

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

CRIMINAL WRIT PETITION NO. 364 OF 2022

PETITIONER : Indostar Capital Finance Limited,
through its Senior Vice President, Mr.
Kirtikant Kaviju, Aged about 48 years,
Occ.- Service, office at One India Bul
Centre, 20th Floor, Tower 2-A, Jupital
Mills Compound, Senapati Bapat
Marg, Mumbai 400 013.

//VERSUS//

RESPONDENTS : 1. Jyoti Shyam Dahare, Aged about 42
years, Occ.- Business, Resident of 77,
Gitanjali Society, Beltarodi Road, Near
Kachore Laws, Nagpur 440015.

2. India Infoline Finance Limited,
through its Manager, office at 12, A-10,
13th Floor, Parini Crisenzo, C-38, C-
39, G-Block, Behind MCA, Bandra
Kurla Complex, Bandra East, Mumbai
400051.

3. India Infoline Finance Limited,
through Vidharbha Head Shri Swapnil
Randive, aged about 45 years, Occ.-
Service, office at 1st Floor, Naidu
Chambers, Near Chawan Traders,
West High Court Road, Dharampeth,
Nagpur.

Mr. Alok H. Daga, Advocate for the Petitioner.

Mr. Akhtar N. Ansari, Advocate for Respondent Nos.2 & 3.

CORAM : G. A. SANAP, J.

DATED : 11th JANUARY, 2023.

ORAL JUDGMENT

Rule. Rule made returnable forthwith. The petition is heard finally by consent of the learned advocates for the parties. Respondent No.1 though served, has failed to appear before this Court.

02] The petitioner-Company has questioned the correctness and legality of the order dated 27th July, 2021, passed by the District Consumer Disputes Redressal Forum at Nagpur (for short "Consumer Forum"), whereby the Presiding Officer of the Consumer Forum was pleased to allow the application made by the respondent No.1 for addition of the petitioner as party respondent No.3 in the execution proceeding being M.A. No.1 of 2020. The Consumer Forum *vide* order dated 9th June, 2017 had allowed the application filed by the respondent No.1 and granted certain reliefs. In the execution proceeding, the respondent Nos.2 and 3 made a statement with regard to the transfer of the portfolio of the respondent Nos.2 and 3. In view of this statement made by the respondent Nos.2 and 3, the respondent No.1 applied for addition of the petitioner herein as party respondent No.3 in the

execution proceeding. In the application before Consumer Forum, the respondent No.1 stated that the respondent Nos.2 and 3 got merged in the petitioner herein and, therefore, the petitioner herein was the necessary party for the purpose of the execution of the order passed in favour of the respondent No.1.

03] The learned advocate for respondent Nos.2 and 3 submitted that the merger as sought to be contended by respondent No.1 has not taken place. Learned advocate submitted that respondent Nos.2 and 3 have simply stated about dealings of portfolio and the vehicle business only. The respondent Nos.2 and 3 contested the execution application on merits. It is to be noted that the Consumer Forum without verifying the correct factual position, by one line order, allowed the application in the absence of any material to establish that the merger as sought to be asserted by the respondent No.1 had actually occurred. There was no need to make the petitioner herein as party respondent No.3 in the execution proceeding. No material has been placed on record either before the Consumer Forum or before this Court to justify the contention that the merger as stated in the application made by the respondent No.1 indeed occurred. Therefore, in my view, the Consumer Forum ought to have taken note of this fact. The

petitioner in view of the above position was not a necessary party, being liable to satisfy the order passed in favour of the respondent No.1 on 9th June, 2017.

04] In view of this position, the order cannot be sustained. The petition is accordingly allowed. The order passed by the Consumer Forum dated 27th July, 2021 is quashed and set aside.

05] As a result thereof, the application made by the respondent No.1 to add the petitioner as respondent No.3 in the execution proceeding, stands rejected.

06] Rule is made absolute in the above terms.

(G. A. SANAP, J.)

Vijay