



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

CRIMINAL WRIT PETITION NO. 713/2022

M/s. K. B. Associates thr. Its Partner Sau. Rohini Nilay Band Vs. Dr. Sau. Arti
Abhay Kelkar

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. S. P. Bhandarkar, Advocate for petitioner.
Mr. T. D. Mandlekar, Advocate for respondent.

CORAM : ANIL L. PANSARE, J.

DATE OF RESERVING THE ORDER: 25.09.2023

DATE OF PRONOUNCING THE ORDER: 04.10.2023

The petitioner – Developer has challenged the order dated 21.06.2022 passed by learned District Consumer Redressal Forum, Nagpur (hereinafter referred to as the, “District Forum”), as also order dated 04.10.2022, passed by the State Consumer Dispute Redressal Commission, Maharashtra, Circuit Bench at Nagpur (hereinafter referred to as the, “State Commission”), thereby confirming the order passed by the District Forum.

2. Briefly stated, the facts are as under:

The respondent-original complainant has, in December – 2012, lodged complaint against the petitioner – Developer under Section 12 of the Consumer Protection Act, 1986 (hereinafter referred to as the, “Act of 1986”). The petitioner is said to have published advertisement and floated a scheme under the name and style as, “Swapnasrushti”, in the land bearing survey nos. 143/1, 142/2, 182 and 183,

total admeasuring 8.34 HR situated at mouja Ambazari, Tahsil Hingna, District Nagpur. The respondent, after going through the advertisement and brochure, showed her willingness to purchase the plot bearing No. A/12, admeasuring 20,000 Sq. Ft. along with tenement to be constructed thereon, admeasuring 760 Sq. Ft. The parties entered into an agreement to sell, which came to be registered before the Sub Registrar's Office on 19.06.2006. The total consideration agreed was Rs.7,00,000/-

3. The grievance of the respondent is/was that the petitioner has agreed to provide amenities viz. children park, swimming pool, health club, sports club, street lights, internal roads, shops and restaurants, daily need shop, etc. on payment of nominal charges. These amenities were not provided and, therefore, the complaint under Section 12 of the Act of 1986 came to be filed.

4. The District Forum, vide judgment and order dated 07.06.2014, partly allowed the complaint. The petitioner was directed to execute the sale deed as agreed along with all the amenities upon payment of Rs.50,000/- as additional costs of construction by the respondent.

5. The petitioner preferred an appeal before the State Commission vide Appeal No.318/2014, which came to be dismissed on 13.04.2015 and, thereafter, the National Consumer Disputes Redressal Commission has also dismissed the appeal vide order dated 10.09.2015 in R. P. No.

1739/2015. Thus, the order dated 07.06.2014 passed by the District Forum, attained finality.

6. The respondent has, on 27.10.2016, filed the execution proceedings bearing Execution Application No.252/2016. The petitioner filed her reply and showed her willingness to comply the order passed by the learned District Forum, Nagpur. On 21.06.2022, the learned District Forum, Nagpur in the execution proceedings, while allowing execution application, was pleased to pass the impugned order. The petitioner has been sentenced to suffer simple imprisonment for six months and to pay a fine of Rs.25,000/- as penalty and in default to undergo simple imprisonment for two months.

7. The petitioner approached the State Commission vide Appeal in Execution Application No. AEA/22/24. On 04.10.2022, the State Commission has refused to grant stay to the impugned order as also to suspend the sentence. On 25.08.2022, the petitioner was detained and, therefore, the petitioner approached the High Court vide Criminal Writ Petition No.593/2022, thereby challenging the said order. The High Court granted interim relief and the petitioner was released. On 12.09.2022, the High Court was pleased to quash and set aside the order dated 25.08.2022 and remanded the matter back to the State Commission to decide it afresh. On 04.10.2022, the learned State Commission was pleased to dismiss the appeal. Hence, the present petition.

8. Mr. Bhandarkar, learned counsel for the petitioner, has placed reliance upon the following judgments to contend that the procedure as contemplated under Section 262 of the Criminal Procedure Code, 1973 (hereinafter referred to as the, “Code”), i.e. the procedure specified in the Code for trial of summons cases, ought to have been followed by the District Forum and having not done so, the impugned orders are unsustainable in the eyes of law.

1. Kamlesh Aggrawal Vs. Narain Singh Dabbas and anr., reported in (2015) 11 SCC 661.

2. Ramesh G. Kohali Vs. Shivanand Shanbag, reported in 2020 SCC Online NCDRC 234

3. Irbat Faizan Vs. Omaxe Buildhome Pvt. Ltd, reported in 22 SCC OnLine SC 620

4. Karnataka Housing Board Vs. K. A. Nagamani, reported in (2019) 6 SCC 424.

5. Deepa Bhargava and Ors. Vs. Mahesh Bhargava and Ors., reported in (2009) 2 SCC 294

6. Akella Lalitha Vs. Konda Hanumantha Rao and another, reported in 2022 SCC OnLine SC 928.

7. Suhas Ratnakar Morey Vs. Dhanraj Tulshiram Khaparde, Bombay High Court, Bench at Nagpur, judgment dated 26.04.2022, passed in Criminal Writ Petition No.113/2022.

9. The learned counsel for the respondent submits that this procedure has been followed by the District Forum but same need not be. In support, he has relied upon the following judgments.

1. Shakeel Ahmad Mohd Sabir Vs. Smt. Madhuri Shrikant Modi, Criminal Writ Petition No.292/2022, Bombay High Court.

2. Shakeel Ahmad Mohd Sabir Vs. Smt. Chetna Ramesh Patel, Criminal Writ Petition No. 293/2022, Bombay High Court.

3. Shueb Asad Shakeel Ahmad Vs. Smt. Meera Dwarkaprasad Sharma, Criminal Writ Petition No.351/2022, Bombay High Court.

4. Harish Kathuria Vs. State and anr., Cri. M.C. No.790/2020, Delhi High Court.

5. In Re: ... Vs. Anil Kumar Jindal & Ors., reported in 2012 SCC OnLine All 2239.

6. Nar Singh Vs. State of Haryana, reported in (2015) 1 SCC 496

7. Nagindas Ramdas Vs. Dalpatram Ichharam and ors, reported in (1974) 1 SCC 242.

8. Suresh Chandra Bahri Vs. State of Bihar, reported in 1995 Supp (1) SCC 80.

9. State (Delhi Administration) Vs. Dharampal, reported in (2001) 10 SCC 372.

10. Shobhit Chamar and anr. Vs. State of Bihar, reported in (1998) 3 SCC 455.

10 He, then, contends that the proceedings under Section 27 of the Act of 1986 are at par with the contempt proceedings, for the reason that the issue relates to the willful disobedience of order. He further submits, by relying upon the aforesaid judgments, that unless the petitioner points out to the Court of the prejudice caused to him because of the so called irregularity, committed by the forum in processing the application under Section 27 of the Act of 1986, the petitioner cannot take advantage of technical glitches, if any.

11. Having gone through the judgments relied upon by the petitioners, the law on the point of the procedure to be adopted while imposing the penalties under Section 27 of the Act of 1986 appears to be well settled. Section 27 of the Act of 1986, which is *pari materia* Section 72 of the Consumer Protection Act, 2019 (hereinafter referred to as the, “Act of

2019”), provides for punishment of imprisonment for a term, which may extend to three years. Sub Section (3) of Section 27 provides that the offences under the Act of 1986 may be tried summarily by District Forum or the State Commission or the National Commission, as the case may be. This provision has been considered by the Supreme Court in the judgments relied upon by the petitioner. This Court, also the other High Courts have, held that in a trial for an offence under Section 27(1) of the Act of 1986 or under Section 72(1) of the Act of 2019, the procedure as laid down in Chapter XXI, vide Section 262(1) of the Code, has to be followed.

12. Section 262 of the Code provides as under:

“262. Procedure for summary trials.

(1) In trials under this Chapter, the procedure specified in this Code for the trial of summons-case shall be followed except as hereinafter mentioned.

(2) No sentence of imprisonment for a term exceeding three months shall be passed in the case of any conviction under this Chapter.”

13. In the present case, the term of imprisonment imposed against the petitioner is six months and, therefore, the District Forum was duty-bound to follow the procedure specified in the Code for the trial of summons cases.

14. Chapter XX of the Code deals with trial of summons cases by the Magistrate. It starts with Section 251, which provides that the particulars of offences shall be explained to the accused and he shall be asked whether he

pleads guilty or has any defence to make. Section 252 provides for conviction of accused on pleading guilty. Section 253 provides for conviction of accused on pleading guilty even in absence of accused but in petty cases. Section 254 provides for procedure where the accused is not convicted under Sections 252 or 253. In such eventuality, the Magistrate has to proceed to hear the prosecution and the defence and take all such evidence as may be produced by them. Sub Section (2) of Section 254 provides that the Magistrate may, if he thinks fit, on the application of the prosecution or accused, issue a summons to any witness, directing him to attend or produce any document or other thing. Section 255 provides for acquittal or conviction of accused on the basis of the evidence so produced in terms of Section 254. Section 256 provides for non appearance or death of complainant, which is not relevant in this case. Section 257 provides for withdrawal of complaint, which is also not relevant. Section 258 provides for power to stop proceedings in certain cases. Section 259 provides for power of the court to convert summons cases into warrant cases, which also is of no relevance.

15. Thus, what is to be seen is whether in the Execution Application No.252/2022, the District Forum has followed the procedure contemplated under Sections 251 to 255 of the Code.

16. Mr. Mandlekar, learned counsel for the respondent, has invited my attention to certain documents to

contend that the above procedure has been followed by the forum. First such document is summons issued on 07.06.2014 in Execution Application No.252/2016. The summons was issued to the petitioner firm and also to its partner Mrs. Rohini Nilay Band (the petitioner) and Mahesh Prabhakar Dolas (since deceased). The next document is non bailable warrant issued under Section 70 of the Code read with Section 27 of the Act of 1986 against both the partners of the firm. The next important document is dated 25.11.2019, which is in compliance to Section 251 of the Code. The document is at Exh-43. The particulars of offence have been explained to the petitioner. The petitioner pleaded not guilty. The petitioner has then, vide Exh.-44, put forth her say. The petitioner has not filed any application to examine any witness in support of her defence. The District Forum has, accordingly, proceeded to pass the impugned order.

17. The above facts have been noted in the impugned order dated 21.06.2022 passed by the District Forum. The order indicates that the plea of petitioner has been noted and that the petitioner did not plead guilty. It also indicates that the petitioner was permitted to put forth her say which she has filed vide Exh.-44. It appears that the petitioner and respondent chose not to lead evidence in terms of Section 254 of the Code. Thus, whatever has been produced by the petitioner and respondent in support of their respective stands has been considered by the District Forum. The District Forum noted the petitioner's repeated failure to

provide facilities and amenities as assured to the respondent. The petitioner was found guilty of commission of offence under Section 27 of the Act of 1986 and since offence was recurring for want of compliance, the petitioner was found guilty under Section 72 of the Act of 2019 as well. Thereafter, the petitioner and her counsel were heard on the point of sentence, which resulted into passing of the impugned order.

18. Thus, the forum has followed the procedure as prescribed under Chapter XX of the Code. The record indicates that the petitioner failed to provide the amenities as assured in the advertisement and brochure as also the agreement dated 05.06.2006. The District Forum vide order dated 07.06.2014 directed the petitioner to provide all facilities as promised under agreement to sell dated 05.06.2006. This order was unsuccessfully challenged by the petitioner before the State Commission as also before the National Commission. Thus, the order passed by the forum attained finality.

19. Mr. Bhandarkar, learned counsel for the petitioner, submits that though the order was passed on 07.06.2014, it was subject to respondent paying Rs.50,000/- towards expenses for additional construction. The amount of Rs.50,000/- has been paid by the respondent on 03.08.2019 and, therefore, the petitioner could not be blamed for non compliance of the order. However, this aspect has been considered by the District Forum. The District Forum was of

the view that even after 03.08.2019, the petitioner failed to provide the facilities assured and thus found her guilty of the offence.

20. Mr. Mandlekar, learned counsel for the respondent has invited my attention to assurances/undertakings given by the petitioner before this Court as also before the District Forum and the State commission. To highlight this aspect, he has referred to the order dated 26.08.2022 passed by this Court in Criminal Writ Petition No.593/2022, wherein the order dated 25.08.2022 passed by the State Commission in appeal against Appeal Execution Application No.AEA22/24 was challenged. The Commission declined to suspend the execution of sentence to release the petitioner on bail. The petitioner made a statement before this Court that she will positively comply the order dated 07.06.2014 in letter and spirit within a week from her release. This Court, relying upon the assurance, has issued order of release of the petitioner, on furnishing PR bond of Rs.15,000/-. The petition was then heard on merit and the matter was remanded back to the State Commission to consider afresh in the light of the subsequent development. The State Commission then heard the appeal afresh and vide order dated 19.09.2022 suspended the sentence. During the course of hearing, counsel for the petitioner submitted that the petitioner undertakes to provide amenities and is also ready and willing to execute the sale deed after providing the necessary amenities as promised in the agreement.

21. The appeal was then finally heard. The submissions of the petitioner's counsel have been noted in para 11. The petitioner submitted that she has provided all the amenities and facilities as assured in the agreement to sell dated 15.06.2006 barring the few. The use of word 'barring the few', indicates that the petitioner admitted that all the amenities and facilities have not been provided. Para 15 of the judgment indicates that the State Commission made a specific query as to whether the liberty given by the High Court has been utilised positively and whether the sale deed has been executed after providing amenities and facilities as directed by the State Commission vide order dated 07.11.2014, the petitioner stated that most of the amenities and facilities have been provided but sale deed could not be executed as the respondent failed to respond to the calls of the petitioner. The use of word 'most of the amenities', will further show that all the amenities were not provided. The State Commission noted from the photographs that the facilities like swimming pool, health club, street lights, internal roads, shops and restaurants, daily need shop, etc. are not provided. Accordingly, the State Commission, vide judgment dated 04.10.2022, declined to grant any relief to the petitioner.

22. Mr. Mandlekar has, accordingly, argued that despite giving ample opportunity and despite several assurances given by the petitioner, she failed to provide aforesaid amenities and, therefore, no interference is called for in the impugned judgment.

23. I find substance in the submissions put forth by Mr. Mandlekar. The non compliance is writ large. Ample opportunities were given to the petitioner to provide the amenities promised by her. The District Forum has followed the prescribed procedure as well. In the circumstances, I need not delve upon the authorities relied upon by the petitioner. Even otherwise, in the first three judgments, the co-ordinate bench of this Court was testing order of the District Forum, Nagpur whereby the application filed by the complainant for execution of the order of District Forum was opposed by the opposite party therein on the ground that the District Forum should hold a trial, in accordance with the provisions of Section 27 of the Act of 1986. This Court has referred to judgment of the Hon'ble Supreme Court in *State of Karnataka Vs. Vishwabharathi House Building Coop. Society*, reported in *(2003) 2 SCC 412*, wherein the Supreme Court held that the order made by the District Forum, State Commission or the National Commission will be deemed to be a decree or order made by the civil court in civil suit and the District Forum, State Commission or the National Commission, as the case may be, would possess power to execute its own order. The provision under Section 27 of the Act of 1986 was held to be an additional power upon the District Forum or the State Commission to execute its order.

The District Forum in the said case has rejected the objection raised by the opposite party that the execution proceeding should be processed only in accordance with Section 27 by holding that the trial. The coordinate bench

upheld the said finding on the count that the application under Section 27 was filed to prolong the execution.

24. The other cases relied upon by the respondent deal with the issue of non compliance of the mandatory provision under Section 313 of the Criminal Procedure Code, 1973. The Hon'ble Apex Court consistently held that omission by the Court to put any material circumstance to the accused under Section 313 of the Criminal Procedure Code, 1973, by itself will not vitiate the trial. The accused will have to prove the prejudice caused to him of such non compliance, which occasioned failure of justice to him. Accordingly, it is argued that unless the petitioner points out with cogent material that the District Forum has not complied with a particular provision and further that such non compliance has resulted into failure of justice, the order of District Forum may not be interfered with.

Thus, the cases relied upon by the respondent are of no assistance, considering the facts of the present case.

25. At this stage, Mr. Bhandarkar, learned counsel for the petitioner, submits that the petitioner was always ready and willing to provide the amenities as promised in the agreement. However, because of the death of the active partner, ~~i.e. husband of the petitioner~~ who happens to be the close friend of the petitioner's husband and the impact of Covid-19 pandemic, the petitioner, despite her efforts, could not provide the agreed facilities. He further submits that except for the present respondent, none of the purchasers, has raised this grievance.

Corrected as per Hon'ble
Court's order dated
19.12.2023

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26. The argument put forth by Mr. Bhandarkar, learned counsel for the petitioner, except for gaining sympathy, will not be and cannot be taken as a reasonable ground to upset the finding recorded by the State commission, upholding the finding of the District Forum. She continued to extend assurances, even after the death of her ~~husband~~ partner, but for namesake.

27. As such, the ground of non compliance of Chapter XX of the Code has been put forth, for the first time, during the course of argument. Nonetheless, this ground being a law point involving non compliance of the statutory provisions, has been considered but found to be without substance.

28. Mr. Mandlekar, learned counsel for the respondent, has rightly pointed out that the procedure as laid down under Chapter XX of the Code has been followed by the District Forum while holding the petitioner guilty of the offence punishable under Section 27(1) of the Act of 1986. It appears that the finding recorded by the District Forum as also the State Commission and the reasoning given therein is consistent with the material on record. No interference, therefore, is called for in the writ jurisdiction. The writ petition is devoid of merit and is dismissed accordingly.

29. The petitioner shall surrender before the District Forum within two months from today. The District Forum shall take steps to remand the petitioner to Magisterial

Custody to undergo the sentence imposed. The bail bonds of petitioner shall stand cancelled.

30. The petitioner is at liberty to provide remaining amenities as assured by her to the respondent and if the facilities are so provided, she shall be released forthwith on satisfaction of the District Forum of providing such facilities.

31. The writ petition is disposed of in the above terms.

(Anil L. Pansare, J.)

Kahale