



\$~72

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 11.12.2023

+ CM(M) 2032/2023, CM APPL. 63870/2023 & CM APPL. 63871/2023

VIJAY GUPTA & ORS.

..... Petitioners

Through: Ms. Maninder Acharya, Senior Advocate with Ms. Jyoti Taneja, Advocate

versus

VINAY ARORA & ORS.

..... Respondents

Through: Mr. Aditya Parolia and Mr. Akshay Srivastava, Advocates for R-1, 2, 3, 7, 8, 9, 10
Mr. Manoj Yadav and Mr. Akshat Yadav, Advocates for R-6

%

CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMEET PRITAM SINGH ARORA, J (ORAL):

1. This petition filed under Article 227 of the Constitution of India impugns the order dated 10.11.2023 passed by the National Consumer Disputes Redressal Commission ('NCDRC') in Consumer Complaint No.



2011/2017 and connected matters in so far it issues Non-Bailable Warrants ('NBW') against the Petitioner Nos. 1 and 2 herein (Directors of Orris).

2. The learned Senior Counsel for the Petitioners states that the Respondents before this Court i.e., Respondent Nos. 1 to 10 are decree holders with respect to seven (7) independent judgments passed in their favour in separate consumer complaints filed by them before NCDRC.

2.1 She states that the statutory appeal(s) assailing the said seven (7) judgments have been filed and the same are tentatively listed for hearing before the Supreme Court on 02.01.2024.

2.2 She states that in comparable matters where similarly placed consumers have judgments in their favour, the same have been assailed by the Petitioners herein in a Civil Appeal No. 5132/2021; and the Supreme Court vide order dated 01.05.2023 has been pleased to grant a stay on the execution proceedings in those matters.

2.3 She states since the seven (7) judgements in favour of the present Respondent Nos. 1 to 10 is similar to those stayed by the Supreme Court in Civil Appeal No. 5132/2021, the Petitioners herein seek limited protection of stay of the non-bailable warrants until the appeal(s) are taken up for hearing before the Supreme Court. She states that the Petitioners have remained present before NCDRC on most dates in the execution proceedings and undertake to remain duly represented.

2.4 She states that the Petitioners herein are willing to handover the possession of the flats, which were initially allotted to the Respondents, however, the Respondents have declined to accept the said allotments. She states that Respondents are seeking refund of the monies which direction of NCDRC has been challenged in the appeals.



2.5 She states that the matter has been settled with Respondent Nos. 4 and 5.

3. In reply, learned counsel for the Respondent Nos. 1,2,3,7,8,9 and 10 states that there is no merit in the submissions of the Petitioners.

3.1 He states that as per the judgements passed by NCDRC in favour of the respective Respondents, the Respondents are now entitled to receive refund of the amounts deposited along with interest.

3.2 He states that in a similarly placed matter where a judgement dated 06.05.2019 (passed in consumer case no. 1702/2016) was passed by NCDRC in favour of a consumer i.e., Mr. Shalabh Nigam; the Supreme Court in Civil Appeal No. 5784/2019, vide order dated 29.07.2019 has upheld the order passed by NCDRC dated 06.05.2019 and dismissed the appeal filed by the Petitioners herein.

3.3 He states that the Respondents herein are similarly placed as Mr. Shalabh Nigam and therefore, there is no reason to stay the execution proceedings in anticipation of the listing of the appeals.

3.4 He, further, relies upon the order dated 30.11.2022 passed by the Supreme Court in Special Leave to Appeal (Civil) No. 20531/2022 pertaining to Respondent No.7 herein to contend that, in fact, there are directions of Supreme Court to NCDRC to expedite the execution proceedings. He states that the impugned order has been passed by the NCDRC in furtherance of the said directions issued by the Supreme Court.

3.5 He also relies upon the judgment passed by this Court on 16.07.2021 in W.P.(C) 6769/2020 and the connected matters as well as the order dated 04.06.2021 in W.P.(CRL.) 1095/2021 to contend that the Petitioners herein have been unreasonably delaying the execution of the judgements of



NCDRC passed in favour of the Respondents herein which dates back to the year 2020.

3.6 He states that infact, the Respondent No.9 has, received a payment plan offered by the Petitioners in pursuance to the judgement of NCDRC and the Respondent No.9 is in process of responding to the same. He states that Respondent No.9 is, therefore, perplexed by the filing of this petition.

4. The learned counsel for the Respondent No.6, further states that the SLP filed by the Petitioners herein against the decree in favour of Respondents herein has been filed with gross delay and in fact, since it has been filed beyond the statutory period of limitation, the Civil Appeal may not be entertained by the Supreme Court.

5. To conclude, learned counsel for the Respondent Nos. 1,2,3,6,7,8,9 and 10 states that in case this Court is inclined to protect the Petitioners herein for a limited period until 02.01.2024, the respective Petitioners should be directed to deposit 50% of the decretal amount as per Section 67 of the Consumer Protection Act, 2019 ('the Act of 2019').

6. In response, learned senior counsel for the Petitioners states that the appeals filed by the Petitioners will be governed by Section 23 of the Consumer Protection Act, 1986 ('the Act of 1986') and not Section 67 of the Act of 2019.

7. This Court has considered the submissions of the counsel for the parties and perused the record.

7.1 It is admitted that statutory appeals against the judgements passed by NCDRC in favour of the Respondents has been filed and is listed tentatively on 02.01.2024. It is also admitted that the Supreme Court in Civil Appeal No. 5132/2021 has in the case of similarly placed consumers stayed the



execution proceedings.

7.2 This Court is of the opinion that since the statutory appeals against the seven (7) judgements already stands filed and are tentatively listed on 02.01.2024 and considering the fact that a stay has been granted by Supreme Court in Civil Appeal No. 5132/2021 on 01.05.2023 with respect to similar matters, this Court is of the opinion that the operation of the impugned order to the extent it directs issuance of non-bailable warrants against the Petitioner Directors be stayed for a limited period until the listing of the statutory appeals.

7.3 This Court finds merit in the contention of the Respondents that since the judgements of NCDRC granted in their favour of Petitioners are of 2020 and the Petitioners herein have waited more than 3 ½ years to avail their statutory right of appeal, the stay cannot be for an indefinite period. Therefore, without expressing any opinion on the merits of the conduct of the Petitioners, the operation of the non-bailable warrants is stayed until 04.01.2024.

7.4 It is made clear that this order will cease to operate on 04.01.2024. The Petitioners must take all steps necessary for having its appeals heard and listed before the said date.

7.5 With respect to the contention of the learned counsel for the Respondents that the Petitioners be directed to deposit 50% of the decretal amount in terms of Section 67 of the Act of 2019, this Court is of the opinion that submissions in this regard should be reserved to be urged before the Supreme Court at the time of hearing of the said statutory appeals.

8. Petitioner Nos. 2 and 3 are directed to remain present before NCDRC through video conferencing on the next date of hearing.



9. With the aforesaid directions, the present petition is disposed of.
Pending applications stands disposed of.

MANMEET PRITAM SINGH ARORA, J
DECEMBER 11, 2023/msh/sk

Click here to check corrigendum, if any