



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 7879 OF 2025

Harsha Uday Motdhare, Age: 56 yrs., Occ: Nil,
R/o House no.351, Jagnath Budhwari, Nagpur-440002.

PETITIONER

VERSUS

Neeta Cooperative Housing Society Ltd., Through
Secretary Savita Chandrakant Vishwas, Age : Major,
R/o Bannerjee Layout, Bhagwan Nagar, Opp. Bank of
Maharashtra, Nagpur – 440027.

RESPONDENT

Ms Krutika Motdhare, counsel for the petitioner.
Shri S.D. Mishra, counsel for the respondent.

CORAM : PRAFULLA S. KHUBALKAR, J.

DATE : FEBRUARY 05, 2026

ORAL JUDGMENT

RULE. Rule made returnable forthwith. Heard finally with consent of the learned counsel for the parties.

2. The petitioner has challenged the order dated 08.09.2025 passed by the Additional District Consumer Dispute Redressal Commission, Nagpur whereby the application filed by the respondent in proceedings under Sections 71 and 72 of the Consumer Protection Act, 2019 (for short, 'the Act of 2019') was allowed and the proceedings are adjourned even though there is no interim stay.

3. Ms Krutika Motdhare, learned counsel for the petitioner submits that the petitioner had filed applications under Sections 71 and 72 of the Act for execution of the final order passed by the Consumer Forum dated 23.12.2021 in Consumer Complaint No.CC/18/254. It is submitted that the order passed by the Consumer Forum was subjected to challenge by

the respondent by filing an appeal before the State Commission which is pending. It is also pointed out that by order dated 30.11.2022, the State Commission has initially granted interim stay to the order passed by the District Forum subject to the appellant (respondent-Society herein) depositing the balance decretal amount within four weeks from that date. It is pointed out that the said amount is not deposited by the respondent-Society within the time and resultantly the interim stay stood vacated. Thereafter, the petitioner/consumer continued with the execution proceedings.

4. Shri S.D. Mishra, learned Counsel for the respondent submits that the instant petition is not maintainable as the petitioner has got an alternate remedy. He, however, does not dispute the position that the interim relief was granted by order dated 30.11.2022 by the appellate Court and the same stood vacated since the amount was not deposited within the period of four weeks from the date of the order.

5. While considering the controversy involved, it has to be noted that even as on today there is no interim stay to the final order passed by the District Forum. As such, there is no impediment for the Additional District Consumer Dispute Redressal Commission, Nagpur to proceed with the execution proceedings initiated by the consumer under Sections 71 and 72 of the Act.

6. It has to be noted that the respondent has not complied with the order dated 30.11.2022 passed by the Appellate Commission till today.

In view of the non-compliance of the said conditional order, the stay got vacated on expiry of four weeks. It is important to note that the respondent-Society has challenged the conditional order of stay dated 30.11.2022 *vide* Writ Petition No.8531 of 2022, however the writ petition was withdrawn.

7. The impugned order records that since the appeal is pending before higher authority, there is possibility of the appeal becoming infructuous and therefore there is likelihood of prejudice to the appellant. However, the Commission has totally ignored the effect of vacation of interim relief. The entire approach of the Commission to postpone and adjourn the execution proceedings only because the appeal is pending, even though the interim relief is vacated, is against the settled position of law. The appellant/respondent herein is entitled to obtain appropriate interim relief from higher Courts to stay the execution proceedings. However, in absence of stay, the execution proceedings need not be postponed unnecessarily.

8. As regards the objection raised by the counsel for the respondent on the ground of alternate remedy, it has to be noted that the instant petition is not by way of an appeal to the final order passed by the Commission, which are appealable under the provisions of the Act. The petitioner's grievance is against the postponement of the execution proceedings despite vacation of interim order. The statutory appeal is already pending and the petitioner/consumer desire to prosecute the execution

proceedings in view of vacation of interim relief. Considering the nature of the impugned order passed by the Commission, the objection on account of alternate remedy is not sustainable, since relegating the petitioner/consumer to approach the Appellate Commission, before which the appeal is already pending, is not warranted. The petitioner has made out exceptional circumstances referred above. As such, the judgment in *Nivedita Sharma Versus Cellular Operators Association of India & Others* [(2011) 14 SCC 337] relied upon by the counsel for the respondent is not of any assistance to the respondent.

9. In the present case, the respondent has challenged the judgment and order passed by the District Forum before the appellate Forum and obtained the interim stay, which came to be vacated for the respondent's failure to deposit the decretal amount. Hence there is no hindrance for the appellate Forum to proceed with the execution proceedings as per law.

10. Having considered all the relevant legal and factual aspects, I am of the firm opinion that the impugned order needs interference. Hence, the following order is passed:-

I. The writ petition is allowed.

II. The order dated 08.09.2025 passed by the Additional District Consumer Dispute Redressal Commission, Nagpur at Exhibit-31A is quashed and set aside. The application filed by respondent below Exhibit-31 is rejected.

III. The Additional District Consumer Disputes Redressal Commission, Nagpur is entitled to proceed with the proceedings initiated by the consumer under Sections 71 and 72 of the Act.

11. Rule is made absolute in aforesaid terms with no order as to costs.

(PRAFULLA S. KHUBALKAR, J.)

APTE