STATE CONSUMER DISPUTES REDRESSAL COMMISSION

WEST BENGAL

FIRST APPEAL NO. SC/19/A/1013/2018

Mr. Biswajit Paul .....Appellant(s)
PRESENT ADDRESS - S/o Lt. Bibhuti Bhusan Paul, 35/1, Bangur Avenue, Block-C, P.O.- Bangur, P.S.- Lake Town, Kolkata - 700 055. ,WEST BENGAL.

Versus

Smt. Afsari Bano & Ors. .....Respondent(s)
PRESENT ADDRESS - D/o Ahmad Soib, 63, Phari Bagan, Kamarhati, P.S. Belghoria, Dist. North 24 Pgs., Kolkata - 700 058. ,WEST BENGAL.

BEFORE:

HON'BLE MR. RAJES GUHA RAY , JUDICIAL MEMBER

HON'BLE MR. SANTANU SAHA , MEMBER

FOR THE APPELLANT: Md. Bani Israil, Ms. Kanchan Gupta (Advocate)

FOR THE RESPONDENT: Prashant Pathak. (Advocate)
Mr. Manojit Pal. (Advocate)

DATED: 07/09/2026

ORDER

Hon'ble Mr. Rajes Guha Ray, Judicial Member

1. This Appeal has been preferred u/section 27A of the Consumer Protection Act, 1986, hereinafter to be called and referred as the 'Act, 1986', against the impugned order dated 27.11.2018 passed by Learned DCDRF, Kolkata Unit- I, renamed as DCDRC, Kolkata Unit- I in EA case no. 187 of 2018 arising out of C.C. Case No. 362 of 2016.

Initially this Appeal was filed against Respondent No. 1 and proforma Respondent Nos. 2 to 8. Subsequently vide Order no. 15 dated 17.05.2024 the names of proforma Respondent Nos. 2 to 8 have been expunged.

2. The backdrop of this appeal is that Afsari Bano filed the complaint case being C.C. case no. 362 of 2016 before the Ld. DCDRF, Kolkata Unit- I against the present appellant Biswajit Paul being O.P. no. 2 therein and 07 other opposite parties with certain prayers.

3. The appellant/OP no. 2/J.Dr. no. 2 contested that complainant case and after hearing Ld. Forum below passed the order allowing the complaint case on contest with cost against the opposite parties directing them jointly and/or severally to refund the amount of Rs. 32,790/- to the complainant jointly and or severely along with compensation of rupees 5,000/- for harassment and litigation cost of Rs. 3,000/- within 30 days from the date of communication of

the order i.d. an interest @ 8% per annum shall accrue over the entire sum due to the credit of the complainant till full realization.

4. Later said complainant filed the Execution Case No. 187 of 2018 rising out of said complaint case for execution of that order. The appellant after receiving only the copy of summon appeared before Ld. Forum below and prayed for copy of execution case but no such copy was served upon the appellant till filing of this appeal and the matter was fixed on 27.11.2018. On that day the appellant appeared and made a prayer to file an application for referring the execution case before One Man Committee but said petition was not accepted and the same was not reflected in the order even on that date only J.Dr. no. 2 appeared and in respect of other Jdr no one appeared. But in the order it appears that the J.Dr. no. 2 did not appear and the warrant was issued against the Jdr. no. 2 and the others.

5. The Appellant has made some other averments regarding some other proceedings in the memo of appeal including functioning of Hon'ble One Man Committee so formed for the purpose of reimbursement matters of the deposits of the depositors.

6. Being aggrieved and dissatisfied by the impugned order dated 27.11.2018 the appellant/J.Dr. no. 2 has filed this appeal inter alia on the following grounds -

G R O U N D S OF A P P E A L

i) that the Ld. Forum below acted illegally and/or with material irregularity;

ii) that if the petitioner refund the money of the present depositors, hen proceeding under the Contempt of Court may be initiated against him and the aforesaid process of refund of money may be frustrated;

iii) that to avoid multiplicity of proceeding let the execution case being EA No. 187 of 2018 may be referred to the One Man Committee for execution of the judgement dated 27th April, 2018 passed in CC No. 362 of 2016;

iv) that the Ld. Forum ought to have record the presence of the appellant a such the order under challenge is a piece of document with suppression of fact and as such same is liable to be set aside;

v) that it is the right of the parties to file application before the Ld. Forum, the Forum may allow it or reject it, it is the duty of the Forum to hear the parties but in the present case the learned forum did not accept the application of the appellant as such the order under challenge is patently illegal and reliable to be set aside.

By filing this appeal the appellant has prayed for setting aside the impugned order dated 27/11/2018 passed in the aforesaid Execution Case and for referring the present execution case to the One Man Committee for execution of the judgement dated 27th April 2018 passed in C.C. Case no. 362 of 2016.

7. Now, the following points are to be considered for the decision in this appeal-

POINTS FOR DETERMINATION

a) whether the impugned order passed by Ld. Forum below is bad in law or suffers any infirmity.

b) whether the impugned order is liable to be set aside.

DECISION WITH REASONS

8. This appeal has been heard in absence of respondent as on the date of hearing nobody turned up for the respondent. Both parties have filed their respective written notes of arguments. Ld. Advocate for the appellant advanced his argument in conformity with the case of the appellant. In course of argument Ld. Advocate for the appellant has referred the prayers of the decree holder in the execution application vis a vis the passing order of issuance of non bailable warrant of arrest. It has been argued that there is prayer for attachment of property of the J.Drs., but in the same proceeding non bailable warrant of arrest has been issued.

In written notes of argument on behalf of the respondent it has been argued reiterating his case and proceedings of the case. It is submitted that the executing Forum cannot go behind the decree etc.

9. The impugned order dated 27.11.2018 passed in EA/186/2018 is reproduced as hereunder:

> *"Order No. 2 dt. 27/11/2018*
>
> *Ld. Advocate DHR is present.*
>
> *JDRs 2,5,6,7 & 8 are absent without step though received notice.*
>
> *Dhr prays for issuance of non-bailable warrant of arrest against jdrs 2,5,6,7&8.*
>
> *Heard. Considered. The prayer is allowed.*
>
> *Issue non-bailable warrant of arrest against Jdrs 2,5,6,7&8 fixing 07.01.2019 for E/R of non bail-able warrant of arrest.*
>
> *No S/R of Jdrs 1,3,&4.*
>
> *Learned Advocate for Dhr prays for paper publication for S/R of Jdrs 1,3&4. Heard. Considered. The prayer is allowed.*
>
> *To date (07/-1/2019 for filing paper cutting.*
>
> *Draft copy of paper publication to be approved from the office in the mean time."*

10. It appears from the materials on records that the Execution Case no. 187 of 2018 has been filed before the Ld. Forum below U/S 25 of the Consumer Protection Act, 1986, whereas, in the prayer portion of the execution application the remedy sought, is attachment of property of the opposite parties and execution of the order as per provision of Section 25 and 27 of the Consumer Protection Act, 1986 and / or punishment by sending to prison for wilful, deliberate and contumacious violation of the order dated 27.04.2018 passed in CC Case no. 362 of 2016.

`**11.** Section 25 and Section 27 of Consumer Protection Act 1986 are reproduced as here under :

> *Section 25-*
>
> *(1) Where an interim order made under this act is not complied with the District Forum or 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 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 there to.*
>
> *(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, State Commission or the National Commission, as the case may be, and such District Forum, 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.*
>
> *Section 27 -*

(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.

12. Apparently, in the present Execution Application the decree holder has made a composite or duel prayers both civil and criminal in nature simultaneously in a single proceeding by clubbing Sections 25 and 27 of the Consumer Protection Act, 1986.

13. Section 25 and Section 27 of that Act are different in natures and of their applications. Section 25 is civil in nature and it prescribes the manner in which the order passed by the Forum or Commission in a consumer dispute case is to be executed, whereas. Section 27 of the Act is punitive in nature. The provision of this Section is attracted when the party against whom the award has been passed i.e. the Judgement debtor fails to comply with the order.

14. It is the position of law that in a proceeding u/s 25 of said Act warrant of arrest cannot be issued against the j.dr. i.e. against whom the order has been passed. Within four corners of the provision of Section 25 of the Act, 1986 no room has been provided for issuance of non bailable warrant by the District Forum or State Commission or National Commission. Sub-sections (1) and (2) of it prescribe attachment of property and sale of the same when an interim order passed by the Forum or Commission is not complied with. In the case in hand, the order being the subject matter of the execution case, is not an interim order but final in nature awarding some amounts to be paid by the O.P/J.Dr. So, sub sections (1) & (2) are not applicable to it. Now remains the sub section (3).

The Sub section (3) prescribes for issuance of certificate of amount to the Collector of the district who shall proceed to recover the amount so awarded in the same manner as arrears of land revenue.

So, it is clear that the consumer Forum or Commission has no jurisdiction to issue non bailable warrant under Section 25 of the Act.

15. So far the provisions of Section 27 of the Consumer Protection Act, 1986 is concerned, it deals with occasions arising out of non compliance of the order passed by the Forum or the Commissions. There is nothing in this Section to mean for enforcement or execution of the order passed by the Forum or Commission. In other words this section is not for enforcing the order passed by the Forum or the Commissions. It prescribes the penalties and procedures to be followed in case of non compliance of the order passed by the Forum or Consumer Commission and for that purpose the power of a first class Judicial Magistrate has been conferred upon it for trial of the offences and such offences will be tried summarily.

16. In this case by adopting both the Section 25 and 27 of the Act, 1986 the decree holder or award holder has tried to get recourse of both the sections simultaneously, by clubbing them together in a single proceeding which has made the entire proceeding a mess and to be vitiated raising questions about maintainability of the execution case in its present form and prayers. The survival of this execution case is to be at stake if it continues with its present form and prayers.

17. Even if it is taken into consideration that the impugned order issuing non bailable warrant of arrest so passed against the judgement debtor taking the course of action u/s 27 of

the Act, 1986 keeping aside the Section 25 of that Act, yet the same is not a proper course of action by directly issuing non bailable warrant of arrest without following necessary procedures, such as initiation of a proper criminal proceeding as prescribed in law. As per Section 27 of the Act, 1986 has been conferred power of first class Judicial Magistrate to try the offences summarily. As per Cr.P.C. presently repealed and replaced by BNSS, the cases to be tried summarily are to be tried as summons cases. In case of a summons case, generally summons are issued at the first instance. Though in some cases warrant of arrest may be issued but in such cases cogent reasons are to be mentioned in the order.

18. The copy of impugned order no. 2 dated 27.11.2018 shows that on that day the J.Drs nos 2 and 5 to 8 were absent despite receipt of notice. Ld. Advocate for D.Hr prayed for issuance of warrant of arrest and the Ld. Forum passed the impugned order issuing non bailable warrant against the appellant. The Execution Case has been filed under section 25 of the Consumer Protection Act, 1986 as it appears from the description of cause title of the Execution application. However, the prayer portion of it includes prayers for issuance of Warrant upon the opposite parties, attachment of their property and execution of the order under section 25 of the Act and/or to punish by sending to prison. It is the contention of the appellant/J.Dr./O.P. no. 2 that on that day the J.D. no. 2 was present before Ld. Forum, but it has not been mentioned in the impugned order. No reasons has been mentioned for issuance of non bailable warrant. There is no contention that the J.Dr. is a habitual offender or there was chances of his escape or leaving country vis a vis the quantum of amounts so claimed in the execution case.

19. Therefore, considering the nature and circumstances of the execution case this Commission is of opinion that issuing non-bailable warrant of arrest amounts to miscarriage of justice. From this point of view the impugned order suffer infirmities and material irregularities and as such the impugned order is liable to be set aside.

20. It is also the contention of the appellant that several public interest litigations were instituted against the appellant companies before the Hon'ble High Court at Calcutta vide W.P. 30617 (W) of 2015, W.P. No. 1668(W) of 2015 and W.P. No. 825(W) of 2016 alleged to have been instituted by several several investors and upon hearing the same the Hon'ble Court was pleased to constitute a committee of Justice S.P. Talukdar for liquidation of assets of the two companies and recovery of sums invested by the depositors etc. In our view all those proceedings are not so essential for adjudicating the present issue i.e. passing order of non bailable warrant of arrest particularly at the such early stage of the execution case.

21. Therefore, having considered the nature and circumstances of the case in hand and the position of laws this Commission is of opinion that the impugned order is bad in law and procedure. It suffers infirmity and material irregularity and it needs interference by this Commission. However, this Commission refrains from passing any remarks and comments regarding the merit of the execution application and also the appellant's prayer for referring the execution case to said one man committee at this stage.

As a result the present appeal succeeds.

22. Hence, it is

o r d e r e d

that the Appeal being no. 1013 of 2018 is hereby allowed in part on contest without cost.

The impugned order dated 27.11.2018 passed in Execution Case No. 187 of 2018 arising out of C.C. Case No. 362 of 2016 passed by Learned DCDRF, Kolkata Unit- I is set aside.

Send a copy of this judgement and order to Learned DCDRC, Kolkata Unit- I with a request for further proceeding and disposal of the execution case as per law, after giving opportunities to both sides for taking appropriate steps if any, and of being heard.

Supply the copies of this order to the parties free of cost.

Office is to do needful.

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RAJES GUHA RAY

JUDICIAL MEMBER

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SANTANU SAHA

MEMBER