

A-05
Ct No.09
01.04.2024
TN

WPA No. 6114 of 2023

Naba Kumar Dutta
Vs.
Union of India and others

Mr. Sobhendu Sekhar Roy,
Mr. Dilip Kumar Samanta,
Mr. Biswapriya Samanta

.... for the petitioner

Mr. Tirtha Pati Acharyya

.... for the UOI

Mr. Rajdeep Bhattacharya

.... for the respondent no. 5

- 1.** The point involved in the present writ petition is short.
- 2.** The petitioner, being the award debtor in a proceeding under the Consumer Protection Act, 2019 (for short “the 2019 Act”), challenges the issuance of a warrant of arrest under Section 72 of the 2019 Act for alleged non-compliance of the award by the petitioner.
- 3.** Learned counsel for the petitioner argues that since the respondent/award holder has already initiated a proceeding under Section 71 of the 2019 Act for implementation of the said award previously, the subsequent application under Section 72 of the 2019 Act is not maintainable, which vitiates the warrant of arrest issued in connection with the subsequent proceeding.
- 4.** Learned counsel also cites a coordinate Bench unreported judgment in the case of *Samasth*

Infotainment Pvt. Ltd. and Ors. Vs. The State of West Bengal & Ors. in support of his proposition. That apart, the petitioner has also taken objection to the impugned order containing an observation that the judgment debtor has proceeded with criminal remedy which is palpably absurd.

5. Heard learned counsel for the parties.
6. Although the observation in the impugned order to the effect that the judgment debtor has opted for proceeding with criminal remedy is palpably an erroneous oversight, since it is only the award debtor who can proceed with such an application, the other question raised by the petitioner is germane.
7. As held by the learned Single Judge in the cited judgment and as per the scheme of Sections 71 and 72 of the 2019 Act, the remedy under Section 72 cannot be read to have been conferred on the award holder over and above Section 71, since the same would lead to an absurdity that the award debtor would be punished doubly for non-implementation of the same award.
8. It cannot be the contemplation of the statute that the same award shall be enforced both in terms of Section 71 which provides that the enforcement shall be in the same manner as if it were a decree made by a court in a suit before it and the provisions of Order XXI of the First Schedule to the Code of Civil Procedure, shall as

far as may be applicable, be construed as reference to an order under this Act and in the same breath, the non-compliance of an order made by the District Commission or the State Commission or the National Commission shall be visited with the penal measure as contemplated under Section 72.

- 9.** The said two provisions operate in different spheres but in respect of the same award and the award holder has to opt for one. Since in the present case, a final award has been passed and the award debtor/respondent has already initiated a proceeding for implementation of the same under Section 71 of the 2019 Act, the application under Section 72 initiated later by the same award debtor is not maintainable.
- 10.** As such, the impugned order of issuance of warrant of arrest against the petitioner under the said provision is also a nullity and cannot but be set aside.
- 11.** Accordingly, WPA No. 6114 of 2023 is allowed on contest, thereby setting aside the impugned order dated February 06, 2023 passed by the Bankura District Consumer Disputes Redressal Commission.
- 12.** However, it is made clear that the respondent/award debtor will be at liberty to proceed with the award debtor's application under Section 71 of the 2019 Act.
- 13.** It is expected that the said application shall be disposed of by the forum below as expeditiously as

possible, positively within two months from the date of communication of this order to the said forum, in accordance with law.

- 14.** There will be no order as to costs.
- 15.** Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)