

S/L 12
03.01.2023
Court No.652
SD

CO 4305 of 2019

The Chief Executive Officer, Malda District Central
Cooperative Bank Ltd.

Vs.

Bipradas Kumar & Ors.

Mr. Sobhendu Sekhar Roy
Mr. Amarendra Chakraborty
Mr. Arghya Banerjee

...for the Petitioner.

Mr. Avishek Prasad
Ms. Sreetama Neogi

...for the Opposite Party No.1.

Being aggrieved by Order No.9 dated 09.9.2019 passed by the learned District Consumer Disputes Redressal Forum, Malda in Execution Case No.05 of 2018 arising out of CC/10/2017, present revisional application has been preferred.

The petitioner contended that the opposite party herein, as complainant, filed a consumer complaint case before the District Consumer Dispute Redressal Forum, Malda, West Bengal praying for a direction upon the opposite party nos.2 and 3 herein to refund the entire money of Rs.2,37,116/- along with Rs.50,000/- for mental agony and harassment within 45 days from passing of the order.

The aforesaid complaint case was came up for hearing before learned District Redressal Forum, Malda and after hearing the complainant, the learned Forum was pleased to dispose of the said application directing the petitioner herein to refund the earnest money of Rs.2,37,116/- to the opposite parties herein and also to pay compensation for mental

agony and harassment for Rs.50,000/- within 45 days from the date of order.

The petitioner herein has not filed any appeal before the State Consumer Dispute Redressal Commission and now the opposite party no.1 being the decree-holder in the complaint case filed an application for execution of the order dated 18.9.2018 passed by the District Forum. The petitioner herein had entered appearance on 09.9.2019 and filed one application for recalling of the order dated 18.9.2018. The said application was came up for hearing before the learned Forum, when learned Forum after hearing both the parties was pleased to reject the petitioner's prayer for recalling of the aforesaid order and was pleased to issue warrant of arrest against the opposite parties.

Mr. Sobhendu Sekhar Roy, learned counsel appearing on behalf of the petitioner, contended that the order passed by the learned Forum is illegal and has been passed without any reason. The complainant is not a consumer as directed under the Act as there never existed any transaction for any goods or services. Opposite party no.1/decreree-holder has obtained the order dated 19.9.2018 by misrepresentation and suppression of the actual scenario. Learned Forum ought not to have passed such order issuing warrant of arrest against the Government service holder who in no way involved in any transaction and/or causing deficiency of service. In fact, learned Forum below has exercised its jurisdiction not vested in it by law and has failed to appreciate the correct state of affairs.

He further contended that the learned Forum ought to have given a proper hearing to the application of the petitioner and should have given reasonable opportunity to the petitioner herein before passing the order impugned. Accordingly, petitioner prayed for setting aside the order impugned.

The petitioner in this context has relied upon a judgment of this Court passed in CO 1663 of 2021 on 04.11.2022.

Mr. Avishek Prasad, learned counsel appearing on behalf of the opposite party no.1, submits that the Forum had passed the impugned order dated 09.9.2019 against all the opposite parties. However, the opposite party no.3 of the said case is the petitioner herein who has challenged the order impugned.

He further contended that from the order impugned, it is clear that the Forum has clearly held that the opposite parties are jointly liable to pay the amount awarded by the Tribunal. From the order passed by the Forum in execution proceeding being Malda D.F. Execution Case No.05 of 2018, it appears that the notice of the execution case was duly served upon the parties and the petitioner/opposite party no.3 had appeared in the said execution proceeding and also filed petition for recalling of the order passed by the Forum on 18.9.2018. However, the said prayer was turned down.

He further submits that from the Order No.3 dated 20.02.2019, it appears that the judgment debtor no.1 after appearance prayed time to enable the judgment debtor to

pay the awarded amount to the decree-holder. In spite of such admission made on behalf of the judgment debtors, they have not taken any initiative for payment of the said amount and as such, the Forum was justified in issuing warrant of arrest against the petitioner. Accordingly, the order impugned does not call for any interference.

Considered the submissions made by both the parties.

It appears from the Order No.6 dated 09.9.2019 that the Forum had taken up for hearing the judgment debtor no.3/petitioner's petition for recalling the order dated 18.9.2018 and was pleased to reject the said prayer. However, the petition filed by the opposite party/decreed-holder on 17.7.2019 for issuance of warrant against the judgment debtors was allowed without assigning any reason.

It is needless to mention that under section 13(5) of Consumer Protection Act, 1986, every proceeding before the forum shall be deemed to be a judicial proceedings within the meaning of section 193 and 228 of the I.P.C. and district forum shall be deemed to be a civil court for the purpose of section 195 chapter XXVI of the Code of Criminal Procedure. Sections 25 and 27 of the Act provides for speedy enforcement of the orders of the forum, which are in the nature of execution proceedings of the orders made by the Redressal authority and Section 25 of the Act provides for enforcement of such orders by a civil process, as if they are decree or order of civil court, whereas section 27 of the Act confers a quasi criminal sanction for their enforcement by way of punishment with imprisonment or imposition of

monetary penalties. Accordingly section 25 should be read in conjunction with section 27. There is no other provision for execution in the Act nor there is any rule to that effect. Section 25 is divided in two parts, the first part relates to interim order passed under the authority of Section 13(3B) while second part relates to recovery of money ordered to be paid to the applicant by the adversary. Sub-sections (1) and (2) speak of attachment and sale of the property of the opposite party who has contravened the interim order. The relevant provisions for attachment and sale are provided in order 21 rule 41 to 106 of the Civil Procedure Code.

In the present case, it appears that the opposite parties/petitioner herein who is bound by the order, failed to comply with the order during the period of its subsistence, and as such, the commission in my opinion should have passed the order for attachment of the property of the opposite parties herein in order to recover the dues, before issuance of warrant of arrest against the judgment debtors. The warrant of arrest in such execution proceeding should be issued as a last resort and as such, I am of the view that the commission was not justified in issuing warrant of arrest without exhausting process of attachment for not complying the order of the commission regarding payment of decretal dues as ordered by the commission.

In this context, reliance has been placed in ***L & T Finance Limited vs. Pramod Kumar Rana & Anr.*** reported in ***(2021) SCC Online (SC) 1124*** where the national commission was pleased to issue bailable warrant

for producing the opposite party before *the National Commission on 18.10.2021. In the said proceeding Hon'ble Apex Court was pleased to held "Be that it may, even the review application against the order dated 26.08.2021 is pending before the Tribunal. Therefore, in the facts and circumstances of the case, issuance of theailable warrants against Shri Dinanth Mohandas Dubhashi, the Director of original opposite party No. 2 was not warranted at this stage.ailable warrants are to be issued as a last resort and only in a case where it is found that the opponent parties are not co-operating at all and that they are avoiding appearance before the national Commission deliberately and /or they are not represented at all either through their authorized representative or through their counsel".*

In view of above decision and for the reasons stated above, the Order No.9 dated 09.9.2019 passed by the District Consumer Disputes Redressal Forum, Malda directing issuance of warrant against the present petitioner is hereby set aside. However, it will be open for the commission to pass further order including attachment of property for recovery of decretal dues after giving opportunity to both the parties to represent their case relating to non-payment and /or non-appearance before the forum. It will also be open to the Forum to pass necessary direction to require presence of the judgment debtors, if required, in future after compliance of the provisions contemplated in Section 25 of

the Consumer Protection Act read with the relevant provisions of the Code of Civil Procedure.

It is made clear that I have not expressed anything in favour of either of the parties, on the allegations made in the application and present application is allowed to the aforesaid extent only.

CO 4305 of 2019 is accordingly allowed.

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.

(Ajoy Kumar Mukherjee, J.)