

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

Present:

The Hon'ble Justice Partha Sarathi Sen

**CO 134 of 2024
With
CAN 3 of 2025**

**Tiru Fine Residency LLP
Vs.
Magnanil Goswami & Ors.**

For the petitioner : Mr. Nabankur Paul
Ms. Sutapa Sen Paul
Mr. Md. Apzal Ansari
Mr. Bodhisatya Ghosh

For the O.P. Nos.1 & 2 : Mr. Kunaljit Bhattacharjee
Mr. Alok Sah
Mr. Sayan Sinha

Heard on : 07.01.2025

Judgment on : 07.01.2025

PARTHA SARATHI SEN, J.:

1. At the time of hearing learned advocate for the revisionist at the very outset draws attention of this Court to the photocopy of the certified copy of the judgment dated December 8, 2023 as passed

by the District Consumer Disputes Redressal Forum, Jalpaiguri (hereinafter referred to as the 'said forum' in short) in Complaint Case No.CC/3/2023.

2. It is submitted that admittedly in the said complaint case before the said forum the present petitioner was not a party. At this stage learned advocate for the petitioner also draws attention of this Court to page No.15 of the instant petition being a photocopy of two money receipts as issued by the petitioner in the name of the complainant in the aforementioned complaint case. It is contended that though the present petitioner was a necessary party in the said complaint case but for the reason passed known to the opposite party herein the present petitioner was not made a party in the said complaint case though a valuable right has been affected on account of passing of the judgment dated December 8, 2023 in the aforementioned complaint case since according to the learned advocate for the petitioner the complainant booked a flat and paid the booking money not with the opposite party of the said complaint case but with the petitioner.
3. It is thus submitted that the present petitioner thus feel aggrieved with the said judgment dated December 8, 2023 and thus presented his memo of appeal with the State Commission at Siliguri. It is further submitted that from page No.122 of the

instant petition being Annexure 'O' it would reveal that the said memo of appeal was returned to the present petitioner on the ground that the present petitioner was not a party in Complaint Case No.CC/3/2023.

4. At this juncture learned advocate for the petitioner draws attention of this Court to Section 41 of the Consumer Protection Act, 2019 (hereinafter referred to as the said Act of 2019). It is further submitted that on a bare perusal of the Section 41 of the said Act, it would reveal that any person aggrieved by an order made by the District forum may prefer an appeal against such order. It is thus submitted that a serious miscarriage of justice occurred on the part of the State Commission, Siliguri, for not allowing the present petitioner in preferring the appeal impugning the judgment dated December 8, 2023 passed by the said forum in Complaint Case No.CC/3/2023.
5. Such contention is, however, opposed on behalf of the opposite party/complainant. It is contented that there is no error of fact or of law on the part of the State Commission, Siliguri in not allowing the present petitioner in preferring the appeal impugning the judgment dated December 8, 2023 as passed in Complaint Case No.CC/3/2023 inasmuch as from the said judgment it would reveal that the liability of the opposite parties

of the said complaint case have been well-established which is why the said forum passed the said award.

6. In his next fold of submission learned advocate appearing on behalf of the opposite party submits that in the said Act of 2019 there is a provision for appeal before the National Commission impugning the order passed by the State Commission and thus without availing the said statutory remedy the petitioner cannot be permitted to seek remedy by filing the instant petition under Article 227 of the Constitution of India.
7. Learned advocate for the opposite party thus submits that this is fit case for dismissal of the instant revisional application.
8. For effective adjudication of the instant lis this Court at the very outset proposes to look Section 41 of the said Act of 2019 and the same is reproduced hereinbelow in verbatim:-

“41. Appeal against order of District Commission.-

Any person aggrieved by an order made by the District Commission may prefer an appeal against such order to the State Commission on the grounds of facts or law within a period of forty-five days from the date of the order, in such form and manner, as may be prescribed:

Provided that the State Commission may entertain an appeal after the expiry of the said period of forty-five days, if it is satisfied that there was sufficient cause for not filing it within that period:

Provided further that no appeal by a person, who is required to pay any amount in terms of an order of the

District Commission, shall be entertained by the State Commission unless the appellant has deposited fifty per cent of that amount in the manner as may be prescribed:

Provided also that no appeal shall lie from any order passed under sub-section (1) of section 81 by the District Commission pursuant to a settlement by mediation under section 80.”

9. On careful consideration of the aforementioned legislative provision it appears to this Court that while enacting Section 41 of the said Act of 2019 it is the intention of the legislatures that in the event any person feels aggrieved by an order of the District Commission he may prefer an appeal against such order to the State Commission. In considered view of this Court the word ‘any person’ has been consciously used by the legislature and it should be construed in a broader sense and in its proper perspective as otherwise the legislature could have used any other word or words instead of the words ‘any person’.
10. From the judgment dated December 8, 2023 it reveals that the present revisionist is admittedly not a party to the said complaint case however, prima facie materials have been placed before this Court to substantiate that the present revisionist has every reason to prefer an appeal against the said judgment since the present petitioner feels aggrieved with the said judgment.

11. In view of such there cannot be any embargo on the part of the State Commission in not allowing the present petitioner in preferring an appeal challenging the judgment dated December 8, 2023 as passed in Complaint Case No.CC/3/2023 by the said Forum. Admittedly, in the said Act of 2019 there is a provision for appeal before the National Commission but in considered view of this Court the statutory provision cannot take out the plenary power of the High Court under Article 227 of the Constitution of India.
12. From the case history information as has been annexed at page No.122 of the instant revisional application being Annexure 'O' it reveals that the State Commission had refused to accept the memo of appeal on the ground that the petitioner is not a party to the aforementioned complaint case which in considered view of this Court is contrary to provision of Section 41 of the said Act of 2019.
13. This Court thus finds sufficient merit in the instant revisional application. Accordingly the instant revisional application being **CO 134 of 2024** is hereby allowed.
14. The West Bengal State Consumer Disputes Redressal Commission, Siliguri Circuit Bench, West Bengal, is hereby directed to grant leave to the present petitioner to prefer an appeal impugning the judgment dated December 8, 2023 as

passed in Complaint Case No.CC/3/2023 by the District Consumer Disputes Redressal Forum, Jalpaiguri upon its presentation subject to the compliance of all formalities as mentioned in the Consumer Protection Act, 2019 and the Rules made thereunder and also in the event such appeal is presented within a period of fortnight from today.

15. The interim order as passed on 21/08/2024 in this revisional application shall remain in force till the last day of March, 2025 unless such order is modified by the said State Commission by passing a reasoned order in course of the hearing of the appeal to be filed by the present revisionist.
16. With the disposal of the instant revisional application all pending applications, if there be any, stands hereby disposed of.
17. District Consumer Disputes Redressal Forum, Jalpaiguri is directed to act on the server copy of this order.
18. Urgent Photostat certified copies of this order, if applied for, be supplied to the parties upon compliance with all necessary formalities.

(PARTHA SARATHI SEN, J.)