present one, may not provide the complainant the reliefs which he has obtained in terms of section 14, unless Forum/Commission exercising their Magisterial power can mould the reliefs under the provisions of Code of Criminal procedure. But for applying section 27, the Forum or the commission is to take cognizance of the offence under section 190 of the Code of Criminal procedure but nothing has been stated in the said section as to how the cognizance of the offence can be taken by the said authorities nor it has stated that taking cognizance shall also be guided by the code of criminal procedure as applicable in case of Trial. Accordingly on conjoint reading of aforesaid two provisions which are the only provisions relating to execution, under the Act of 1986, it appears that the orders like the present one can only be enforced by order of imprisonment or fine or with both or by molding the order while awarding punishment. Accordingly

Forum/Commission ought to have dealt with the matter of issuance and /or prayer for stay of warrant of arrest against petitioner in the aforesaid perspective.

11. In the present context admittedly no complaint has been lodged by the petitioner in compliance with section 27 of the Act of 1986. Opposite parties filed the execution case in order to execute the order which was passed on 14.02.2017. However, in the aforesaid context it cannot be said that the intention of the legislature is not to provide any remedy against the order passed under the Act. In the present case I find that the order impugned dated 14.02.2017 is very specific, ordering portion of which runs as follows:-

Ordered

“That the complaint case is allowed against O.P-1 on contest & in expert against O.P-1 on contest & in ex parte against O.P-2.

The O.Ps are directed to complete the installation of the elevator/lift at the premises of the complaint and hand over the elevator/lift in working condition and to provide the lift license from the appropriate authority for proper use of the same within 60 days from this date.

The complaint shall pay the balance amount of the lift/elevator i.e. Rs. 3.00 lakh within this period.

O.P.s shall have to pay condensation to the tune of Rs. 50,000/- for harassment and mental agony of the complainant and litigation cost of Rs. 20,000/- within 60 days from this date either jointly or severally. Be it mentioned here that after the stipulated period if the lift/elevator is not installed, then the complainant is at liberty to execute the order through this Forum and in that event O.Ps have to bear further cost of Rs/20,000/- jointly & severally towards the punitive damages and that amount will be deposited in the Consumer Legal Aid Fund. It may be mentioned here that if the O.Ps failing to comply the above order then complainant is at liberty to executes the order thorough the Forum.”

12. In view of the said order presently the impasse created among the parties as appearing from their submissions are as follows:-

- (i)** In terms of final order the opposite party/complainant is to pay Rs. 3,00,000/- within 60 days from the date of the order and petitioner is to complete the installation work within the period for 60 days, but the opposite party wants to pay the said amount after completion of substantial installation work, since their contention is out of 7,50,000/- they have already paid 4,50,000/- and further more they want to pay the said amount after adjusting the cost of Rs. 1,00,000/- which they are entitled to receive from the petitioner herein as imposed by the Forum and commission, which the petitioner does not agree.
- (ii)** Parties are at loggerheads, unless substantial portion of work is done in terms of their/complainant's payment of Rs. 4,50,000/- out of 7,50,000/- they are not agreeable to pay any further amount, on the other hand the petitioner's contention is unless payment is made phase wise the installation work get stalled. Petitioner argued with force that after his defeat before National Commission he is/was always willing to carry out the order but in view of issuance of warrant of arrest order and non-co-operation on the part of opposite parties he is not getting access to the property to complete the installation work.

- 13.** Be that as it may from the aforesaid quoted order it is clear that in terms of the order both the parties are under an obligation to comply the order in its true letter and spirit. In the present application petitioner has specifically stated in paragraph 7 that upon passing the final order that is order dated 4th May, 2019 passed by Hon'ble National Commission, they tried their level best to comply the order passed but few problems are generated in compliance of the said order which he has described in the said paragraph

Problems In Compliance

- (a) Non Co operation from Complainants end.*
- (b) Non payment of balance R.3,00,000/- by complainant.*
- (c) Non providing of Site/Site Clearance "1106, Kalikapur, Purbaloke, Kolkata-700099" as per Contract No. ALE 0326/13-14 dated 21.08.2013.*
- (d) Not ready to talk with applicants men & agent.*
- (e) Non providing materials already supplied(admitted by Complainant & recorded in all Orders i.e. District Forum, State Commission & national Commission)*
- (f) "Warrant of Arrest" pending for Compliance.*
- (g) The Officer-In-Charge Karaya & Anandapur Police Station, Kolkata acted in such a way the entire business operation of applicants' company got closed.*

- 14.** In view of aforesaid facts and circumstances and also in view of the legal proposition as discussed above, the present application is hereby disposed of invoking power under Article 227 of the Constitution of India, with the following directions.

- (i)** Petitioner will complete the work of installation of lift/elevator as per the order dated 14.02.2017 passed in C.C. case No. 463 of 2014 within 90 days from the date of communication of this order.
- (ii)** If the petitioner complete substantial portion of installation work, (i.e. two third of the entire work within 60 days) the opposite party shall pay Rs. 1,50,000/- to the petitioner after expiry of 60 days from the date order and will pay the remaining amount of 1,50,000/- after completion of the entire work. The impugned order in connection with issuance of warrant of arrest against the petitioner herein, shall be stayed for a period of 90 days from the date of communication of the order but if petitioner fails to complete the installation work within stipulated period of 90 days the order impugned regarding issuance of warrant of arrest against the petitioner, will revive as if present order of stay no longer exists.
- (iii)** The petitioner shall pay the cost already imposed by the Forum and commission as directed, within a period of 30 days from the communication of the order, in default opposite party will be at liberty to initiate proceeding under section 25(3) and/or 27 of the Act of 1986 against the petitioner. However, I made it clear that payment of cost has got no connection with opposite party's liability

to pay Rs.3,000,000/- and as such there shall be no question of adjustment of the amount of cost with the opposite party's liability to pay Rs, 3,000,000/- to the petitioner as per the modalities stated above and remedy for realisation of unpaid cost amount, if any, shall be dealt with under section 25(3) and/or section 27 of the Act as stated above.

15. C.O. 3300 of 2019 along with connected application are accordingly disposed of.

16. There will be no order as to costs.

Urgent Photostat certified copy of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(AJAY KUMAR MUKHERJEE, J.)