

SHAMIM AHMED V. SUSMITA BHATTACHARJEE & ORS.

1. SHAMIM AHMED

S/O. LATE NAYAZ AHMED, R/O. AT 16F/IA C.N. ROY ROAD,
KOLKATA-700039

.....Appellant(s)

Versus

1. SUSMITA BHATTACHARJEE & ORS.

S/O. HAJI AKBAR, RESIDING AT 6-D, SAFGACHI, 1ST
LANE,
KOLKATA-700039

2. Md. OSMAN GANI,

S/O HAJI AKBAR, R/O 6 -D, SAFGACHI, 1ST LANE,
KOLKATA – 700039

3. SK. REAJ,

S/O SK MANICK, R/O 6-D SAFGACHI 1st LANE,
KOLKATA – 700039

.....Respondent(s)

Case No: FIRST APPEAL NO. 127 OF 2020

Date of Judgement: 19 Jan 2023

Judges:

HON'BLE MR. DINESH SINGH, PRESIDING MEMBER

For the Appellant : For the Appellant : Mrs. Nighat Malik,
Advocate

For the Respondent : For the Respondent No. 1 : NEMO

For the Respondents No. 2 & 3 : Mr. Kalyan Babu Singh,
Advocate along
with Respondent No.2 in person

Facts:

Appeal filed against order dated 02.09.2019 passed in execution proceedings by State Commission West Bengal in CC No. 475/2015. The order directed issue of non-bailable warrants against the judgment debtors for securing their presence.

Procedural Aspect:

The appeal, though unclear in contents, has been treated by the Commission as an appeal under Section 27A relating execution proceedings.

Observations & Decision:

Commission noted that the execution proceedings would be conducted as per law by State Commission and judgment debtors can raise their issues there. In view of withdrawal request made by counsel for appellant, the appeal was dismissed as withdrawn.

Since the appeal itself has been dismissed as withdrawn at the threshold, the document does not discuss in detail the factual or legal issues otherwise involved in the execution proceedings. There are no elaborate arguments by parties or analysis of legal provisions.

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Court

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Full Text of Judgment:

1. This appeal has been filed in challenge to the Order dated 02.09.2019 of the State Commission passed in execution application no. 53 of 2018 in complaint case no. 475 of 2015.
2. There is no clear mention of the provision (section) of The Consumer Protection Act, 1986 (the old Act; then in force) under which the present appeal has been filed. At one place in the memorandum of appeal section 20 of the Act 1986 has been

written, which however deals with 'Composition of the National Commission' and has nothing to do with appeals. The Registry has listed it as a first appeal under section 19, 'Appeals', of the Act 1986. Learned counsel for the appellant could not state the section of the Act under which its appeal has been filed.

3. However, a mere reading of the impugned Order dated 02.09.2019 shows that non-bailable warrants were ordered to be issued against judgment debtors by the State Commission during the course of execution proceedings being conducted by the executing forum. As such it is most obviously an order passed under section 27 of the Act 1986, which deals with 'Penalties'. The present appeal before this Commission is accordingly being treated as an appeal (execution) under section 27A of the Act, which provides for 'Appeal against order passed under section 27'.

4. The Order dated 02.09.2019 under challenge is reproduced below for reference:

Dated: 02 Sep 2019

ORDER

Order No. 06

D. Hr., as well as J.Dr. Nos. 1 & 3 are present through their Ld. Advocates. J.Dr. No.2 is found absent on calls. Despite specific order passed on the last occasion by this Commission, the J.Dr. No. 2 has not taken any step to pay any amount whatsoever to D. Hr. which indicates that J. Drs. are in no mood to comply with the order of this Commission and it appears to us that unless harsh measure is taken, there is hardly any scope to execute the solemn order of this Commission.

Accordingly, issue non-bailable W.A. against (1) Md. Osman Gani s/o Haji Akbar, 6-D, Safgachi, 1st Lane, Kolkata – 700039, (2) Shamim Ahmed, s/o Late Nayaz Ahmed, 6-D, Safgachi, 1st Lane Kolkata – 700039 and (3) Sk. Reaj s/o Sk. Manick, 6-

D, Safgachi, 1st Lane, Kolkata-700039 through the Officer- in-Charge, Tiljala P.S. fixing 17.01.2020 for E.R. of W.A.

The Joint Registrar of the Commission is directed to send a copy of the order along with W.A. to the Officer-in-Charge, Tiljala P.S. with a direction upon him to execute the said warrant positively by the date fixed.

The Bench-Clerk-in-Charge is directed to send a copy of the order to the Registrar of the Commission and also to the Joint Registrar of the Commission forthwith.

Evidently the State Commission has ordered for issuance of non-bailable warrants for producing the judgement debtors before it. Needless to say that the State Commission shall be required and expected to conduct the proceedings under section 27 strictly in accordance with the law. And the judgement debtors will be free to raise all their issues and contentions and make all their submissions in the normal wont as per the law before the executing forum.

5. That being as it may, learned counsel for the appellant makes a submission that she wishes to withdraw the instant appeal (execution) and that the appellant will raise all its issues and contentions and make all its submissions before the State Commission in the normal course of the execution proceedings.

6. In the wake of the above submission nothing survives for adjudication and the instant appeal (execution) is dismissed as withdrawn.

7. The Registry is requested to send a copy each of this Order to the parties in the appeal (execution) and to their learned counsel as well as to the State Commission immediately. The stenographer is requested to upload a copy of this Order on this Commission's website immediately.