

06.02.2026
Ct. No. 06
Item 15
Cp

C.O. 170 of 2026

Tapan Banerjee & Anr.
Vs.
Keya Chatterjee & Anr.

Mr. Srijan Nayek
Ms. Aheriya Roy

.....for the petitioners.

1. Affidavit of service is taken on record. Despite service, none appears on behalf of the opposite parties.
2. The petitioners are aggrieved by an order dated July 31, 2025, passed by the learned State Consumer Disputes Redressal Commission, West Bengal in Execution Application No. SC/19/EA/44/2023. By the order impugned, IA/316/2025 filed by the judgment debtor nos. 2 and 3 was dismissed, solely on the ground that the matter had already been considered by the National Consumer Redressal Commission and the Hon'ble Apex Court.
3. Mr. Nayek, learned advocate for the petitioners, submits that an objection was filed to the IA, by the decree holder, but no opportunity to file a rejoinder to the said application was allowed. He further submits that no reasons had been afforded by the learned Commission while rejecting the IA. Hence, this court should interfere

with the order impugned and consider the issues on merits.

4. A complaint was filed by the opposite parties vide Complaint Case No. 885 of 2019 before the State Consumer Disputes Redressal Commission, West Bengal. By a final order/judgment dated September 29, 2022, the State Commission came to the finding that there was deficiency in service and the complaint should be allowed. The petitioners were directed to refund a sum of Rs.8,50,000/- with interest @ 9% p.a. to the complainants from the date of payment till realization, as per the agreement dated April 18, 2012. The judgment records that the petitioners did not appear despite proper service. Neither any written version nor any evidence had been filed by them. On the other hand, the complainants filed their evidence in the form of affidavits and the judgment was passed with reasons.
5. Challenging the aforementioned judgment, a First Appeal being No. 1161 of 2023 was filed before the National Consumer Disputes Redressal Commission, New Delhi. The said appeal was dismissed as being time barred, with reasons. Challenging the said order, a review application was filed before the National Consumer Disputes Redressal Commission and the review application was also rejected.

6. Thereafter, the petitioners filed a civil revisional application before this court being C.O. 2784 of 2024. The said C.O. was dismissed on the ground that the court did not find any infirmity in the order of the National Consumer Disputes Redressal Commission. Challenging the aforementioned order, the petitioners approached the Hon'ble Apex Court and the Hon'ble Apex Court held that it was not inclined to interfere with the order of the High Court. Thus, the final judgment of the commission in the complaint case has attained finality.

7. In this proceeding, the petitioners have challenged an order passed in execution. The petitioners filed an application being IA No. 316 of 2025, inter alia, praying for dismissal of the execution case. The prayers in the said application are quoted below:-

“In this circumstances it is prayed that Your Honour would graciously be pleased to

- a) Dismiss the execution application as infructuous, as the decretal amount has already been discharged long ago before filing Consumer Complaint;
- b) Impose costs, compensation, damages, and litigation expenses upon the DHrs for willfully abusing the process of law and unnecessarily consuming the valuable time of this Hon'ble Commission;
- c) Pass such further or other orders as this Hon'ble Commission may deem fit and proper in the interest of justice and equity.”

8. In the said IA, the petitioners denied and disputed the facts of the complaint case and narrated in detail as to

how the petitioners had paid back the money to the opposite parties who had filed the complaint case. The details of payment were narrated in paragraph 6(g) thereof. The petitioners denied the allegations of the opposite parties. They denied the claim that, a sum of Rs.10,50,000/- was paid to the petitioners as earnest money. It was submitted that the facts narrated in the IA with regard to the falsities in the complaint case should be allowed to be re-agitated before the executing court, in order to bring on record the actual state of affairs and in order to demolish the complaint case.

9. According to the petitioners, an excess amount of Rs.66,910/- had been refunded to the decree holders. The petitioners narrated how the advance payment was adjusted. It is further alleged that before the complaint case was filed, the opposite parties never demanded possession of the flat, nor did they demand refund of the money. The petitioners were all through in the dark and did not receive summons of the complaint case. The complaint case was not maintainable, as it was filed for refund of the earnest/booking money. Once, the petitioners had refunded more than the money that was paid towards booking of the flat, nothing remained to be executed. The petitioners requested the executing court to allow them to file the statement of accounts and to hear the application for dismissal of the execution case

upon considering those factual aspects, which would demolish the complaint case as a whole.

10. The State Commission rejected the application on the ground that the issue involved was settled by the National Consumer Disputes Redressal Commission and then by the Hon'ble Apex Court.
11. The general power of superintendence of this court has been invoked challenging such order of rejection of the IA on various grounds. Although, the order passed by the learned State Commission is cryptic, this court has to analyse whether the final decision is correct or not. The averments in the application for dismissal of the execution case are in the nature of a written version, denying the complaint case. The complaint case was decided on merits with reasons. Calculations of the amount directed to be refunded was clearly mentioned. The Commission recorded that despite notice, the petitioners did not contest the proceeding. The petitioners approached the National Commission by filing an appeal under the provisions of the relevant statute. The said appeal was also belated and the learned National Commission dismissed the appeal on the ground that the same was barred by law. Aggrieved by the said order, a review application was filed and similar objections were raised. The said review application was also dismissed. The petitioners

approached the High Court with the same objections. The civil revisional application challenging the order passed by the National Commission was also rejected by the High Court. The order of the High Court was challenged before the Hon'ble Apex Court which was once again rejected.

12. At this stage, this court is constrained to hold that the decision in the complaint case had attained finality. The IA filed by the petitioners is in the nature of an application under Section 47 of the Code of Civil Procedure. Such an application can only be entertained by the executing court if the decree is a nullity or the decree is contrary to law or the law having undergone a change, makes the decree inexecutable.
13. The complainants filed the complaint case alleging deficiency of service. The learned State Commission found there was deficiency of service. The complainants were the intending purchasers of a residential flat and had entered into an agreement for sale on April 18, 2012, with the petitioners to purchase the proposed flat along with car parking place for a total consideration of Rs.69,04,200/-. Out of which, the complainants had paid Rs.10,50,000/- on different dates as advance. The developers had promised to give possession of the flat within 18 months from the date of the agreement, i.e. October 18, 2013. The developers promised to hand over

the flats to other land owners after completion of the construction. The developer sold the flat to third parties. The State Commission found that even after the sale to third parties, the developer had unethically withheld the sum advanced by the complainants. Thus, the decree was passed as prayed for.

14. This order was challenged in an appeal and the appeal was dismissed on the ground of delay. The review application was dismissed. The civil revisional application was dismissed without any interference with the order of the National Commission and the order of the High Court was upheld by the Hon'ble Apex Court.

15. Under such circumstances, the executing court cannot go beyond the decree. It is not the petitioners' case that the decree is a nullity. The petitioners want to agitate the factual aspects which the petitioners could have agitated during the hearing of the complaint case.

16. Under such circumstances, this revisional court also cannot go beyond the decree and hold that the learned State Commission was wrong in dismissing the IA. The executing court has to proceed on the basis of the decree and it cannot reopen the case of the petitioners. They could have urged those points before the State Commission when the complaint case was being heard on merits. Similarly, the revisional court cannot sit in appeal over the order of a coordinate bench dismissing

the civil revisional application in which the petitioners had challenged dismissal of the appeal. More so, the order of the High Court was upheld by the Hon'ble Supreme Court.

17. Thus, the petitioners' contentions that they were not heard and they could not place their case before the State Commission and if the accounts were brought on record, the complaint case would be dismissed, cannot be accepted at the stage of execution.

18. Under such circumstances, the revisional application fails, and is accordingly disposed of.

19. It is well-settled that the High Court, in exercise of the power under Article 227 of the Constitution of India, is required to only examine whether courts and tribunals under it acted in accordance with law or not. Even if the order of dismissal of the application filed by the petitioners is cryptic, the reason assigned by the Commission is valid. The matter was already considered by the National Commission and also by the Hon'ble Apex Court.

20. This State Commission has narrated the factual background. The reasons missing in the order impugned are supplied by this court. This court holds that at the stage of execution, the issues raised by the petitioners in the IA could not have been adjudicated at all. The order of dismissal of the IA was correct.

21. There shall be no order as to costs. Parties are to act on the server copy of this order.

(Shampa Sarkar, J.)