

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 173 OF 2024

Heena Mohammedin Kashmiri
Aged: 65 yrs, Presently Occ: Housewife)
Mumbai Indian Inhabitant, Through her C.A.
Mohammudin Ahmeddin Kashmiri presently
Residing at Royal Garden CHS, Flat 502, S.V.
Road, Jogeshwari (West), Mumbai - 400 102
and earlier having address at BMC Plot, C.T.S
No. 41, Anand Nagar, Oshiwara,
Jogeshwari (West), Mumbai 400 102. ...Petitioner

Versus

1. The State of Maharashtra
Through its Government Pleader
Mumbai.
2. The Collector of Mumbai, Mumbai
Suburban District, Bandra 10" Floor,
Administrative Building, Near Chetna
College, Government Colony, Bandra
East, Mumbai - 400 051.
3. District Consumer Disputes Redressal
Mumbai Suburban District Forum at Bandra
having its address at Government Colony,
Bandra East, Mumbai - 400 051.
4. Mr. Premshankar Kedar Pandey
alias Rinku Pandey legal representative
of Kedar Pandey Proprietor of
M/s Nityanand Builders and Developers
having address address at flat no. 401, 402

Govind Building, Nandanwan Society,
Opposite Manav Kalyan Kendra, S. V.
Road, Dahisar, Mumbai - 400 068 and
site address Jay Ambe CHS C.T.S. No. 41,
B.M.C. Plot, Anandnagar, Oshiwara,
Jogeshwari (West), Mumbai - 400 102

5. M/s Nileshwar Developer
having address at Satellite height, Anandnagar,
Opposite lemachy Mall now known as Megha
Mall, Oshiwara, Jogeshwari (West),
Mumbai - 400 102

through their partners

(i) Dinesh Ishwarlal Desai

(ii) Nitesh Ranchondas Patani

(iii) Jayesh Ishwarlal Desai

(iv) Prakash Ranchodas Patani.

...Respondents

Mr. Anil R. Mishra, for Petitioner.

Mr. Rohan Pawaskar, for Respondent No. 4.

Ms. P.J. Gavhane, AGP for the State.

**CORAM : M.S. Sonak &
Advait M. Sethna, JJ.**

DATED : 12 September 2025

Oral Judgment (M. S. Sonak, J):-

1. Heard. Learned counsel for the parties.
2. Rule. The rule is made returnable forthwith with the consent of the learned counsel for the parties.
3. The petitioner filed a Consumer Complaint No. MSDF/198/2008 against Respondent No. 4 before the Mumbai Suburban District Consumer Dispute Redressal

Forum at Bandra, which was disposed of by judgment and order dated 06th February 2010.

4. The consumer forum directed the Respondent No. 4 to put the petitioner in vacant and peaceful possession of Flat No. 501, in the building named “Satellite Heights”, free from encumbrances. The Respondent No. 4 was also directed to pay compensation in the sum of Rs. 20,000/- per month from 31st December 2005 till the delivery of the possession of the flat. The Respondent No. 4 was also directed to pay the cost of Rs. 5,000/-.

5. By the above order dated 06th February 2010, four weeks’ time was granted to the Respondent No. 4 to comply with the order. On failure to do so, the Respondent No. 4 was directed to pay the petitioner a sum of Rs. 100/- per day towards penalty.

6. Despite the above order, the petitioner complains that there was no compliance by the Respondent No. 4. Therefore, the petitioner filed two proceedings. The first was Execution Application No. 63 of 2010 under Section 25(3) of the Consumer Protection Act, 1986. This was disposed of by order dated 19th July 2012 by issuing a recovery certificate dated 19th July 2012. The Collector must execute this. But the petitioner complains that the Collector is delaying the execution by colluding with the developer.

The second proceedings are Execution Application No. 10/63 under Section 27 of the Consumer Protection Act. This is still

pending before the consumer forum.

7. There is no dispute that the recovery certificate is required to be executed by the Collector, i.e. Respondent No. 2. The petitioner complains that to date, the Collector has not executed this recovery certificate. The petitioner has made allegations of collusion. But since the Collector is not impleaded as a party in person, we do not wish to delve into those allegations. Besides, for the last 12 years, we think that several incumbents must have held the position of Collectors.

8. Allegations apart, we are quite shocked that the recovery certificate of 2012 has not been executed by the Collector of Mumbai, Mumbai Suburban, Bandra (R-2) to date. The petitioner has obtained a favourable order from the consumer forum and further obtained an order under Section 25(3) of the Consumer Protection Act in the form of a recovery certificate. These recovery certificates must be executed by the Respondent No. 2 expeditiously. These executions cannot be delayed, and that too so unreasonably.

9. The Hon'ble Supreme Court in the case of *Satyawati V/s. Rajinder Singh and Anr.*¹ held that though the Appellant-Plaintiff had succeeded in obtaining a Final Decree from the Appellate Court in January 1996, she was not able to get the fruits of her success till 2013. The Hon'ble Supreme Court relied upon its earlier judgments to highlight the unreasonable delays faced by the litigants in the execution

¹ [(2013) 9 SCC 491]

proceedings while seeking execution of the Decrees issued by the judicial forums. In para 17 of *Satyawati (supra)*, the Hon'ble Supreme Court has held that there should not be unreasonable delay in execution of a decree because if the decree-holder is unable to enjoy the fruits of his success by getting the decree executed, the entire effort of successful litigant would be in vain.

10. The Hon'ble Supreme Court referred to the observations of the Privy Council in ***General Manager of the Raj Durbhunga V/s. Coomar Ramaput Sing²***, in which it was observed that the difficulties of a litigant in India begin when he has obtained a decree. The Hon'ble Supreme Court was constrained to observe that the position has not been improved till today, and therefore, there should be no unreasonable delay in execution of decrees because if decree holders are unable to enjoy the fruits of their success by getting the decree executed, the entire effort of a successful litigant would be in vain.

11. In the case of ***Marshall Sons & Co. (I) Ltd. V/s. Sahi Oretrans (P) Ltd.³***, the Hon'ble Supreme Court noted that the decree of the Appellant was not being executed for some reason or the other. The Court noted how proceedings are dragged for a long time on one count or the other and, on occasion, become highly technical accompanied by unending prolixity at every stage providing a legal trap to the unwary.

² (1871-72) 14 MIA 605 : 20 ER 912

³ (1999) 2 SCC 325

Because of the delay, unscrupulous parties to the proceedings take undue advantage and a person who is in wrongful possession draws delight in delay in disposal of the cases by taking undue advantage of procedural complications.

12. The Hon'ble Supreme Court in the case of *Bhoj Raj Garg V/s. Goyal Education and Welfare Society and Others*⁴ while disposing of the Special Leave Petition (Civil) complaining of the non-compliance by the Execution Court with the directions issued by the Apex Court in the case of *Rahul S. Shah V/s. Jinendra Kumar Gandhi and Ors.*⁵ for the adjudication of suits and execution proceedings, held that it is the duty of the Execution Court to dispose of the execution proceedings within six (6) months from the date of filing, which can be extended only by reasons to be recorded in writing.

13. Although most of the above decisions were in the context of execution of decrees in civil proceedings, the principle that execution proceedings should be disposed of with utmost dispatch will equally apply to orders made under the Consumer Protection Act. This Act was enacted to provide for the protection of the interests of consumers and for the said purpose, to establish authorities for the timely and effective administration and settlement of consumer disputes. The entire objective of setting up these special fora was to ensure that the consumers, as a class, obtain timely and

⁴ (2022) SCC Online SC 2449

⁵ (2021) 6 SCC 418

effective administration of settlement of consumer disputes. Therefore, in fact, the principle that execution proceedings should be disposed of with utmost dispatch will apply with greater vigour to the proceedings under the Consumer Protection Act.

14. The Authorities must always remain conscious of this aspect, as otherwise, the entire objective of enacting the Consumer Protection Act and providing for a facile and speedy remedy to consumers would be frustrated.

15. As noted earlier, this is a case where the Petitioner has obtained favourable orders in 2012, and to date, such favourable orders have not been executed for one reason or another. The 4th Respondent, after a delay of almost 14 years and perhaps, after the institution of this Petition, has chosen to institute an Appeal along with an application for condonation of delay. The mere ground of pendency of the Application for condonation of delay can never be a good enough reason to delay or postpone the execution proceedings.

16. The Collector has no justification in not disposing of the Petitioner's plea for execution of the recovery certificate issued in 2012 or thereabouts. The entire efficacy of the consumer movement will stand frustrated if the Collector sits tight on the execution of the recovery certificate. Therefore, the allegations apart, we direct the Collector of Mumbai to execute the recovery certificate as expeditiously as possible,

and in any event within three months from today. This is, unless the Respondent No. 4 produces any stay order from the Competent Appellate Authority.

17. Under no circumstances must Respondent No. 4 be permitted to unnecessarily delay the execution proceedings. In the peculiar facts of this case, considering the unreasonable delay, we direct the Collector to file a compliance report in this Court, after giving an advance copy to the learned counsel for the parties. The compliance report must be filed in this Court on or before **31st December 2025**.

18. The petitioner's application under Section 27 remains pending before the Consumer Forum (R-3). Once again, there is no justification for why the matter has been pending for the past 12 to 13 years. If the consumer forums do not process their orders with the utmost urgency, the complainants will lose faith in the effectiveness of the forums.

19. Therefore, we direct the District Consumer Dispute Redressal Forum at Bandra to dispose of the petitioner's application under Section 27 of the Consumer Protection Act as expeditiously as possible and in any event within three months from the date of production of an authenticated copy of this order, before it.

20. If the Respondent No. 4 delays the proceedings, we expect the consumer forum to pass appropriate orders to prevent such dilatory tactics. The Collector must also not succumb to any delaying strategies that the fourth respondent

might employ. Although we are not examining allegations of collusion, we note that such unreasonable delays in obtaining the benefits of favourable orders lead litigants to suspect collusion or bad faith. Such delays benefit the party against whom adverse orders are made and weaken the effectiveness of the consumer movement.

21. Adv. Rohan Pavaskar, learned counsel for the Respondent No. 4, submits that Respondent No. 4 has already instituted an Appeal No. 779 of 2023 against the judgment and order of the Consumer Forum dated 06th February 2010. He admits that this appeal is instituted after a delay of 14 years. He states that the application for condonation of delay is pending. He submits that once the delay is condoned and the appeal is admitted, the effect of finality of the consumer forum orders disappears.

22. At this stage, it is not for the court to make any observations on the above contentions. It suffices to note that the appeal has been instituted after a delay of almost 14 years. To date, neither any interim relief has been granted nor is the delay condoned. In such circumstances, merely on the ground of pendency of an application, seeking condonation of the delay of 14 years in instituting an appeal, the execution proceedings or the application under Section 27 filed by the petitioner cannot be postponed. Neither the Collector nor the consumer forum should grant any adjournment only on the ground of pendency of such an application seeking condonation of 14-year delay in

instituting the appeal.

23. At the same time, we clarify that this order should not affect the pendency of the application for condonation of delay or if the delay is condoned, then the hearing of the appeal on merits. Nothing in this order is intended to affect or influence such proceedings. Our only anxiety is that the orders passed by the consumer forum are expeditiously executed or are not delayed merely on the ground of pendency of such applications seeking condonation of the delay of 14 years in filing the appeal.

24. The learned AGP is requested to immediately communicate an authenticated copy of this order to the Collector so that the Collector proceeds to execute the recovery certificate within the time now indicated by us. We clarify that the recovery certificate has been pending before the Collector since 2012; therefore, we will be most reluctant to entertain an application for further extension. The Collector must take all efforts to complete the execution proceedings as expeditiously as possible and in any event within the time limit as indicated by us. The Collector must personally file a compliance report in this matter, as noted above.

25. This petition is disposed of in the above terms. Though we are disposing of this petition, we direct the Collector to personally file a compliance report in this Court, after giving an advance copy to the learned counsel for the

parties. The compliance report must be filed in this Court on or before **31st December 2025**.

26. The rule is also disposed of in the above terms without any order for costs.

Advait M. Sethna, J)

(M.S. Sonak, J.)