

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL WRIT PETITION (WP) NO.128 OF 2022

Nisarg Herbals Pvt. Ltd. Through its Managing Director
.VS.

The State of Maharashtra and ors.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions Court's or Judge's orders.
and Registrar's Orders.

Mrs Swati Paunikar, Advocate for the petitioner
Mr S. A. Ashirgade, APP for the State/respondent Nos. 1 to 3
Mr R. S. Nitnaware, Advocate for respondent Nos. 4 to 7 (a) & (b)

CORAM : G.A. SANAP, J.

DATE : JANUARY 04, 2023.

Heard finally at admission stage. Perused the record
and proceedings.

2. The petitioner, a Private Limited Company, through its Managing Director, has challenged the impugned order dated 25.02.2022 passed by the State Consumer Disputes Reddressal Commission, Maharashtra State, Circuit Bench, Nagpur in Execution Application No. EA/15/1 arising out of Consumer Complainant Case No. CC/10/4 and Execution Application No. EA/15/2 arising out of Consumer Complaint Case No. CC/10/5. The Consumer Complaint Case Nos. CC/10/4 and CC/10/5 were decided by a common Judgment on 09.04.2013. The complaints were partly allowed against the present petitioner. The operative order passed by the Commission reads thus:

“1. Both the complaints are partly allowed against the opponent No.1 and opponent No.1 is directed to repay the amount Rs.10,00,000/- (In words Rupees Ten Lacs only) to complainant – Smt Shubhangi with interest @ 12 % p.a. w.e.f. from the date of payment. Likewise opponent No.1 is directed to repay the amount of Rs.2,00,000/- (In words Rupees Two Lacs only) to complainant- Smt Sandhya with interest @ 12 % p.a. w.e.f. from the date of payment. Further opponent No.1 is directed to repay the amount Rs.21,00,000/- (In words Rupees Twenty One Lacs only) to complainant- Mr. Vinay Karkare with interest @ 12 % p.a. w.e.f. from the date of payment. Further opponent No.1 is directed to repay the amount Rs.7,00,000/- (In words Rupees Seven Lacs only) to complainants- Mr Milind and Mr Ramesh jointly with interest @ 12 % p.a. w.e.f. from the date of payment.

2. Further the opponent No.1 is directed to pay Rs.10,000/- each to complainants -Smt Shubhangi, Smt Sandhya and Mr Vinay towards compensation and Rs.10,000/- jointly to complainant Mr Milind and Mr Ramesh. The opponent No.1 is also directed to pay Rs.2,000/- to complainants – Smt Shubhangi towards cost of proceeding and Rs.2,000/- to complainants – Smt Sandhya and Mr Vinay, Mr Ramesh and Milind jointly for their each complaint.

3. No order against opponent No.2.”

3. The petitioner appeared before the Commission in the execution proceedings on 03.03.2017. On 28.07.2017, he raised oral objection to the maintainability of the execution applications filed under Section 27 of the Consumer Protection Act, 1986. The proceedings before the Commission went on till

25.02.2022. The petitioner did not comply the order passed by the Commission. Therefore, the Commission was constrained to pass an order dated 25.02.2022 and the Managing Director of the petitioner company was taken in custody and remanded to Magisterial Custody.

4. This Court vide order dated 26.02.2022 granted stay to the order dated 25.02.2022 passed in both the execution applications and simultaneously, ordered that the petitioner be forthwith released on bail. This Court passed the order subject to certain conditions. One of the condition was that he must deposit the principal amount of Rs.40,00,000/- (In words Rs. Forty Lacs only) in terms of the order passed by the Commission on 09.04.2013. The petitioner has deposited the amount as per the order of this Court and he has been released from jail.

5. It is to be noted that the grievance of the respondents has been substantially redressed. The amount remained to be paid, as per the order of the Commission dated 09.04.2013, is towards the interest and the compensation. Learned Advocate for the respondent Nos. 4 to 7 (a) & (b) submits that the execution proceedings are pending. In the pending execution proceedings the respondents would be required to submit the calculation of the interest and make a prayer before the Commission to issue appropriate order for recovery of said amount from the petitioner. Learned Advocate for the respondents, therefore, submits that

subject to the availment of right to execute this part of the order, the petition can be disposed of by setting aside the impugned order.

6. Learned Advocate for respondent Nos. 4 to 7 (a) & (b) submits that the respondents be allowed to withdraw the amount deposited by the petitioner in this Court.

7. Learned Advocate for the petitioner submits that even if the submission advanced by the learned Advocate for the respondents is accepted, the prayer made for withdrawal of the amount cannot be allowed. Learned Advocate for the petitioner submits that the petitioner has now approached the National Consumer Disputes Reddressal Commission, New Delhi, by way of an appeal. The learned Advocate submits that the appeal with an application for condonation of delay was filed in the month of December 2022. It appears that the delay has not yet been condoned. The petitioner slept over its right till December 2022. The respondents have been denied the fruits of the order dated 09.04.2013. Therefore, the objection raised to the withdrawal of amount by the respondents, cannot be sustained.

8. In view of above, the petition stands, disposed of. The impugned order dated 25.02.2022 is quashed and set aside. Liberty is granted to the respondents to take appropriate steps

before the State Consumer Commission for execution of the remaining part of the order, in accordance with law.

9. The petition stands disposed of, accordingly.

(G. A. SANAP, J.)

Namrata