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Calcutta High Court

Case No: C.O. No. 2735 of 2010

Shamik Raha	APPELLANT
Vs	
Puspa Ashoka Chandrani	RESPONDENT

Date of Decision: Sept. 6, 2010

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 39 Rule 2
- Consumer Protection Act, 1986 - Section 25, 27

Hon'ble Judges: Prasenjit Mandal, J

Bench: Single Bench

Advocate: Sourabh Guha Thakurata, for the Appellant;J.L. Roy, for the Respondent

Final Decision: Dismissed

Judgement

Prasenjit Mandal, J.
This application is at the instance of the judgment debtor and is directed against the order No. 2 dated July 19, 2010 passed by the learned State Consumer Disputes Redressal Commission, West Bengal in R.P. Case No. 75 of 2010 thereby dismissing the revisional application preferred by the petitioner with regard to the execution proceeding No. 74 of 2009.

2. The short fact is that the opposite party filed a complaint before the learned District Forum, Alipore being the C.C. Case No. 107 of 2008 stating, inter alia, that on the basis of a verbal agreement, the opposite party booked a flat measuring 650 square feet on the first floor at premises No. 176/14/142, Raipur Road, Kolkata -700 092 being the flat No. 1A at a total consideration price of Rs. 5,00,000/- only. The said consideration money was paid. But the judgment debtor/petitioner herein, did not deliver possession of the flat and also did not execute the deed of conveyance. So, he filed the complaint before the forum. That matter went from the consumer forum to State Commission, then National Commission and ultimately to the Apex Court and everywhere the decree/order passed

against the judgment debtor, petitioner herein, has been confirmed. The judgment debtor did not comply with the said decree/order and as such, execution application was filed for execution of the decree/order. In that application, the judgment debtor filed an application for cancelling the application for execution of the decree. That application was dismissed on contest by the District Forum. Being aggrieved, he filed a revisional application before the State Consumer Disputes Redressal Commission, West Bengal (henceforth shall be called as "State Commission"). By the order impugned, the learned commission has rejected the revisional application. Being aggrieved, this application has been preferred by the judgment debtor.

3. Mr. Guha Thakurata, learned Advocate appearing on behalf of the petitioner, submits that a single petition for execution u/s 25/27 of the Consumer Protection Act is not maintainable. Moreover, the decreeholder had obtained the decree by practising fraud upon the Court before the District Consumer Forum and so the decree should not be executed.

4. Mr. Roy, learned Advocate appearing on behalf of the opposite party, objects to such submission and he submits that the judgment debtor fought up to the Apex Court and everywhere he lost thereby confirming the decree/order passed by the consumer forum. So, there is no question of exercising fraud upon the Court. An application u/s 25/27 of the Consumer Protection Act is well maintainable. So, the application should be dismissed.

5. Therefore, the point that emerges for decision in this application is whether the impugned order can be sustained.

6. Upon hearing the learned Advocate for both the parties and on perusal of the materials on record, I find that the petitioner has raised the contention that in a single petition containing two kinds of relief in the execution application is not maintainable. There is no doubt that the order passed by a consumer forum amounts to a decree and such decree is enforceable by the forum or the State Commission u/s 25 of the Consumer Protection Act. The same can be executed before the said forum and in case the decree/order becomes unexecutable by the forum, then it can be executed by the civil Court, if the situation demands. Section 27 of the said Act confers additional power upon the forum or the State Commission to execute with the order and the said provision is akin to Order 39 Rule 2(a) of the C.P.C. or the provisions of the Contempt of Courts Act. Therefore, in order to get the relief as per decree, the decreeholder has mentioned two kinds of relief in the application for execution of the decree.

7. The learned Advocate for the petitioner refers to the decision of State of Karnataka Vs. Vishwabarathi House Building Coop. Society and Others, and submits that according to the paragraph Nos. 57 and 58 of the said decision, such prayer for alternative relief cannot be executed in the same application. Upon perusal of the said decision, I find that there is no such indication in the ratio of the decision that such two modes of execution of

decree/order cannot be done in one application. Rather, everything is kept open for execution of the decree and it can be dealt with by the forum or the State Commission and in case of need by the civil Court. In that case, the decree can well be sent to the civil Court for execution. Therefore, the said decision does not help the petitioner at all.

8. As regards the contention of the petitioner relating to fraud, I find from the materials on record that the decree/order passed by the District Forum was challenged before the State Commission and then before the Hon"ble National Commission and lastly the SLP filed by the petitioner was dismissed by the Hon"ble Apex Court.

9. This being the position, at this stage of execution, the question of practising fraud is nothing but it means a way to delay the execution of the case. Therefore, I am of the view that there is nothing to interfere with the impugned order. This application is totally meritless.

10. It is, therefore, dismissed.

11. There will be no order as to costs.

12. Urgent xerox certified copy of this order, if applied for, be supplied to the learned Advocates for the parties on their usual undertaking.