**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

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CWP-28258-2023
Date of Decision: 21.12.2023

Arvind Aggarwal
.....Petitioner

Versus

State Consumer Dispute Redressal Commission and Anr.
.....Respondents

CWP-28210-2023

Arvind Aggarwal
.....Petitioner

Versus

State Consumer Dispute Redressal Commission and Anr.
.....Respondents

CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA

Present: Mr. Sahil Vij, Advocate for the petitioner.

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<u>SANJEEV PRAKASH SHARMA, J. (Oral)</u>

1. The petitioner has preferred this writ petition assailing the order dated 06.10.2023 (Annexure P-1) passed by respondent No. 1 namely the State Consumer Dispute Redressal Commission, UT, Chandigarh (hereafter referred to as 'the Commission') whereby it dismissed the miscellaneous application moved by the petitioner for deleting his name from the array of judgment debtors.

2. Learned counsel for the petitioner submits that a complaint was filed against M/s Raheja Developers Limited, before the Commission seeking refund of the amount along with the guaranteed premium, interest, compensation etc. as the company had delayed in providing services. Several other allegations were levelled apart from the above in the complaint and after having considered the said complaint, an order was passed on 21.02.2022 (Annexure P-3) by the Commission, whereby it directed as follows:-

> *"In consumer complaint bearing No. 01 of 2021 the developer/opposite party no.1 was directed as under:*
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> *i. To refund the entire amount of Rs.2,13,25,900/- paid by the complainant alongwith the amount of guaranteed premium compensation @ Rs. 1400/- per square feet of the area of unit alongwith interest @18% p.a. from 22.09.2017 (60 days from completion of 36 months from the date of booking of unit) without deducting any TDS, within a period of 30 days, from the date of receipt of a certified copy of this order and failure to do so shall entail additional compensation of Rs.1000/- per day, till realization.*
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> *It is made clear that in case any amount stood refunded to the complainant out of the aforesaid amount of Rs.2,13,25,900/- and guaranteed premium compensation, the same shall be deducted accordingly, by the developer.*
>
> *ii. To refund the amount to the complainant, if any, which stood auto debited from his account by opposite party no.2-ICICI Bank, towards equated monthly installments alongwith taxes/miscellaneous charges, on the loan amount, alongwith interest @12% p.a. from the respective dates of deductions till realization, as it was the legal obligation of the developer to pay the said EMIs, as agreed to, under the tripartite agreement and also MOU aforesaid, which fact has not been disputed by the developer.*

It is also made clear that the developer-opposite party no.1 shall repay the entire pending/future EMIs alongwith taxes/miscellaneous charges, of the loan amount, to opposite party no.2-ICICI Bank, alongwith up-to-date interest on the loan account and keep the complainant fully indemnified in this regard, till the time refund of the aforesaid amount is made to the complainant.

iii. To pay compensation for causing mental agony and physical harassment; deficiency in providing service and adoption of unfair trade practice and also cost of litigation, in lumpsum, to the tune of Rs.1,50,000/- to the complainant within a period of 30 days from the date of receipt of a certified copy of this order, failing which, the said amount of Rs.1,50,000/-, shall carry interest @ 9% p.a. from the date of passing of this order, till realization.

In consumer complaint bearing No.02 of 2021 the developer/opposite party no.1 was directed as under:-

i. To refund the entire amount of Rs.2,00,89,129/- paid by the complainant alongwith the amount of guaranteed premium compensation @ Rs.1400/- per square feet of the area of unit alongwith interest @ 18% p.a. from 22.09.2017 (60 days from completion of 36 months from the date of booking of unit) without deducting any TDS, within a period of 30 days, from the date of receipt of a certified copy of this order and failure to do so shall entail additional compensation of Rs.1000/- per day, till realization.

It is made clear that in case any amount stood refunded the complainant out of the aforesaid amount of to Rs.2,00,89,129/- and guaranteed premium compensation, the same shall be deducted accordingly, by the developer.

ii. To refund the amount to the complainant, if any, which stood auto debited from her account by opposite party no.2-ICICI Bank, towards equated monthly installments alongwith taxes/miscellaneous charges, on the loan amount, alongwith interest @ 12% p.a. from the respective dates of deductions till realization, as it was the legal obligation of the developer to pay *the said EMIs, as agreed to, under the tripartite agreement and also MOU aforesaid, which fact has not been disputed by the developer.*

It is also made clear that the developer-opposite party no.1 shall repay the entire pending/future EMIs alongwith taxes/miscellaneous charges, of the loan amount, to opposite party no.2-ICICI Bank, alongwith up-to-date interest on the loan account and keep the complainant fully indemnified in this regard, till the time refund of the aforesaid amount is made to the complainant.

iii. To pay compensation for causing mental agony and physical harassment; deficiency in providing service and adoption of unfair trade practice and also cost of litigation, in lumpsum, to the tune of Rs.1,50,000/- to the complainant within a period of 30 days from the date of receipt of a certified copy of this order, failing which, the said amount of Rs.1,50,000/-, shall carry interest @ 9% p.a. from the date of passing of this order, till realization."

3. The order was required to be complied with within a period of 30 days however the same was not done and therefore an execution application was preferred before the Commission under Section 72 of the Consumer Protection Act read with Order 21 CPC and the petitioner was shown as judgment debtor/respondent No.6 in the capacity of one of the additional Directors/Directors. The petitioner upon service having been effected on him moved an application for deleting his name from the array of judgment debtor. It was stated by him that he has joined as Assistant Vice President on 20.01.2021. He was offered directorship as a temporary arrangement and he worked as a director for less than two months i.e from 28.06.2021 to 25.08.2021. He resigned from the Company on 25.08.2021 and prayed that his name should be deleted. Similar application was moved in the other complaint case also. Both the applications were heard by the

Commission and after considering the submissions, the applications were rejected holding them to be not maintainable.

4. Feeling aggrieved by the said order, the present writ petitions have been filed.

5. Learned counsel for the petitioner has relied on judgment passed in the case of Karnataka Housing Board versus K.A.Nagamani, Civil Appeal No. 4631 of 2019 decided on 06.05.2019 to submit that revision petition would not lie against the order passed in execution proceedings by the Commission to the National Commission and therefore the writ petition would be maintainable against order passed in execution proceedings. Learned counsel further submits that the Commission has erred in rejecting the application for deleting the name of the petitioner from array of judgment debtors and it has also erred to hold that the petitioner was looking after the affairs of the Company and was responsible for running the project in question. Learned counsel further submits that as the petitioner had already submitted his resignation from the post of Director, before the execution proceedings were initiated by the respondent, he could not have been impleaded nor could he said to be responsible for the non-execution of the orders passed by the Commission as he was no more connected with the M/s Raheja Developers Limited already impleaded as judgment debtor No. 1.

6. Learned counsel submits that the e-mail sent by the petitioner to the HR Team, very specifically mentions that the applicant has resigned. Certain aspects mentioned in the letter have been erroneously taking into consideration for rejecting the application moved by the petitioner for deleting his name. It is submitted that the said averments made in the application for resignation are with respect to the complaint made by the

petitioner to Company of not properly cooperating with them and which has resulted in petitioner to resign. Once his letter for resignation was taken on record by the Commission, there was no occasion to continue the petitioner as a judgment debtor. The application has been wrongly rejected.

7. I have considered the submission and perused the order passed by the Consumer Commission.

8. At the outset, it is noticed that it is an interim order and there is no final order passed by the Commission in the execution proceedings. The Commission has not given any findings with regard to the liability of the petitioner as a Director of M/s Raheja Developers Limited in reference to the order passed by it in the main complaint case. It is settled law that a person who is holding the post of Director in the Company can only be treated to have resigned once the same is notified by the Registrar of Companies i.e from the said date alone he does not remain on the Board of Directors of the Company. Section 168 and 169 of the Companies Act, 2013, are reproduced as follows:

> *"168. Resignation of director.-(1) A director may resign from his office by giving a notice in writing to the company and the Board shall on receipt of such notice take note of the same and the company shall intimate the Registrar in such manner, within such time and in such form as may be prescribed and shall also place the fact of such resignation in the report of directors laid in the immediately following general meeting by the company:*
>
> *Provided that a [director may also forward] a copy of his resignation along with detailed reasons for the resignation to the Registrar within thirty days of resignation in such manner as may be prescribed.*

(2) The resignation of a director shall take effect from the date on which the notice is received by the company or the date, if any, specified by the director in the notice, whichever is later:

Provided that the director who has resigned shall be liable even after his resignation for the offences which occurred during his tenure.

(3) Where all the directors of a company resign from their offices, or vacate their offices under section 167, the promoter or, in his absence, the Central Government shall appoint the required number of directors who shall hold office till the directors are appointed by the company in general meeting.

169. Removal of directors.— (1) A company may, by ordinary resolution, remove a director, not being a director appointed by the Tribunal under section 242, before the expiry of the period of his office after giving him a reasonable opportunity of being heard:

[Provided that an independent director reappointed for second term under sub-section (10) of Section 149 shall be removed by the company only by passing a special resolution and after giving him a reasonable opportunity of being heard.]

[Provided further that] nothing contained in this sub-section shall apply where the company has availed itself of the option given to it under section 163 to appoint not less than two-thirds of the total number of directors according to the principle of proportional representation.

(2) A special notice shall be required of any resolution, to remove a director under this section, or to appoint somebody in place of a director so removed, at the meeting at which he is removed.

(3) On receipt of notice of a resolution to remove a director

under this section, the company shall forthwith send a copy thereof to the director concerned, and the director, whether or not he is a member of the company, shall be entitled to be heard on the resolution at the meeting.

(4) Where notice has been given of a resolution to remove a director under this section and the director concerned makes with respect thereto representation in writing to the company and requests its notification to members of the company, the company shall, if the time permits it to do so,—

(a) in any notice of the resolution given to members of the company, state the fact of the representation having been made; and

(b) send a copy of the representation to every member of the company to whom notice of the meeting is sent (whether before or after receipt of the representation by the company), and if a copy of the representation is not sent as aforesaid due to insufficient time or for the company's default, the director may without prejudice to his right to be heard orally require that the representation shall be read out at the meeting:

Provided that copy of the representation need not be sent out and the representation need not be read out at the meeting if, on the application either of the company or of any other person who claims to be aggrieved, the Tribunal is satisfied that the rights conferred by this sub-section are being abused to secure needless publicity for defamatory matter; and the Tribunal may order the company's costs on the application to be paid in whole or in part by the director notwithstanding that he is not a party to it.

(5) A vacancy created by the removal of a director under this section may, if he had been appointed by the company in general meeting or by the Board, be filled by the appointment of another director in his place at the meeting at which he is removed, provided special notice of the intended appointment has been given under sub-section (2).

(6) A director so appointed shall hold office till the date up to which his predecessor would have held office if he had not been

removed.

(7) If the vacancy is not filled under sub-section (5), it may be filled as a casual vacancy in accordance with the provisions of this Act:

Provided that the director who was removed from office shall not be re-appointed as a director by the Board of Directors.

(8) Nothing in this section shall be taken—

(a) as depriving a person removed under this section of any compensation or damages payable to him in respect of the termination of his appointment as director as per the terms of contract or terms of his appointment as director, or of any other appointment terminating with that as director; or

(b) as derogating from any power to remove a director under other provisions of this Act."

9. The other aspects which the Commission yet to take into consideration is as to whether at the stage when the judgment was passed, the petitioner was holding the post of Director or not. As these aspects are yet to be examined, in the opinion of this Court there was no occasion to assail the order rejecting the application for impleadment. This Court also finds that the writ petition would not lie with regard to interregnum order passed by the Commission in execution proceedings which are penal in nature. For ready reference Section 72 of the Consumer Protection Act, reads as under:-

"*(1) Whoever fails to comply with any order made by the District Commission or the State Commission or the National Commission, as the case may be, 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 twenty-five thousand rupees, but which may extend to one lakh rupees, or with both.*

(2) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the District Commission, the State Commission or the National Commission, as the case may be, shall have the power of a Judicial Magistrate of first class for the trial of offences under sub-section (1), and on conferment of such powers, the District Commission or the State Commission or the National Commission, as the case may be, shall be deemed to be a Judicial Magistrate of first class for the purposes of the Code of Criminal Procedure, 1973.

(3) Save as otherwise provided, the offences under sub-section (1) shall be tried summarily by the District Commission or the State Commission or the National Commission, as the case may be."

10. Thus, from the above, it would be seen that the Commission acts as a Judicial Magistrate for the purpose of Code of Criminal Procedure, 1973 proceedings, would therefore have to be examined accordingly. Once an order is passed under Section 72 finally, the appeal would lie under Section 73 to the National Consumer Commission, the judgment relied upon by learned counsel for the petitioner (supra) is on completely different aspects. The Supreme Court has held that a revision would not lie against an order passed in appeal by the State Commission in execution proceedings whereas the present proceedings are the original proceedings before the Commission and appeal would lie as per Section 73 to the National Consumer Commission. Facts of each case have to be therefore examined independently. Before considering such aspects, the law cannot be as put as a copy and paste. The contentions of learned counsel for the petitioner are thereafter found to be misconceived.

11. Both the writ petitions at this stage, do not warrant any interference nor the writ petitions are maintainable against interim order(s) passed in execution proceedings by the Commission. The same are accordingly dismissed.

(SANJEEV PRAKASH SHARMA)
JUDGE

21.12.2023
Rajeev (rvs)

Whether speaking/reasoned Yes/No

Whether reportable Yes/No