

Form No. J (2)

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

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

**F.M.A. 1345 of 2025
IA NO: CAN/1/2025**

**Probir Kumar Das @ Probir Das & Ors.
vs.
The State of West Bengal & Ors.**

For the Appellants : Mr. Gopal Mondal, Advocate
Advocate : Mr. Mani Sankar Chattopadhyay,

For the Respondent No.2 : Mr. Gouranga Kumar Das, Advocate
Ms Jayita Dhar Chakraborty, Advocate

For the Respondent Nos.5 and 6 : Mr. Pratip Mukerjee, Advocate
Ms. Rima Banerjee, Advocate
Mr. Purnankar Biswas, Advocate

Heard & Judgment on : 27.08.2025

Debangsu Basak, J.:-

1. Appeal is at the behest of persons claiming to be owners of an immovable property and directed against the order dated July 7, 2025 passed in W.P.A. 15804 of 2024.

2. Appellants before us were the writ petitioners in such writ petition which resulted in the impugned order.
3. Learned advocate appearing for the appellants submits that, appellants entered into a development agreement with regard to the immovable property concerned. The developer is the respondent no.7 herein. He submits that, two persons, namely the respondent nos. 5 and 6 claim that they entered into an agreement with the respondent no.7 for purchasing two individual flats. He refers to the so-called agreements. He submits that, there is no privity of contract between the appellants and the respondent nos.5 and 6. He points out that, the agreements were executed between the respondent nos.5 and 6 on one part and respondent no.7 on the other part. Respondent no.7 did not execute the two several agreements as the power of attorney holder of the appellants. The appellants also did not execute the agreements. Consequently, according to him, the appellants are not bound by any of the two agreement entered into between the respondent nos.5 and 6 on the one part and respondent no.7 on the other.
4. Learned advocate appearing for the appellants submits that, since, there is no privity of contract between the appellants and respondent nos.5 and 6, the respondent nos.5 and 6 cannot be construed to be a consumer within the meaning of the Consumer Protection Act, 1985. Therefore, according to him, both the State Consumer Disputes

Redressal Commission as well as National Consumer Redressal Commission, assumed jurisdiction when, none existed.

5. So far as maintainability of the writ petition directed against an order passed by the National Consumer Redressal Commission is concerned, learned advocate appearing for the appellants relies upon **(2024) 9 Supreme Court Cases 148 (Universal Sompo General Insurance Company Limited vs. Suresh Chand Jain & Anr.)**. He submits that, since, the cause of action and the property concerned, are lying within the State of West Bengal the writ petition is maintainable before this Hon'ble Court.
6. Union of India and respondent nos.5 and 6 are represented.
7. Learned advocate appearing for the respondent nos.5 and 6 submits that, the present appeal is not maintainable. In this regard, he draws the attention of the Court to paragraph-39 of the **Universal Sompo General Insurance Company Limited (supra)**.
8. On the merits of the matter, learned advocate appearing for the respondent nos.5 and 6 submits that, there was a tripartite agreement between the appellants and the respondent nos. 5 and 6 as also the respondent no.7 with two flats concerned, therefore, the appellants cannot deny executing documents as directed by the State Commission as upheld by the National Commission.

9. Appellants as owners of immovable property entered into a development agreement with respondent no.7 for development of the same. Respondent no.7 in the process of executing the project of development of such immovable property entered into the subject agreements with the respondent nos.5 and 6. Apparently, there are disputes and difference between the appellants and the respondent no.7. The appellants filed a civil suit being T.S. No.63 of 2014 before the Learned Civil Judge, Senior Division, Bolpur. The appellants did not proceed with such suit subsequent to February 23, 2016. We are not concerned with such disputes and differences.
10. Two several agreements were entered into between respondent nos.5 and 6 on one part and respondent no.7 on the other part with regard to purchase of two several flats, at the project executed by the respondent no.7 on the property owned by the appellants. The respondent nos.5 and 6 are in possession of the two flats.
11. Respondent nos.5 and 6 approached the State Consumer Redressal Commission complaining about the refusal on the part of the appellants and the respondent no.7 to execute the deed of conveyance.
12. State Consumer Disputes Redressal Commission, by an order dated January 15, 2019 passed in Complaint Case No. CC/145/2016 directed execution and registration of the deed of conveyance.

13. Aggrieved by such decision of the State Consumer Redressal Commission, the appellants approached the National Consumer Disputes Redressal Commission. Appeal of the appellants was registered as First Appeal No. 293 of 2019. First Appeal No.293 of 2019 was disposed of by an order dated April 8, 2024.
14. National Consumer Disputes Redressal Commission by the order dated April 8, 2024 held that, the appellants and the respondent no.7 cannot be allowed to wriggle out of obligations to execute deed of conveyance by setting the disputes between the appellants and the respondent no.7.
15. Consequently, National Consumer Disputes Redressal Commission affirmed the order passed by the State Consumer Disputes Redressal Commission.
16. Appellants filed a writ petition assailing such decision of the National Consumer Disputes Redressal Forum being W.P.A.15804 of 2024 which was disposed of by the impugned order dated July 7, 2025.
17. ***Universal Sompo General Insurance Company Limited (supra)*** is of the view that, challenge to an order passed in appeal by the National Consumer Disputes Redressal Commission can be made either under Article 226 of 227 of the Constitution of India before the High Court within whose jurisdiction, the cause of action or part thereof arose. It is apposite in this regard to set out paragraphs 38 and 39 thereof which are as follows:-

“38. This Court in *Ibrat Faizan*, while explaining the importance of approaching the High Court, more particularly when a remedy is available by way of a writ petition under Article 226 of the Constitution or by way of a petition under Article 227 of the Constitution (supervisory jurisdiction) observed as under : (SCC pp. 603-605, paras 18, 21, 23)

“18. ... Also, in a given case, this Court may not exercise its powers under Article 136 of the Constitution of India, in view of the remedy which may be available to the aggrieved party before the High Court concerned under Article 227 of the Constitution of India, as it is appropriate that aggrieved party approaches the High Court concerned by way of writ petition under Article 227 of the Constitution of India.

*21. Now so far as the remedy which may be available under Article 136 of the Constitution of India is concerned, it cannot be disputed that the remedy by way of an appeal by special leave under Article 136 of the Constitution of India may be too expensive and as observed and held by this Court in *L. Chandra Kumar*, the said remedy can be said to be inaccessible for it to be real and effective. Therefore, when the remedy under Article 227 of the Constitution of India before the High*

Court concerned is provided, in that case, it would be in furtherance of the right of access to justice of the aggrieved party, may be a complainant, to approach the High Court concerned at a lower cost, rather than a Special Leave to Appeal under Article 136 of the Constitution.

23. The scope and ambit of jurisdiction of Article 227 of the Constitution has been explained by this Court in Estralla Rubber v. Dass Estate (P) Ltd. Which has been consistently followed by this Court (see the recent decision of this Court in Garment Craft v. Prakash Chand Goel). Therefore, while exercising the powers under Article 227 of the Constitution, the High Court has to act within the parameters to exercise the powers under Article 227 of the Constitution. It goes without saying that even while considering the grant of interim stay/relief in a writ petition under Article 227 of the Constitution of India, the High Court has to bear in mind the limited jurisdiction of superintendence under Article 227 of the Constitution. Therefore, while granting any interim stay/relief in a writ petition under Article 227 of the Constitution against an order passed by the National Commission, the same shall always be subject to the rigour of the powers to be exercised

under Article 227 of the Constitution of India.”
(emphasis supplied)

39. In the aforesaid view of the matter, we have reached to the conclusion that we should not adjudicate this petition on merits. We must ask the petitioner herein to first go before the jurisdictional High Court either by way of a writ application under Article 226 of the Constitution or by invoking the supervisory jurisdiction of the jurisdictional High Court under Article 227 of the Constitution. Of course, after the High Court adjudicates and passes a final order, it is always open for either of the parties to thereafter come before this Court by filing special leave petition, seeking leave to appeal under Article 136 of the Constitution.”

18. In our understanding as the law stands today, a party in a writ petition under Article 226 is entitled file an intra-Court Appeal under Clause 15 of the Letters Patent, 1865, if aggrieved by or dissatisfied with the order passed by the learned Single Judge deciding the writ petition under Article 226 of the Constitution of India. Exception to this rule is a writ petition directed against a criminal proceeding which may result in conviction and sentence. However, in the event, the proceedings are

under Article 227 of the Constitution of India, then the benefit of Clause 15 of the Letters Patent, 1865 is not available.

19. In the facts and circumstances of the present case, the appellants as the writ petitioners approached the Writ Court under Article 226 of the Constitution of India. Rights of the parties are adjudicated by the order impugned. Therefore, appellants before us are entitled to prefer an appeal under Clause 15 of the Letters Patent, 1865 directed against the impugned order herein.
20. Both the State Consumer Redressal Commission as well as National Consumer Redressal Commission considered every facet of the disputes raised by the private parties. National Consumer Disputes Redressal Forum is of the view that, alleged disputes between the appellants and the respondent no.7 cannot be used as a shield to deny the right of the respondent nos.5 and 6 to obtain execution and registration of a deed of conveyance. Consequently, it directed the parties to do so.
21. Learned Single Judge, by the impugned order, noted that, there are several disputed questions of facts which, cannot be resolved by way of a writ petition.
22. With respect, we are of the view that, the disputes between the private parties stood adequately resolved by the orders of the State Consumer Disputes Redressal Commission as well as the National Consumer Disputes Redressal Commission. Our attention is not drawn to any

aspect of the two decisions which infringes the principles of natural justice. None of the two orders can be classified as perverse or passed without jurisdiction.

23. In such circumstances, **F.M.A. 1345 of 2025** alongwith connected applications are **dismissed** without any order as to costs.

(Debangsu Basak, J.)

24. I agree.

(Md. Shabbar Rashidi, J.)