

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

Present:

The Hon'ble Justice Md. Shabbar Rashidi

C.O. 3257 Of 2022

IA No: CAN 1 of 2023

Bapi @ Birendra Mondal

Vs.

Bally Jute Mill Employees Co-Operative Credit Society Limited

For the petitioner : Mr. Shibaji Kumar Das, Adv.
Mr. Soumyajyoti Sen, Adv.
Ms. Indrani Nandi, Adv.

Hearing concluded on : 17.04.2025

Judgment on : 02.05.2025

Md. Shabbar Rashidi, J.:-

1. The instant proceeding at the behest of the petitioner/judgment debtor in a proceeding under the Consumer Protection Act, 1986, is in assailment of order No. 29 dated September 8, 2022 passed in C. C. Execution 34 of 2012 passed by District Consumer Disputes Redressal Commission, Hooghly.

2. By the order under challenge, the Commission, took into account that an appeal was preferred by the judgment debtor/petitioner against an award passed by the District Consumer Disputes Redressal Commission, Hooghly and the State Commission dismissed the appeal. It was also noted in the impugned order that despite dismissal of appeal filed by him, the judgment debtor did not take any steps towards compliance of the award passed by the District Consumer Disputes Redressal Commission, Hooghly and in such conspectus, the Commission proceeded to issue Warrant of Arrest against the judgment debtor.

3. The opposite party filed an application under Section 12 of the Consumer Protection Act, 1986, with the District Consumer Disputes Redressal Commission, (hereinafter to be referred as District Forum) Hooghly, being CDF Case No. 52 of 2010, seeking refund of the advance money to the tune of ₹4,50,000/- together with a compensation of ₹5,00,000/- The petitioner contested the said proceeding by filing a written version. Such proceeding ended in an order No. 26 dated July 26, 2012. The District Forum granted the petition filed on behalf of the opposite party directing the petitioner to refund to the petitioner the advance amount of ₹4,50,000/- The District Forum also directed the petitioner to pay the opposite party a compensation of ₹1,00,000/-

together with a cost of ₹2,000/- As such, the petitioner was directed to pay the opposite party a total sum of ₹5,52,000/- within one month of the date of order and in default, the due amount was directed to carry interest at the rate of 9% till realization of the full amount.

4. Against such order passed in CDF Case No. 52 of 2010 passed by the District Forum, the petitioner carried an appeal to State Consumer Disputes Redressal Commission (hereinafter to be referred as State Commission) under Section 17 of the Consumer Protection Act, 1986 which was registered as S.C. Case No. FA/400/2013. The said appeal was contested by the opposite party by filing written objection to the memorandum of appeal.

5. The petitioner also taken out an application under Section 47 of the Civil Procedure Code before the District Forum which was rejected by it by order No. 18 dated January 16, 2020. Being dissatisfied with such order, the petitioner preferred an appeal under Section 27A of the Act of 1986 before the State Commission, which was registered as First Appeal No. A/114/2020. By a judgment and order passed on July 29, 2022, such appeal was dismissed by the State Commission affirming the order dated January 16, 2020 passed in connection with C.C. Ex. Case No. 34 of 2012.

6. In consideration of the of the judgment passed by the State Commission dismissing the appeal, the District Forum came to hold that inspite of dismissal of the appeal by the State Commission, the judgment debtor/petitioner did not take any steps towards compliance of the award passed by it. In consideration of the aforesaid facts, the District Forum proceeded to issue warrant of arrest against the petitioner with a view to compel the petitioner to comply the award passed in C.C. Ex. Case No. 34 of 2012 arising out of CDF Case No. 52 of 2010.

7. It is this order, which has been challenged in the present proceeding under Article 227 of the Constitution of India. It has been submitted that the impugned order suffers from illegality and manifest impropriety as the petitioner was never asked to show cause and was never provided with an opportunity of placing his case before issuance of warrant of arrest directly.

8. It was also contended that the District Forum committed gross error in law in issuing warrant of arrest. According to the petitioner, the provisions contained in The Consumer Protection Act, 1986, does not empower the District Forum to issue warrant of arrest without first resorting to the provisions of Order XXI of the Civil Procedure Code. The impugned order is also illegal on the ground that

the same has been passed without adjudicating the application under Section 47 of the Civil Procedure Code filed on behalf of the petitioner which is still pending with the District Forum. The petitioner also contended that the impugned order also suffers from illegality for violation of the principles of natural justice. In support of his contentions, learned advocate for the petitioner relied upon **2020 SCC OnLine Cal 3290 (Hirak Nath Sounth vs. Alok Kumar Sen & Anr.)**, **2022 SCC OnLine Cal 3519 (Somadhan Properties vs. Pulak Kumar Bera)**, **2025 SCC OnLine Cal 2940 (Abdul Manim Mollah vs. State of West Bengal and Anr.)** and an unreported decision of a Coordinate Bench rendered in CRR 2955 of 2022 **(Samasth Infotainment Pvt. Ltd. and Ors. Vs. The State of West Bengal and Ors.)**.

9. As it transpires from the material placed before this Court, the complainant/opposite party was a registered co-operative society. The aforesaid society on June 09, 2009 decided in its board meeting that it would celebrate its 50 years golden jubilee. It was decided that a three litre capacity pressure cooker would be gifted to all the 1500 members of the society at a cost of ₹380/- each. A tender was published. In pursuance of such tender the petitioner submitted its quotation on July 08, 2009. Subsequently, on July 18, 2009, the petitioner submitted

another quotation to supply to the opposite parties LG make pressure cookers with three litre capacity weighting 1100 gms. to 1150 gms. of 10 gauge price being ₹365/- per piece with a warranty of 7 years. Such quotation submitted by the petitioner was accepted by the opposite parties. The petitioner agreed to supply the quoted goods and requested the opposite parties for an advance payment. A sum of ₹4,50,000/- was paid to the petitioner as advance consideration amount out of the total consideration of ₹5,47,500/-. The compliance consideration money was paid after the celebrations.

10. Accordingly, in terms of the quotation, the opposite parties supplied 670 pieces of pressure cookers on August 26, 2009 and 834 pieces of pressure cookers on August 28, 2009 in packed condition.

11. It is the allegation of the petitioner that the aforesaid supplied pressure cookers were kept unopened at the godown of the opposite parties. About 1100 pressure cookers were distributed. Some of the members raised a complaint that the pressure cookers supplied to them were not proper and usable.

12. The petitioner was called upon by the opposite parties whereupon, it is said that the petitioner is alleged to have assured the opposite party society to change the whole supply of pressure cookers. However, the petitioner did not keep its words. Petitioner is also alleged

to have denied the refund of the advance amount of consideration money of ₹4,50,000/-.

13. As noted above in the aforesaid facts, the opposite parties filed a complaint at the District Consumer Disputes Redressal Forum, Hooghly which was registered as CDF Case No. 52 of 2010. The aforesaid case was allowed by the District Consumer Disputes Redressal Forum, Hooghly by its order No. 26 dated July 26, 2012. The operative portion of the judgment and order is as follows:-

“That the case be and the same is allowed in part on contest with cost of Rs. 2000/-. The OP is directed to refund the amount of consideration money of Rs.4,50,000/- to the petitioner complainant along with interest @ 9% per annum from the date of payment till today. The OP is further directed to pay compensation of Rs.1,00,000/- (Rupees one lakh only) to the petitioner.

The OP is directed to pay Rs.5,52,000/- (five lakhs fifty two thousand only) to the petitioner/complainant within one month from the date of this order i.d. 9% interest will carry till realization of the full amount.”

14. Later on, the opposite party society filed an execution case on the force of judgment and order dated July 26, 2012 being Execution Case No. 34 of 2012. The opposite party society complained of non-compliance of the order passed by the District Forum. In pursuance of

such complaint, Penal Proceedings No. 1 under Section 27 of the Consumer Protection Act was initiated within the said Execution Case No. 34 of 2012. Learned District Forum by order No. 1 dated February 27, 2015 held the petitioner guilty of non-compliance of the order issued by it and convicted him to pay a fine of Rs. 3,000/-, in default, to suffer simple imprisonment for one month.

15. Prior to passing the order of sentence dated February 27, 2015 the District Forum had issued warrant of arrest against the petitioner and the petitioner was brought under arrest on the strength of such warrant of arrest. Record placed before this Court also reveals that in pursuance of the order passed on February 27, 2015, the petitioner deposited the amount of fine of Rs. 3,000/- as ordered by the District Forum and in consideration of such payment being made by the petitioner he was released at once on February 27, 2015 itself.

16. So far as the provisions contained in The Consumer Protection Act, 1986 (for short, 'Act of 1986') is concerned, Section 25 provides for the enforcement of the orders of the District Forum, State Commission or the National Commission in the following terms:-

“25. Enforcement of orders of the District Forum, the State Commission or the National Commission.-(1)

Where an interim order made under this Act is not complied with, the District Forum or the State Commission or the

National Commission, as the case may be, may order the property of the person, not complying with such order to be attached.

(2) No attachment made under sub-section (1) shall remain in force for more than three months at the end of which, if the non-compliance continues, Forum or the State Commission or the National Commission may award such damages as it thinks fit to the complainant and shall pay the balance, if any, to the party entitled thereto.

(3) Where any amount is due from any person under an order made by a District Forum, State Commission or the National Commission, as the case may be, the person entitled to the amount may make an application to the District Forum, State Commission or the National Commission, as the case may be, and such District Forum or the State Commission or the National Commission may issue a certificate for the said amount to the Collector of the district (by whatever name called) and the Collector shall proceed to recover the amount in the same manner as arrears of land revenue.”

17. Section 27 of the Act of 1986 deals with non-compliance of the order made by the District Forum, the State Commission or the National Commission as the case may be and provides for imposing penalty for such non-compliance. Section 27 of the Act reads as follows:-

“27. Penalties.—(1) *Where a trader or a person against whom a complaint is made [or the complainant] fails or*

omits to comply with any order made by the District Forum, the State Commission or the National Commission, as the case may be, such trader or person [or complainant] 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 two thousands rupees but which may extend to ten thousands rupees, or with both:

(2) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the District Forum or the State Commission or the National Commission, as the case may be, shall have the power of a Judicial Magistrate of the first class for the trial of offences under this Act, and on such conferment of powers, the District Forum or the State Commission or the National Commission, as the case may be, on whom the powers are so conferred, shall be deemed to be a Judicial Magistrate of the first class for the purpose of the Code of Criminal Procedure, 1973 (2 of 1974).

(3) All offences under this Act may be tried summarily by the District Forum or the State Commission or the National Commission, as the case may be.”

18. Nothing has been placed before me to establish that any proceeding under Section 25 of the Act of 1986 was taken out or any order to that effect was made by the District Forum. The materials placed on record to go to show that in order to execute the order passed by the District Forum on July 26, 2012, the opposite party society

initiated an execution proceeding being Execution Case No. 34 of 2012. In such Execution Proceeding a Penal Proceeding No. 1 under Section 27 of the Consumer Protection Act was initiated wherein on the date of passing the final order by which penalty was imposed upon him i.e., on February 27, 2015, the petitioner was in custody and it was directed in the order that he was sentenced to pay a fine of Rs. 3,000/-, in default, to suffer simple imprisonment for one month and on payment of fine, he would be released from the case. Accordingly, on payment of the amount of fine of Rs. 3,000/-, as directed in the order dated February 27, 2015, by the petitioner he was directed to be released at once.

19. The impugned order was passed in the said Execution Case No. 34 of 2012. It transpires from the impugned order that on the date i.e., September 08, 2022 the decree holder placed certain copy of judgment passed by the State Commission whereby the appeal filed by the present petitioner was dismissed. It was noted in the impugned order that inspite of dismissal of the appeal the judgment debtor had not taken any steps for compliance of the award. In such circumstances, the District Forum proceeded to issue warrant of arrest against him.

20. It is pertinent that in doing so, the District Forum must have proceeded on the basis of the provisions contained in sub-Section (2) of

Section 27 of the Act of 1986 which provides that the District Forum, the State Commission or the National Commission, as the case may be, shall have the power of a Judicial Magistrate of the 1st Class for the trial of offences under the Act of 1986 and the aforesaid authorities were deemed to be a Judicial Magistrate of the 1st Class. In exercise of such powers of a Judicial Magistrate, the District Forum proceeded to issue warrant of arrest against the present petitioner/judgment debtor. However, as I have noted earlier that there are no materials placed on record that the opposite party society ever proceeded against the petitioner under Section 25 of the Act of 1986 for enforcement of the order passed by the District Forum.

21. No doubt, the District Forum had the powers of a Judicial Magistrate of the 1st Class in terms of Section 27(2) of the Act of 1986 and issued warrant of arrest against the petitioner. However, Section 27(1) of the Act of 1986 provides that when a trader or a person against whom a complaint is made, fails or omits to comply with any order made by the District Forum, State Commission or the National Commission, as the case may be, the concerned authority is empowered to punish such person guilty of non-compliance.

22. In the facts and circumstances of this case, an execution case being 34 of 2012 was initiated at the behest of the opposite party

society against the petitioner for non-compliance of the award passed by the District Forum. The petitioner was arrested and was released on payment of the penalty imposed upon him. Not only that, order No. 1 dated February 27, 2015 passed in Penal Proceeding No. 1 under Section 27 of the Act of 1986 arising out of the Execution Case No. 34 of 2012 also goes to show that with the order of imposing punishment upon the present petitioner in the execution case, the execution case was directed to be disposed of. If the execution case has already been disposed of by order No. 1 dated February 27, 2015, there was no proceeding pending under which a warrant of arrest could be directed to be issued against the judgment debtor i.e., the petitioner. Moreover, the petitioner was once convicted and sentenced for the non-compliance of the order passed by the District Forum, he cannot be vexed twice for the same non-compliance.

23. In **Abdul Manim Mollah** (supra) a co-ordinate Bench of this Court noted that:-

“7. Therefore an order granting specific performance of an agreement as in the present case is executable under the provision of Order XXI of the Code of Civil Procedure and may be executed by putting the judgment debtor in civil prison or by attachment and sale of his property or by both. Warrant of arrest can be executed by the executing Court to

compel the attendance of the judgment debtor and cost of execution of the warrant of arrest as well as civil prison is required to be borne by the decree holder upon assessment of the same by the Forum.

8. Section 72 of the Act envisages penalty for non-compliance of the order of the District Commission, State Commission or National Commission, as the case may be, meaning thereby, that the Commission is empowered to initiate proceeding under section 72 of the Act for penalty for noncompliance of the order. The decree holder may take recourse to section 71 or section 72 of the Act for execution of the order passed by the Consumer Forum. The law does not authorize the Forum to issue warrant 5 of arrest for enforcement of its order under the Code of Criminal Procedure.”

24. Similarly, in **Somadhan Properties** (supra) this Court observed that:-

“5. Needless to say that sections 25 and 27 of the Act provides for speedy enforcement of the orders of the forum or commission, which are in the nature of execution proceedings of the orders made by the Redressal authority. Section 25 of the Act provides for enforcement of such orders by a civil process, as if they are decree or order of civil court, whereas section 27 of the Act confers a quasi criminal sanction for their enforcement by way of punishment with imprisonment or imposition of monetary penalties. Accordingly section 25 should be read in conjunction with section 27. There is no other provision for

execution in the act nor there is any rule. Section 25 is divided in two parts, the first part relates to interim order passed under the authority of section 13 (3B) while second part relates to recovery of money ordered to be paid to the applicant by the adversary. Sub-section (1) & (2) speak of attachment and sale of the property of the opposite party who has contravened the interim order. The relevant provisions for attachment and sale are provided in order 21 rule 41 to 106 of civil procedure code. No procedure for either attachment or sale has been provided in section 25 of the consumer protection Act which is also not subsequented by any rule. In the present case where the opposite party who is bound by the interim order, failed to comply with the order during the period of its substance, the commission in my opinion should have passed the order for attachment of his property. Though sub-section (1) of section 25 does not indicate whether the attachment can be passed ex-parte or not, still it is desirable that the commission should pass an order of attachment after giving an opportunity to the opposite party of being heard.

6. In a similar context in L & T Finance Limited Vs. Pramod Kumar Rana and another reported in (2021) SCC OnLine SC 1124 the national commission was pleased to issue bailable warrant for producing the opposite party before the National Commission on 18.10.2021. In the said proceeding Hon'ble Apex Court was pleased to held "Be that it may, even the review application against the order dated 26.08.2021 is pending before the Tribunal. Therefore, in the facts and circumstances of the case, issuance of the bailable warrants against Shri Dinanath Mohandas

Dubhashi, the Director of original opposite party No. 2 was not warranted at this stage. Bailable warrants are to be issued as a last resort and only in a case where it is found that the opponent parties are not co-operating at all and that they are avoiding appearance before the national Commission deliberately and/or they are not represented at all either through their authorized representative or through their counsel.”

7. In view of aforesaid provisions of law and in view of the clear finding of the Apex Court, that bailable warrants are to be issued by the commission as a last resort, I am of the view that the commission was not justified in issuing bailable warrant without exhausting process of attachment for not complying the order of the commission regarding payment of money as ordered by the commission.”

25. In **Hirak Nath Sounth** (supra) warrant of arrest for enforcement of an order passed by the District Forum was issued against a petitioner who is not a party to the proceeding taken under the Consumer Protection Act. For such a reason, order issuing warrant of arrest against a person who was not the party to the original proceeding under the Consumer Protection Act was quashed and set aside.

26. In the case of **Samasth Infotainment Pvt. Ltd. And Ors.** (supra) a co-ordinate Bench of this Court while dealing with a case under the provisions of The Consumer Protection Act, 2019 (for short,

'Act of 2019) noted that comparing the provision of Sections 71 and 72 of the Act of 2019 (Sections 25 and 27 of the Act of 1986 herein) were compared and it was ascertained that if the decree holder wanted execution of the order, they were obliged to take recourse under Section 71 which was to proceed in accordance with the Order 21 of the Code of Civil Procedure. It was also noted in an execution proceeding, the commission having power of the executing court could not take recourse of Section 72 of the Act of 2019 and take a short cut and coercive method for execution of its order. In consideration of the aforesaid circumstances, the learned Court came to the conclusion that in an execution application the commission could not issue warrant of arrest for enforcement of its order. Rather the commission had the authority to issue warrant for detention of the judgment debtor in civil prison in accordance with the provision under the Code of Civil Procedure.

27. In the light of the aforesaid discussion made hereinbefore, the Impugned Order No. 29 dated September 08, 2022 is hereby set aside.

28. The instant revisional application being **C.O. 3257 of 2022** is hereby allowed and disposed of without any order as to costs. Connected application being CAN 1 of 2023 is disposed of.

29. Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties on priority basis upon compliance of all formalities.

[Md. Shabbar Rashidi, J.]