

**IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE**

**PRESENT:
THE HON'BLE JUSTICE BIVAS PATTANAYAK**

**C.O. 888 of 2023
Sri Amit Kumar Banerjee
versus
Sri Balaram Nag & Ors.**

For the Petitioner	: Mr. Tilak Mitra, Advocate Mr. Abhik Sarkar, Advocate Mr. Barun Chatterjee, Advocate
For the Respondent No.1	: Mr. Angshuman Chakraborty, Advocate Mr. Shivaji Mitra, Advocate
Heard on	: 25.08.2023
Judgment on	: 16.02.2024

Bivas Pattanayak, J. :-

1. This civil revisional application under Article 227 of the Constitution of India has been filed by the petitioner-complainant for quashing and/or setting aside the entire execution proceeding being EA 20 of 2018, arising out of complaint case being C.C. Case No. 137 of 2014, pending before the learned District Consumer Forum, Hooghly.

2. The brief fact of the case, in nutshell, is as follows:

(i) The opposite party nos. 3, 4 & 5 while being seized and possessed of the *bastu* land measuring an area of 3 *cottahs* 4 *chittaks* 9 Sq Ft comprised within RS plot No. 5994, appertaining to R.S Khatian No. 4121, under LR plot No. 6466, corresponding to L.R Khatian No. 7105//1, Mouza- Serampore, J.L No. 13, municipal holding No. 8/B,

Zamindar Bagan Lane, under Serampore Municipality, P.S Serampore, District-Hooghly, on 5th November 2009 entered into a development agreement with a developer firm namely *M/s Sumit Enterprise* represented by its partners opposite party nos. 1 & 2.

(ii) Pursuant to such development agreement, the opposite party nos. 3, 4 & 5 also executed a registered power of attorney empowering the Developer Firm to carry out all incidental and essential exercise for the purpose of giving complete affect to the development agreement.

(iii) The petitioner desirous of purchasing one self-contained apartment in the said proposed construction, entered into a memorandum of agreement with the opposite parties on 2nd February 2010 in respect of flat no. 102, measuring 600 Sq ft in the first floor, at a consideration of Rs. 5,40,000/-to be paid on different dates/events and that the possession and registration shall be done within 31st March 2011. The petitioner on the date of execution of the memorandum of agreement for sale paid a sum of Rs.1,00,000/-.

(iv) After partial construction work since the Developer Firm represented by opposite party nos. 1 & 2, could not be contacted, the landowners namely opposite party nos. 3, 4 & 5 on 26th June 2013, revoked the power of attorney granted in favour of the Developer firm.

(v) The petitioner was placed in a peculiar circumstance upon revocation of the power of attorney, since he had already paid a sum of Rs.4,90,000/-to the opposite parties on different dates and only Rs.50,000/- was remained to be paid as the same was agreed to be made at the time of registration of the flat-in-question.

(vi) The petitioner for redressal of his grievances as aforesaid, preferred a complaint case being C.C Case no.137 of 2014 before the learned District Consumer Forum, Hooghly praying, *inter alia*, for an order upon the opposite parties to hand over and transfer the right, title and interest of the said residential flat in favour of the petitioner by way of registration of the title deed along with costs for deficiency of service.

(vii) During the pendency of the complaint case before the learned District Consumer Forum, the opposite party nos. 3, 4 & 5 approached the petitioner and decided to execute a memorandum of agreement on 27th July, 2015 acknowledging the fact that the developer since no longer is empowered to carry out any further development work, the rest work of construction would be carried out by them.

(viii) On 29th February 2016 the opposite party nos. 3, 4 & 5 executed a registered deed of conveyance transferring the flat-in-question in favour of the petitioner.

(ix) The aforesaid fact of registration of the flat-in-question in favour of the petitioner by opposite party nos. 3, 4 & 5, despite due instruction, was not disclosed before the learned District Consumer Forum by the concerned learned advocate.

(x) On 21st June, 2016, the learned District Consumer Forum finally decided the consumer dispute raised in the complaint case in favour of the petitioner herein and directed the land owners namely opposite party nos. 3, 4 & 5 and developers namely opposite party nos. 1 & 2

to execute registered deed of conveyance in respect of the flat-in-question in favour of the complainant within one month from date of the order.

(xi) By the selfsame order the learned District Consumer Forum also directed the complainant to pay a sum of Rs.50,000/-only to the developer opposite party no.1 at the time of execution and registration of the sale deed by the opposite parties.

(xii) Since the aforesaid amount of Rs.50,000/-remained unpaid at the instance of the complainant, the opposite party no.1 filed the execution case being no. EA 20 of 2018 before the learned District Consumer Forum, Hooghly for recovery of the said amount.

(xiii) The learned District Consumer Forum fixed dates for payment of Rs. 50,000/- by the complainant. On 10th February 2023, the petitioner through his learned advocate informed the learned District Consumer Forum of his inability on the ground of illness to arrange the aforesaid sum, however, the learned forum proceeded to issue warrant of arrest against the petitioner.

(xiv) On 1st March 2023 the petitioner filed an application challenging the maintainability of the execution case being no. EA 20 of 2018 as well as for recall of order dated 10th February 2023, which was summarily rejected.

3. Being aggrieved and dissatisfied with the impugned orders passed in the execution proceeding by the learned District Consumer Forum, the petitioner by filing the present revisional application has prayed for

quashing/setting aside of the entire execution proceedings pending before the said Forum.

4. Mr. Tilak Mitra, learned advocate for the petitioner submitted that the petitioner entered into a memorandum of agreement with the opposite parties for purchase of flat measuring 600 Sq. ft. in the proposed construction at a consideration price of Rs.5,40,000/-. The petitioner paid a sum of Rs.4,90,000/-on different dates and it was agreed that the rest amount of Rs.50,000/- shall be paid at the time of registration of the deed of conveyance in respect of the flat-in-question. In the meantime, the power of attorney executed by the landowners in favour of the developer was revoked. In such circumstances the petitioner filed a complaint before the learned District Consumer Forum, Hooghly for a direction upon the opposite parties for registration of deed of conveyance. During the pendency of such complaint case the landowners being the opposite party nos. 3, 4 & 5 approached the petitioner and a deed of conveyance in respect of the flat-in-question was executed by the landowners in favour of the complainant. Neither the fact of revocation of the power of attorney nor the subsequent registration of deed of conveyance in favour of the petitioner by the landowners in respect of the said flat were informed to the learned District Consumer Forum by the learned advocate representing the petitioner despite instruction. The petitioner did not have the knowledge of the order passed by learned District Consumer Forum in the complaint case till May 2022, when the petitioner was served with a notice of the execution case being no. EA 20 2018. He further submitted that the learned advocate appearing for the petitioner did not apprise the learned

District Consumer Forum that the opposite party nos.1 & 2, the developers, post cancellation of power of attorney by the landowners namely opposite party nos. 3, 4 & 5, did neither have any locus nor had any right to claim any benefit under the development agreement since the developer has wilfully breached the terms and conditions of the said agreement. Since at the time of passing of the order on 21st June, 2016 in complaint case being no. C.C. Case No. 137 of 2014, the flat-in-question was already registered in favour of the petitioners vide deed of conveyance dated 29th February, 2016 by the landowners namely opposite party nos. 3, 4 & 5, even though not informed to the learned District Consumer Forum, it would be an empty formality on the part of the learned District Consumer Forum to impose its authority upon the petitioner to seek enforcement of an action which is no longer possible upon transfer of the flat-in-question in favour of the petitioner. Moreover, it is a settled position of law that in order for the dictum of a court to be enforceable in all respect, such direction vis-a-vis decree of a court has to be free from all irregularities and illegalities. With the registration of the deed of conveyance in respect of the flat-in-question prior to passing of the order in the consumer proceedings, the decree passed by the learned District Consumer Forum on 21st June, 2016 has become inoperative and ineffective and cannot be executed in accordance with law. Referring to the penultimate portion of the order dated 21st June, 2016 of the learned District Consumer Forum he submitted that until and unless the complainant files an execution case the opposite parties themselves cannot file such execution case for enforcement of the decree. In light of his

aforesaid submissions, he prayed that the aforesaid execution proceedings pending before the learned District Consumer Forum, Hooghly should be quashed and/or set aside since the same is not maintainable in law.

5. In reply to the contentions raised on behalf of the petitioner, Mr. Angshuman Chakraborty, learned advocate for opposite party no.1 submitted that the learned District Consumer Forum after taking into consideration that the petitioner-complainant had due amounting to Rs.50,000/-towards the developer, passed direction upon the complainant to pay such amount at the time of registration of the deed of conveyance. The aforesaid order has been passed by the learned District Consumer Forum after hearing the complainant and the opposite parties. The direction for payment by the complainant as aforesaid has not been challenged either by way of review or in appeal and therefore such order directing the complainant to make payment has reached its finality. Section 71 of the Consumer Protection Act, 2019 clearly envisages that every order made by a District Commission, State Commission or the National Commission shall be enforced by it in the same manner as if it were a decree made by a court in the suit before it and the provisions of Order XX1 of the Civil Procedure Code is applicable. Further Section 72 of the Act also provides that whoever fails to comply with the order passed by the District Commission or the State Commission or the National Commission shall be punishable with imprisonment for a term which shall not be less than one month but which may extend to 3 years. Therefore, bearing in mind the aforesaid provisions, it goes without saying that the execution case for recovery of the amount of Rs.50,000/-in terms of order

of the learned District Consumer Forum is very much maintainable. In view of his above submissions, he prayed that the instant revisional application be dismissed.

6. Having heard the learned advocate for the respective parties the only issue which has fallen for consideration is whether the execution proceeding pending before the learned District Consumer Forum is maintainable or not. In order to appreciate the issue of maintainability as above the following questions are to be decided.

(i) Whether on the date of passing of the order since already the deed of conveyance was executed in favour of the complainant, the order becomes inoperative and inexecutable?

(ii) Whether the opposite party no. 1 & 2 can put the order into execution in the event no execution case been filed by the complainant?

7. With regard to the first ground raised in this revisional application that since on the date of passing of the order the deed of conveyance was already executed in favour of the complainant, hence the decree passed is inoperative and inexecutable, it is found from the materials placed before this court that the deed of conveyance in respect of the flat-in-question was executed by opposite parties nos. 3, 4 & 5-landowners in favour of the petitioner on 29th February 2016. The order of learned District Consumer Forum, Hooghly in complaint case being C.C. Case No. 137 of 2014 was passed on 21st June, 2016. Thus, on the date the order was passed, the deed of conveyance in respect of the said flat was already executed. It is relevant to note that the order dated 21st June, 2016 of the learned District Consumer Forum, Hooghly has been passed upon hearing the

submissions advanced on behalf of the petitioner and opposite parties. Admittedly, the aforesaid fact of registration of deed of conveyance in favour of the petitioner-complainant was never brought to the notice of the learned District Consumer Forum by the complainant, who filed the complaint case precisely for registration of deed of conveyance in his favour. By such order the learned District Consumer Forum, Hooghly apart from directing the opposite parties to register the deed of conveyance in favour of the petitioner-complainant, has also directed the complainant to pay a sum of Rs. 50,000/- to opposite party no.1. Since such amount has not been paid by the complainant in compliance to the aforesaid direction the opposite party no.1 filed an execution case for recovery of the said amount. Therefore, the order passed by the learned District Consumer Forum had two parts, one directing the opposite parties for registration of the deed of conveyance in favour of the petitioner-complainant and another part directing the complainant to pay a sum of Rs. 50,000/- to opposite party no.1. The order passed by the learned District Consumer Forum has not been assailed in appeal by the petitioner-complainant before any higher forum under Section 15 of the Consumer Protection Act. Therefore, the order passed by the learned District Consumer Forum has reached its finality. As the deed of conveyance has already been executed in favour of the petitioner-complainant prior to passing of the order, hence the direction passed by the learned District Consumer Forum for registration of deed of conveyance is not required to be executed, since such portion has already been satisfied. However, the other portion of the order directing the petitioner-complainant for payment of Rs. 50,000/- to

the opposite party no.1-developer remains to be executed. Therefore, it cannot be said that the order passed by the learned District Consumer Forum, upon deed of conveyance being executed prior to the date of order, makes the entire order inoperative or inexecutable. In view of the above, the argument advanced on behalf of the petitioner-complainant with regard to the aforesaid does not stand to reason.

8. Upon such finding, this court comes to the next aspect as to whether the opposite party nos.1 & 2 can put the order into execution in the event of no execution case been filed by the complainant. In order to find an answer to the above query, it would be appropriate to reproduce the definition of ‘*decree holder*’ as provided under Section 2(3) of the Civil Procedure Code, 1908 which is as under:

“2. Definitions.—*In this Act, unless there is anything repugnant in the subject or context, –*

(1) xxx

(2) xxx

(3) “decree-holder” means any person in whose favour a decree has been passed or an order capable of execution has been made;”

8.1. Such definition gives an impression that only the person in whose favour a decree or order has been passed can get it executed. The point germane for consideration is about the executability of the decree at the instance of defendant/judgment debtor. The term ‘*decree holder*’ is defined in Section 2(3) of the Civil Procedure Code. The expression ‘*holder of decree*’ is used in Order XXI Rule 10 of the Code. There is marked difference in the expressions used by the Civil Procedure Code in Section

2(3) and Order XXI Rule 10. At first blush, it may appear to be synonymous, but there is a legal distinction between these two expressions. The term '*decree holder*' denotes to persons (i) in whose favour a decree has been passed, (ii) in whose favour the order capable of execution has been passed (iii) whose name appears in the decree either as plaintiff or defendant and the following conditions are satisfied- (a) the decree must be one capable of execution, (b) the said person by the terms of the decree itself or from its nature should be legally entitled to seek its execution.

The expression '*holder of decree*' appearing in Order XXI Rule 10 of the Code is very wide and it not only encompasses the decree holder but also takes into account transferee of a decree and the legal representative of the decree holder.

8.2. In ***Ajudhia Prasad versus The U.P. Government through the Collector***¹, the Allahabad High Court has considered the scope of expression of '*decree holder*' occurring in Section 2(3) of the Code and held has follows:

“Now it is clear from this that a person in whose favour an order capable of execution has been made is also a decree holder. It is also evident from this definition that a decree-holder need not be a party to the suit. He may be ‘any person’.”

8.3. This Hon'ble Court in ***Sree Sree Iswar Sridhar Jew versus Jnanendra Nath and Others***² has laid down law that where a scheme of

¹ AIR 1947 All 390

² AIR 1960 Cal 718

decree is otherwise executable and gives any rights to any party, which can be enforced by execution, the fact that the person seeking execution was formerly a defendant in the suit and a judgment debtor under the decree cannot possibly prevent him from working out the decree by execution. In view of the above discussion, there cannot be any dispute that the decree passed in a suit can be allowed to be executed by defendant/judgment debtor in the suit too. There are many instances in which a decree can be said to be in favour of the parties to the litigation irrespective of the facts whether they are plaintiffs or defendants in the suit. In such circumstances, the decree can be said to be capable of execution at the instance of any of the parties to the suit. For example, in a suit for specific performance where a decree for specific performance for agreement of sale been passed in favour of the plaintiff (decree holder) directing the plaintiff to deposit of the sale amount and get the sale executed within a stipulated period but he fails to do so. In such event, the judgment debtor/defendant can also ask for specific performance of the agreement to sale. In view of the above discussion, there cannot be any quarrel that a defendant/judgment debtor can also seek for enforcement of the decree by way of execution.

8.4. Reverting back to the facts of the case and bearing in mind the proposition as above, this Court finds that the opposite party nos. 1 & 2 in whose favour a portion of the order has been passed directing the petitioner-complainant to make payment of Rs. 50,000/- can be executed by him in the execution proceeding even if the complainant does not prefer any execution proceeding. The order of the learned District Consumer

Forum directing the petitioner-complainant to make payment of Rs. 50,000/- to opposite party nos. 1 & 2 is an executable order and, therefore, the said opposite parties qualify as decree holder in terms of Section 2(3) of the Code. The petitioner-complainant against whom an executable order is passed is a judgment debtor in terms of Section 2(10) of the Civil Procedure Code which defines '*judgment debtor*' as any person against whom a decree has been passed or an order capable has been made.

9. In the aforesaid backdrop, the execution proceeding being no. EA 20 of 2018, arising out of complaint case being C.C. Case No. 137 of 2014, at the instance of the opposite party no.1 pending before the learned District Consumer Forum, Hooghly is maintainable in the eye of law.

10. In light of the aforesaid discussion, revisional application being **C.O. 888 of 2023** stands dismissed. There shall be no order as to costs.

11. All connected applications, if any, stand dismissed.

12. Interim order, if any, stands vacated.

13. Urgent photostat certified copy of this judgment, if applied for, be given to the parties upon compliance of necessary legal formalities.

(Bivas Pattanayak, J.)