

*** THE HONOURABLE SMT. JUSTICE M.G. PRIYADARSINI**

+ Civil Revision Petition No.3423 OF 2023

% 14.03.2024

Between:

M/s. Safeway Infra

Petitioner

Vs.

Sri Surender Reddy Devidi and another

Respondents

! Counsel for Appellants : Sri Chanakya Basa

^ Counsel for Respondents : Sri V. Appa Rao

<GIST:

> HEAD NOTE:

? Cases referred :

1. C.O.No.1663 of 2021 decided on 04.11.2022 of High Court of Calcutta
2. MANU/SC/0674/2019
3. (2012) 8 SCC 524

THE HONOURABLE SMT. JUSTICE M.G.PRIYADARSINI**CIVIL REVISION PETITION No.3423 OF 2023****ORDER:**

By means of present revision petition, the revision petitioner has challenged the order dated 10.10.2023 passed in E.A No.5 of 2022 in CC No. 12 of 2021 on the file of District Consumer Disputes Redressal Commission, Medak at Sanga Reddy District (for brevity hereinafter termed as “the District Commission”) and to allow this revision.

2. For the sake of convenience, hereinafter, the parties will be referred as per their array before the learned “the District Commission”.

3. The factual matrix of the case is that the complainant Nos. 1 & 2, who are the husband and wife respectively, jointly signed an agreement of sale with the opposite party on 18.12.2014 for purchase of an open plot, bearing plot No. 345 admeasuring 205.77 square yards, at Symphany Park Homes, Patancheruvu Village, GHMC Circle-22 and also to develop and construct a villa comprising of ground plus 1st floor with a salable area of 2203 square feet as per terms and conditions mentioned in the

agreement of sale. The complainants took a housing loan from TATA Capital Housing Private Limited to a tune of Rs.41,91,250/-. On 31.12.2014 the opposite party registered the said plot in the name of the complainants after receiving the total amount of Rs.52,31,250/- which amount was paid by the complainants on various dates towards purchase, construction and developmental charges. However, the opposite party failed to handover the completed villa within the time as agreed date i.e. on or before 18.12.2015 as per the terms of agreement, even though there is about five years delay in completing the villa including grace period of six months. In spite of repeated requests from complainants, the opposite party did not respond in any way. The reluctant act of opposite party and his attitude towards the purchasers was doubtful and complainants came to know that opposite party is a fraudster, who swindles away the consumer's money. In fact, several consumer complaint cases have been filed against the opposite party in the District as well as State Consumer Forum.

4. On 20.01.2021 the complainant served a legal notice informing the opposite party that they are approaching consumer

Court for justice, to which also the opposite party did not respond. It is submitted that the opposite party did not develop the common areas as per the approved layout and further the opposite party has to provide common facilities to them as agreed with the Government in getting approval of layout, agreement of sale and sale deed. The complainants further submit that they have been burdened with payment of EMI's to the Bank, though they did not get possession of their villa from the opposite party. They have been further burdened with rent and another financial difficulties due to non-possession of their villa till date. Hence they filed a consumer complaint before District forum for the reliefs mentioned in the complaint.

5. Despite service of notice, the opposite party did not make his appearance before the District Commission to contest the case.

6. Before the District Commission, the complainants filed their evidence affidavit and got marked Ex. A-1 to A-7 on their behalf.

7. The District Commission after hearing and considering the material evidence on record allowed the complaint in part directing the opposite party to pay an amount of Rs.25,93,188/- as per the

estimation provided by Archie Designers under Ex.A-3 as pleaded by complainants in their complaint for completion of construction work for ground plus first floor together with interest at 10% per annum from the date receipt of amount towards construction by opposite party i.e., 31.12.2014 till the date of realization; to pay the damages at Rs.2/- per square feet per month on the total plinth area of 2203 square feet's from 18.06.2012 till realization as per clause 5.8 of Ex.A-1; with regard to other reliefs claimed by the complainants the opposite party was directed to provide all the amenities as per the agreement and Rs.25,000/- towards compensation for the mental agony and trauma suffered by the complainant along with Rs.10,000/- towards costs of litigation.

8. Aggrieved by the *ex-parte* order passed by District Commission, the opposite party filed appeal before Telangana State Consumer Disputes Redressal Commission at Hyderabad (for brevity hereinafter termed as "State Commission) in F.A. No.704/2021 on the ground that the complainants intentionally gave the incorrect address of the opposite party firm, as he changed the office from the address on which notice was served since 2016, thus, he was not aware of any such notice, on this

ground the opposite party could not put forth his defense by way of counter before the District forum. After considering all the aspects the State Commission dismissed the appeal confirming the order passed by the District Commission.

9. The opposite party did not challenge the order of State Commission before the appropriate forum i.e. National Commission as contemplated under section 51 of Consumer Protection Act, 2019 within a period of thirty days from the date of the order passed by the State Commission. In view of the same the District Commission proceeded with the case as the opposite party failed to file appeal within the time stipulated under the Act challenging the Execution Application No. 5 of 2022 in C.C. No. 12 of 2021. However, in spite of several opportunities the opposite party failed to appear before the District forum, thus the complainants filed execution proceedings for compliance of the order dated 10.10.2023. In the said proceedings, the learned District Commission has issued the production/bailable warrant against the opposite party i.e. M/s Safeway Infra, represented by its managing partner Sri. I.V.S.N. Raju, for the offence of non-compliance of order dated 13.04.2023 under section 72 of

Consumer Protection Act, 2019. Aggrieved by the said order in Execution case No. 5 of 2022, the present revision petition is filed invoking the provision of Article 227 of Constitution of India, 1950 and prayed to allow the appeal by setting aside the order of District Commission passed in E.A No. 5 of 2022 in CC No.12 of 2021.

10. Heard both sides and perused the entire record including the grounds of revision.

11. From the said facts, it is apparent that the petitioner chose not to appear in the consumer complaint filed by the respondent herein. He also did not lay any challenge to the judgment passed by State Commission dated 01.08.2023 in F.A. No. 704 of 2021 before the National Consumer Disputes Redressal Commission, New Delhi, in terms of Section 51 of the Act. The docket order discloses that in spite of having knowledge that the appeal before State Commission was dismissed and the District Commission is proceeding with the Execution case, the appellant did not appear before the Court when called on 16.11.2023. On willful default on part of the appellant to appear before the District Commission in spite of notice being served and even in execution proceedings

apart from filing counter thereon the appellant did not chose to appear in the said execution proceedings, as a last resort the District Commission by order dated 10.10.2023 in E.A. No 5 of 2022 in CC No.12 of 2021 issued bailable warrant under Section 70 of Criminal Procedure Code, 1973 read with Section 72 of Consumer Protection Act, 2019 for non compliance of judgment/order dated 13.04.2023. The appellant has filed the present Civil Revision Petition challenging the order of District Commission in issuing bailable warrant for securing his presence in EA No. 5 of 2022.

12. Learned Counsel for the revision petitioner contended that the learned District Commission erred in issuing warrant which is vitiated by various irregularities. It is submitted that the respondent filed a complaint against the appellant before the District Commission in CC No.12 of 2021, whereas the warrant was issued in CC. No 42 of 2022, thus the said warrant is illegal and does not bind on the appellant herein. It is further contended that no notice was served upon the appellant by the respondent herein. While so, the appellant was taking steps to appeal the impugned order before the National Commission, the said

Execution proceedings were initiated, thus, he was not aware of any such execution application being filed by the respondents. Learned counsel for revision petitioner in support his contention relied upon a decision of Calcutta High Court in **M/s. Somadhan Properties v. Pulak Kumar Bera**¹, wherein it was held as follow:

“5. Needless to say that sections 25 and 27 of the Act provides for speedy enforcement of the orders of the forum or commission, which are in the nature of execution proceedings of the orders made by the Redressal authority. Section 25 of the Act provides for enforcement of such orders by a civil process, as if they are decree or order of civil court, whereas section 27 of the Act confers a quasi criminal sanction for their enforcement by way of punishment with imprisonment or imposition of monetary penalties. Accordingly section 25 should be read in conjunction with section 27. There is no other provision for execution in the act nor there is any rule. Section 25 is divided in two parts, the first part relates to interim order passed under the authority of section 13 (3B) while second part relates to recovery of money ordered to be paid to the applicant by the adversary. Sub-section (1) & (2) speak of attachment and sale of the property of the opposite party who has contravened the interim order. The relevant provisions for attachment and sale are provided in order 21 rule 41 to 106 of civil procedure code. No procedure for either attachment or sale has been provided in section 25 of the consumer protection Act which is also not subsequented by any rule. In the present case where the opposite party who is bound by the interim order, failed to comply with the order during the period of its substance, the commission in my opinion should have passed the order for attachment of his property. Though sub-section (1) of section 25 does not indicate whether the attachment can be passed ex-parte or not, still it is desirable that the commission should pass an order of attachment after giving an opportunity to the opposite party of being heard.

6. In a similar context in L & T Finance Limited Vs. Pramod Kumar Rana and another reported in (2021) SCC OnLine SC 1124 the national commission was pleased to issueailable warrant for producing the opposite party before the National Commission on 18.10.2021. In the said proceeding Hon'ble Apex Court was pleased to held " Be that it

¹ C.O.No.1663 of 2021 decided on 04.11.2022

may, even the review application against the order dated 26.08.2021 is pending before the Tribunal . Therefore, in the facts and circumstances of the case, issuance of the bailable warrants against Shri Dinanath Mohandas Dubhashi, the Director of original opposite party No. 2 was not warranted at this stage. Bailable warrants are to be issued as a last resort and only in a case where it is found that the opponent parties are not co-operating at all and that they are avoiding appearance before the national Commission deliberately and/or they are not represented at all either through their authorized representative or through their counsel.”

13. On the above grounds and decision, the learned counsel appearing for the revision petitioner prayed to allow the revision.

14. Per contra, the learned counsel appearing for respondents vehemently argued on the maintainability of the present Civil Revision Petition either under law or on facts of the case and hence, prayed for dismissal of the case at threshold. It is further stated that Execution Application is filed under Section 72 of Consumer Protection Act, 2019 for non compliance of order passed by the District Commission, as such against the said order passed by District Commission is amenable for appeal as provided under Section 73 of the Consumer Protection Act, 2019. Furthermore, it is submitted that the impugned order dated 10.102023 passed in EA No.5 of 2022 in CC No.12 of 2021 is neither a final order under Section 72(1) of the Consumer Protection Act, 2019 nor a speaking order except docket proceedings, hence, against a procedural order

there is no provision under the law to file a revision petition under Consumer Protection Act, 2019. Therefore, the revision is devoid of merits and liable to be dismissed.

15. Before examining the merits of the orders challenged herein, the core question required to be addressed is as to whether this Court has the jurisdiction under Article 227 of the Constitution of India, 1950 to entertain the Civil Revision Petition is maintainable against the orders passed by the learned Commission in execution proceedings, particularly when a remedy of appeal has been provided under Sections 41 and 51 of the Act to State and National Commission respectively.

16. For the purpose of determining this question, the relevant provisions laid down in Section 41 and 51 of the Act, is quoted below:

“41. Appeal against order of District Commission.—Any person aggrieved by an order made by the District Commission may prefer an appeal against such order to the State Commission on the grounds of facts or law within a period of forty-five days from the date of the order, in such form and manner, as may be prescribed: Provided that the State Commission may entertain an appeal after the expiry of the said period of forty-five days, if it is satisfied that there was sufficient cause for not filing it within that period: Provided further that no appeal by a person, who is required to pay any amount in terms of an order of the District Commission, shall be entertained by the State Commission unless the appellant has deposited fifty per cent. of that amount in the manner as may be prescribed: Provided also that no appeal shall lie from any order passed under sub-section (1) of

section 81 by the District Commission pursuant to a settlement by mediation under section 80.

51. Appeal to National Commission.—(1) Any person aggrieved by an order made by the State Commission in exercise of its powers conferred by sub-clause (i) or (ii) of clause (a) of sub-section (1) of section 47 may prefer an appeal against such order to the National Commission within a period of thirty days from the date of the order in such form and manner as may be prescribed: Provided that the National Commission shall not entertain the appeal after the expiry of the said period of thirty days unless it is satisfied that there was sufficient cause for not filing it within that period: Provided further that no appeal by a person, who is required to pay any amount in terms of an order of the State Commission, shall be entertained by the National Commission unless the appellant has deposited fifty percent of that amount in the manner as may be prescribed. (2) Save as otherwise expressly provided under this Act or by any other law for the time being in force, an appeal shall lie to the National Commission from any order passed in appeal by any State Commission, if the National Commission is satisfied that the case involves a substantial question of law. (3) In an appeal involving a question of law, the memorandum of appeal shall precisely state the substantial question of law involved in the appeal. (4) Where the National Commission is satisfied that a substantial question of law is involved in any case, it shall formulate that question and hear the appeal on that question: Provided that nothing in this sub-section shall be deemed to take away or abridge the power of the National Commission to hear, for reasons to be recorded in writing, the appeal on any other substantial question of law, if it is satisfied that the case involves such question of law. (5) An appeal may lie to the National Commission under this section from an order passed ex parte by the State Commission.”

17. From a plain reading of the aforesaid provision, it is clear that in terms of Section 41, the appeal lies against the order passed by the District Commission to State Commission under Section 51 of the Act. It is well settled principle of law that the nature of execution proceedings is materially different from the nature of proceedings for adjudication of a consumer complaint and both are independent proceedings. Any order passed for

enforcement of the final order in the consumer dispute, cannot be construed to be orders passed in the 'consumer dispute', both stands on different footing independent of its enforceability. In the instant case, the impugned order being challenged is a docket proceeding in Execution application and the appellant has approached this Court invoking Article 227 of the Constitution by way of Civil Revision Petition instead of approaching the appropriate forum i.e. State Commission for setting aside the orders of the District Commission passed in EA. 5 of 2021 for the offence punishable under Section 72 of the Act, the appeal lies to State Commission as contemplated under Section 73 of the Act, for reference the said section is reproduced herein:

“73. Appeal against order passed under section 72.—(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), where an order is passed under sub-section (1) of section 72, an appeal shall lie, both on facts and on law from— (a) the order made by the District Commission 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 provided in sub-section (1), no appeal shall lie before any court, from any order of a District Commission or a State Commission or the National Commission, as the case may be. 30 (3) Every appeal under this section shall be preferred within a period of thirty days from the date of order of a District Commission or a State Commission or the National Commission, as the case may be: 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 it is satisfied that the appellant had sufficient cause for not preferring the appeal within the said period of thirty days.”

18. Further, it is relevant to discuss the distinction between an appellate jurisdiction and revisional jurisdiction and in this regard reliance can be placed to the decision of Honourable Apex Court in **Karnataka Housing Board v. K.A. Nagamani**², wherein the fine line distinction between the both were discussed as under:

“A Revision Petition has a narrower scope than an 'appeal'. In Dattopant Gopalvarao Devakate v. Vithalrao Maruthirao Janagaval MANU/SC/0396/1975 : (1975) 2 SCC 246 this Court discussed the distinction between "appellate jurisdiction" and "revisional jurisdiction" as follows:

2. 'Appeal' and 'revision' are expressions of common usage in Indian statute and the distinction between 'appellate jurisdiction' and 'revisional jurisdiction' is well known though not well defined. Ordinarily, appellate jurisdiction involves a rehearing, as it were, on law as well as fact and is invoked by an aggrieved person. Such jurisdiction may, however, be limited in some way as, for instance has been done in the case of second appeal under the Code of Civil Procedure, and under some Rent Acts in some States. Ordinarily, again, revisional jurisdiction is analogous to a power of superintendence and may sometimes be exercised even without its being invoked by a party. The extent of revisional jurisdiction is defined by the statute conferring such jurisdiction. The conferment of revisional jurisdiction is generally for the purpose of keeping tribunals subordinate to the revising Tribunal within the bounds of their authority to make them act according to law, according to the procedure established by law and according to well defined principles of justice.

6.4. Reference must also be made to the judgment of this Court in Hindustan Petroleum Corporation Ltd. v. Dilbahar Singh, (2014) 9 SCC 78 wherein it was held that:

...Conceptually, revisional jurisdiction is a part of appellate jurisdiction but it is not vice-versa. Both, appellate jurisdiction and revisional jurisdiction are creatures of statutes. No party to the proceeding has an inherent right of appeal or revision. An appeal is continuation of suit or original proceeding, as the case may be. The power of the appellate court is coextensive with that of the trial court. Ordinarily, appellate jurisdiction involves rehearing on facts and law but such jurisdiction may be limited by

² MANU/SC/0674/2019

the statute itself that provides for appellate jurisdiction. On the other hand, revisional jurisdiction, though, is a part of appellate jurisdiction but ordinarily it cannot be equated with that of a full-fledged appeal. In other words, revision is not continuation of suit or of original proceeding. When the aid of revisional court is invoked on the revisional side, it can interfere within the permissible parameters provided in the statute.

6.5. Ordinarily, the power of revision can be exercised only when illegality, irrationality, or impropriety is found in the decision making process of the fora below.”

19. Further, reference must also be made to the decision of Honourable Apex Court in **Cicily Kallarackal vs. Vehicle Factory**,³ has observed as under:-

"2. Despite this, we cannot help but to state in absolute terms that it is not appropriate for the High Courts to entertain writ petitions under Article 226 of the Constitution of India against the orders passed by the Commission, as a statutory appeal is provided and lies to this Court under the provisions of the Consumer Protection Act, 1986. Once the legislature has provided for a statutory appeal to a higher court, it cannot be proper exercise of jurisdiction to permit the parties to bypass the statutory appeal to such higher court and entertain petitions in exercise of its powers under Article 226 of the Constitution of India. Even in the present case, the High Court has not exercised its jurisdiction in accordance with law. The case is one of improper exercise of jurisdiction. It is not expected of us to deal with this issue at any greater length as we are dismissing this petition on other grounds."

7. While declining to interfere in the present Special Leave Petition preferred against the order passed by the High Court in exercise of its extraordinary jurisdiction under Article 226 of the Constitution of India, we hereby make it clear that the order of the Commission are incapable of being questioned under the writ jurisdiction of the High Court, as a statutory appeal in terms of Section 27 A(1)(c) lies to this Court. Therefore, we have no hesitation in issuing a direction of caution that it will not be proper exercise of jurisdiction by the High Courts to entertain writ petitions against such orders of the Commission."

³ (2012) 8 SCC 524

20. In view of the above discussion and referring to the above decisions of the Honourable Supreme Court, this Court is of the opinion that an order passed by District Commission under Section 72 of the Act, for non compliance of the orders and issuance of bailable warrant as a last resort to secure the presence of the appellant herein in execution proceeding, is incapable of being questioned in the revisional jurisdiction of the High Court under Article 227 of the Constitution of India as a statutory appeal in terms of Section 73 lies before the appropriate forum i.e., State Commission and that it would not be a proper exercise of jurisdiction by this Court to entertain revision petition directed against the orders of the District Commission in an execution proceedings. The orders of the District Commission are appealable before the State Commission and against the orders of State Commission appeal lies to National Commission, following the dictum of **Cicily Kallarackal's case** (supra). It would not be proper to exercise the jurisdiction under Article 227 of the Constitution of India and entertain the present revision petition which is directed against the orders passed by the District Commission by exercising the powers conferred by the statute under Section 72 of the Act.

21. Thus, in view of the above discussion this Court is of the considered opinion that the Consumer Protection Act, 2019 itself provides for filing of an appeal both on facts and on law, before the specially constituted forum under the said Act for redressal of the grievances of the aggrieved party. In such a situation, the invocation of Article 227 of the Constitution of India by the person aggrieved against the orders of the Commission in execution would not be tenable.

22. Accordingly, without examining or considering the legality of the impugned order, the Civil Revision Petition is dismissed as being not maintainable, with liberty to the petitioner to avail the statutory remedy available to him under the Consumer Protection Act, 2019. For the reasons mentioned above, there are no merits in this Civil Revision Petition, which is liable to be dismissed.

23. In the result, the Civil Revision Petition is dismissed. There shall be no orders as to costs.

Miscellaneous petitions, if any pending, shall stand closed.

JUSTICE M.G.PRIYADARSINI, J

Dt.14.03.2024
AS