

2020 PLRonline 5005

Calcutta High Court

Before: Justice Shampa Sarkar,J

Hirak Nath Sounth v. Alok Kumar Sen

C.O. 109 of 2020

04.03.2020

(i) Consumer Protection Act, 1986, Section 25, Section 27 - Petitioner not a party in the decree - State Commission tried to execute its order first by issuance of warrant of arrest against the petitioner who was not a party to the proceeding in which the final order was passed, and thereafter directed attachment of his own residential house with a further direction that, if he failed to surrender before the police, his house would be sold and the amount to be recovered as arrears of land revenue - Petitioner was not a party to the proceeding before the forum in the complaint case but the allegations of the complainant in the complaint case was against the company of which the petitioners was one of the Directors who had resigned in 2011 - Judgment debtor was a Company, the Commission proceeded with the execution of the final order through its Ex-Director and issued a non-bailable warrant of arrest - Order quashed and set aside.

(ii) Consumer Protection Act, 1986, Section 25, Section 27 - Commission being a creature of a statute cannot travel beyond the power granted to it under the said Act and cannot pass orders in the execution of final orders as if the same was a decree of the civil court - A District Forum or a State Commission or a National Commission can impose penalty on any person failing or omitting to comply with any order made by any of them. Such power has been vested under Section 27 of the Act of 1986 after its amendment - A District Forum, State Commission or the National Commission as the case may be, no longer has the power to execute its order in the same manner as if it was a decree or order made by a Court in a suit pending before such Court by virtue of the amendments introduced by the Amendment Act of 2002 . [Para 15]

Mr. S.R. Islam ..for the petitioner Mr. Dipanjan Datta Mr. Sovan Chakraborty Mr. Sayan Datta Mr. Subhajit Chowdhury ..for the O.P.1

Shampa Sarkar,J - The petitioner is aggrieved by an order dated August 20, 2019 passed by the learned, West Bengal State Consumer Disputes Redressal Commission Kolkata in EA 1 of 2016, arising out of CC 65 OF 2014. The learned Commission directed attachment of the house of the petitioner and if the petitioner did not surrender before the police, a certificate would be issued to the District Magistrate for sale thereof. The learned

Commission had, by a previous order, issued a non- bailable warrant of arrest against the petitioner.

2. The learned Commission came to the conclusion that unless and until the petitioner's personal property, that is, his residential house was attached, the order of the learned Commission could not be executed. It was further may direct that if the petitioner did not surrender before the police authorities, a certificate should be issued to the District Magistrate to recover the amount decreed by the final order in the same manner as arrears of land revenue.

3. The jurisdiction of this Court under Article 227 of the Constitution of India has been invoked on the ground that the learned Commission did not have any power under the law to either issue a non-bailable warrant of arrest in the process of execution of a final order or issue an order of attachment, in execution of the final order. Thus, the revisional application has been entertained. Moreover the order impugned had been passed in an execution proceeding, from which no revision will lie before the National Commission as the dispute between the parties had been finally determined and there was no pending dispute.

4. It appears from the records that the petitioner was not a party to the proceeding before the learned Tribunal in the complaint case but the allegations of the complainant in the complaint case was against the company of which the petitioners was one of the Directors who had resigned in 2011.

5. The company was the opposite party No.2/judgment debtor.

6. A Final order was passed against the Company. As the judgment debtor was a Company, the Commission proceeded with the execution of the final order through its Ex-Director and issued a non-bailable warrant of arrest. Thereafter the order impugned was passed.

7. The provisions relating to execution of the order of District Forum, the State Commission or the National Commission are provided in Sections 25 and Section 27 of the Consumer Protection Act, 1986 (hereinafter referred to as the said Act).

"Sections 25 and 27 subsequent to the amendment with effect from March 15, 2003 are as follows:- "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, the property attached may be sold and out of the proceeds thereof, the District 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, the 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.

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 thousand rupees but which may extend to ten thousand 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.”

8. In the present case, the orders in execution can be passed in exercise of power under Sections 25 (3) Consumer Protection Act, 1986. Section 25 of the Act provides that the person/deed holder may apply to the learned Commission for issuance of a certificate to the collector for satisfaction of the amount due and the collector shall proceed for recovery of the amount in the same manner as arrear of land revenue.

9. Section 25 (3) can be invoked only for the purposes of the recovery of the amount which is due and recoverable under the order of the Commission. Orders of attachment and subsequent sale of such attached property does not come within Section 25(3) of the said Act. The said Act under Section 25 (1) provides for attachment of a property for enforcement an interim order of the Commission and the said order of attachment loses its force within three months from the date of the order. The Commission does not have inherent power like a civil court to enforce its orders by way of attachment and an appointment of receiver etc. It is also provided under the statute that the only mode of recovery of the amount due would be to issue a certificate to the collector for recovery of the dues as arrears of land revenue. Section 25 (3) specifically provides the procedure by which a person to whom an amount is due and payable under the order of the Forum or Commission, he or she may approach the Commission for execution of the order and

recovery of the amount. Moreover, after the amendment of the Act in 2003 the law has undergone a radical change and the Commission cannot execute its order as if it was a decree of a Civil Court.

10. Section 27 gives the penal provision under which punishment can be imposed by the Commission for non-compliance of its order after a trial in terms of the Code of Criminal Procedure and the Commission has same powers as a Judicial Magistrate of the First Class.

11. Reference may be made to the decision of **Rajdeep Laha v. The State of West Bengal & Ors.** (In re: W.P.17282(W) of 2019) and the relevant portion of the above decision is quoted below :-

“13. In the present case, the impugned order herein, although passed by the State Commission, has been passed in exercise of powers under Sections 25 and 27 of the Act of 1986. Section 25 allows the State Commission to enforce its orders. Section 27 of the Act of 1986 allows the State Commission to impose a fine or to punish a person with imprisonment of the prescribed value and term. Sub-Section (3) of Section 25 provides that, where any amount is due from any person under an order made by the District Forum, or the 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, or the 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 and the Collector shall proceed to recover the amount in the same manner as arrears of land revenue. Sections 25 and 27 being the only sections empowering a District Forum, State Commission or the National Commission, as the case may be to pass orders for enforcement of their orders, the enforcement orders of such authorities are required to be within the parameters of Sections 25 and 27. Such authorities being creatures of statute, cannot travel beyond the provisions of the statute which created them. Powers and functions of the statutory adjudicating authorities are circumscribed by the statute under which they were established and under which they function.

14. Orders passed under Section 27 of the Act of 1986 is appealable under Section 27A of the Act of 1986. Section 27A of the Act of 1986 has been introduced with effect from March 15, 2003. Section 27A of the Act of 1986 is as follows:-

“27-A. Appeal against order passed under section 27. -

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), an appeal under section 27, both on facts and on law, shall lie from-(a) the order made by the District Forum to the State Commission;

(b) the order made by the State Commission to the National Commission;

And

(c) the order made by the National Commission to the Supreme Court.

(2) Except as aforesaid, no appeal shall lie to any Court from any order of a District Forum or a State Commission or the National Commission.

(3) Every appeal under this section shall be preferred within a period of thirty days from the date of an order of a District Forum or a State Commission or, as the case may be, the National Commission: Provided that the State Commission or the National Commission or the Supreme Court, as the case may be, may entertain an appeal after the expiry of the said period of thirty days, if, is satisfied that the appellant had sufficient cause for not preferring the appeal within the period of thirty days."

15. The Act of 1986 was amended radically by the Consumer Protection (Amendment) Act, 2002. The Amendment Act of 2002 brought about a paradigm shift in the provisions of the Act of 1986 through the amendments introduced. Various definitions obtaining in the Act of 1986 were amended in order to make the words used in the Act of 1986 to be in tune of the law declared by the Courts. Original Section 25 was substituted. Original Section 27 was radically amended. Section 27A was introduced to the Act of 1986 through the Amendment Act of 2002. Section 25 of the Act of 1986 as presently obtaining allows a District Forum or a State Commission or the National Commission to enforce an interim order passed by any of them. It empowers the District Forum, the State Commission and the National Commission to issue a certificate of the amount payable by a respondent in a proceeding, to the Collector of the District for collecting such amount and making over the same to the person entitled thereto. It also empowers the Collector upon receipt of such certificate to proceed to recover the amount in the certificate in the same manner as arrears of land revenue. The provisions of Section 25 as it stood prior to its amendment, allowed the District Forum, the State Commission or the National Commission to enforce its order in the same manner as if it were a decree or order made by a Court in a suit pending before it. Such provisions were found to be causing delay in execution and inappropriate for the purpose of execution of an order under the Act of 1986. A District Forum or a State Commission or a National Commission can impose penalty on any person failing or omitting to comply with any order made by any of them. Such power has been vested under Section 27 of the Act of 1986 after its amendment. A District Forum, State Commission or the National Commission as the case may be, no longer has the power to execute its order in the same manner as if it was a decree or order made by a Court in a suit pending before such Court by virtue of the amendments introduced by the Amendment Act of 2002."

15. The learned Commission being a creature of a statute cannot travel beyond the power granted to it under the said Act and cannot pass orders in the execution of final orders as if the same was a decree of the civil court.

16. In this case, the learned Commission tried to execute its order first by issuance of warrant of arrest against the petitioner who was not a party to the proceeding in which the final order was passed, and thereafter directed attachment of his own residential house with a further direction that, if he failed to surrender before the police, his house would be sold and the amount to be recovered as arrears of land revenue.

17. The order dated August 20, 2019 passed in EA/1 of 2016 in Complaint Case No.

CC/65/2014 is quashed and set aside.

18. The complainant is at liberty to pray for issuance of certificate upon the District Magistrate for recovery of the amount, and also pray for initiation of proceedings under Section 27 of the said Act, as per law.

19. The opposite party/complainant is also at liberty to approach the other forum/Commission set up with regard to recovery of amount invested in Ponzi Schemes in view of the final order passed in his favour.

20. This revisional application is disposed of.

There will be however no order as to costs.

Urgent photostat certified copy of this order be given to the parties on priority basis, if the same is applied for.

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