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**Allahabad Development Authority and Others Vs. Civil Judge (Junior Division), East, Allahabad and Others**

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**Court : Allahabad**

**Decided On : Aug-27-1998**

**Reported in : 1998(3)AWC2393**

**Judge : S.R. Singh, J.**

**Acts : [Consumer Protection Act, 1986](#) - Sections 15, 17, 19, 25 and 27; Consitution of India - Articles 32, 226 and 227; [Code of Civil Procedure \(CPC\), 1908](#) - Sections 47 - Order 21**

**Appeal No. : C.M.W.P. No. 23600 of 1998**

**Appellant : Allahabad Development Authority and Others**

**Respondent : Civil Judge (Junior Division), East, Allahabad and Others**

**Advocate for Def. : S.C.**

**Advocate for Pet/Ap. : A.K. Mishra, Adv.**

**Judgement :**

**S. R. Singh, J.**

1. This petition is directed against the order dated 17.7.98 passed by the Civil Judge (Junior Division). Allahabad in Execution Case Wo. 2 of 1998, Mahendra Kumar Tripathi v. Allahabad Development Authority, Allahabad, and the order dated 29.4.98 passed by the District Consumer Forum. Allahabad in Case No. 37 of 1996 besides the order dated 14.5.98 of the Consumer Disputes Redressal Commission, U. P. (in short the State Commission).

2. The facts wrapped in brevity are that the respondent Mahendra Kumar Tripathi lodged a complaint with the District Consumer Forum. Allahabad for refund of the amount deposited by him for allotment of a plot in Shantipuram Housing Colony, Allahabad. The case was decided in favour of Mahendra Kumar Tripathi vide order dated 7.10.96 whereby the petitioner. Allahabad Development Authority, Allahabad was directed to return the respondent Mahendra Kumar Tripathi a sum of Rs. 1,54,320 within two months with interest at the rate of 18% per annum calculated with effect from 28.4.94 till the date of payment besides Rs. 100 as cost of the litigation. Appeal against the said judgment and order dated 7.10.96 is pending before Consumer Disputes Redressal Commission, U. P. (in short the State Commission), A conditional order of stay was passed by the Commission on 14.5.98 and notice of appeal has been issued to the respondent therein fixing 27.10.98.

3. It appears that the payment pursuant to the judgment dated 7.10.96 of District Forum was not made to the decree holder ; whereupon the latter moved the District Forum for appropriate action under Section 25 read with Section 27 of the Consumer Protection Act. 1986 (in short 'the Act'). The District Consumer Forum found the defendant-petitioner guilty of non-obedience of its order and accordingly by order dated 29.4.98 imposed punishment of six months' imprisonment besides fine of Rs. 5,000 and directed that the fine be realised and warrant be issued for enforcement of the order of punishment under Section 25 of the Act and for this purpose, a certificate was sent to the Civil Judge (Junior Division), East, Allahabad. In compliance of the said order dated 29.4.98 of the District Consumer Forum, the Civil Judge (Junior Division), Allahabad issued, vide order dated 17.7.98, warrant of attachment of official car of the Secretary, Allahabad Development Authority besides furnitures of his office with a direction superadded

to it that after attachment of the car and furnitures, the same may be handed over to the supurdagi of Prabhari Nireekshak, Thana. Civil Lines, Allahabad. Besides the order of attachment of car and furnitures the learned Civil Judge (Junior Division), Allahabad directed issuance of warrant of arrest of petitioner No. 3. Secretary of Allahabad Development Authority, Allahabad.

4. It may be pertinent to observe that Section 25 of the Act provides for enforcement of the order by the Forum, the State Commission or the National Commission and Section 27 provides for penalties 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 ; provided that the District Forum, the State Commission or the National Commission, as the case may be. may, if it is satisfied that the circumstances of any case so require, impose a sentence of imprisonment or fine, or both, for a term lesser than the minimum term and the amount lesser than the minimum amount, specified in this section.

5. I have heard Shri A. K. Mishra, learned counsel for the petitioners and perused the writ petition.

6. In the course of hearing, a question emerged for consideration if the petitioners had any remedy under the Act against the orders impugned herein. So far as the order dated 14.5.98 passed by the State Commission is concerned, it is an interlocutory order passed by the State Commission not appealable to the National Commission under Section 19 of the Act which confers a right of appeal to a party aggrieved by an order passed by the State Commission in exercise of powers conferred by sub-clause (i) of clause (a) of Section 17 which the National Commission jurisdiction to entertain complaints where the value of goods or services and compensation, if any, claimed exceeds rupees five lakhs but does not exceed rupees thirty lakhs. By means of the order dated 14.5.98 passed as an

interim measure pending appeal preferred against the impugned order dated 7.10.96 of the District Consumer Forum, Allahabad in complaint No. 37 of 1996, the State Commission has provided that if the appellant, namely. Allahabad Development Authority, Allahabad complies with the directions of the District Forum by paying the entire amount awarded to the complainant within a period of six weeks by means of local Bank Draft or a local pay order, then the operation of the order dated 7.10.96 would remain stayed till the pendency of the appeal. The warrant of arrest. If issued, it was further provided, would stand stayed on compliance with the order dated 14.5,98. It is thus evident that the order dated 14.5.98 passed by the State Commission is an order of conditional stay pending appeal. Such an order, in my opinion, warrants no interference by this Court under Article 226/227 of the Constitution of India. The discretion exercised by the State Commission in granting the conditional stay of the operation of the order under appeal is not shown to be suffering from vice of arbitrariness.

7. So far as the order dated 29.4.95 passed by the District Forum is concerned, this order has been passed in exercise of powers under Sections 25 and 27 of the Act, According to Section 25, every order made by the District Forum, the State Commission or the National Commission may be enforced by the District Forum, the State Commission or the National Forum, as the case may be, in the same manner as if it were a decree or order made by a Court in a suit pending therein. Section 25 further visualises that it shall be lawful for the District Forum, to send, in the event of its inability to execute it, such order to the Court within the local limits of whose Jurisdiction (a) in the case of an order against a company, the registered office of the company is situated, or (b) in case of an order against any other person, the place where the person concerned voluntarily resides or carries on business or personally works for gain is situated and thereupon, the Court to which the order is so sent, shall execute the order as if it were a decree or order sent to it for execution. This order is appealable under Section 15 of the Act which clearly provides that any person aggrieved by an order made by the District Forum may prefer an appeal against such order to the State 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 State Commission may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that there was sufficient

cause for not filing it within that period. In *Fair Air Engineers Pal. Ltd. and another v. N. K. Modi*, (1996) 6 SCC 386, the Supreme Court held as under:

'If any person feels aggrieved by the order of the District Forum, there is a right of appeal provided under Section 15 to the State Commission. Section 24 attaches finality to every order of the District Forum. State Commission or of the National Commission if no appeal is preferred within a specified time. However, that is subject to any judicial review under Article 226 or 32 of the Constitution. Section 25 gives teeth to the orders passed by the District Forum, State Commission and National Commission ; every order can be enforced in the same manner as if it were a decree or an order made by a Court in a civil suit pending therein ; it shall be lawful for the District Forum. State Commission or National Commission to send its orders, in case of its inability to execute it, for execution to the appropriate executing court. It is obligatory for the executing court to execute the order treating it to be a decree or order of a Court sent to it for execution. For specific enforcement of the Act. Section 27 gives sanction of the State for imposing penalties against the traders or persons against whom a complaint is made fails to comply with the order passed by the aforesaid District Forums, National Commission or State Commission, as the case may be.'

Accordingly, I am of the considered view that if the petitioners feel aggrieved by the order dated 29.4.98, they may avail of the alternative remedy of appeal provided by Section 15 of the Act.

8. In so far as the order dated 17.7.98 is concerned, it has been passed by the Civil Judge (Junior Division), Allahabad in exercise of powers under Section 25 of the Act. It is evident from Section 25 of the Act that the orders dated 7.10.98 and 29.4.98 passed by the District Forum are executable 'in the same manner as if it were a decree or order made by the Court in suit pending therein' and the Court to which the order is sent for enforcement 'shall execute the order as if it were a decree or an order sent to it for execution'. The language, in which Section 25 of the Act is couched, clearly suggests that provisions relating to execution of decree or order as contained in the Code of Civil Procedure shall apply and, accordingly, remedy of revision available to an aggrieved party against orders passed under

Section 47 of the Code of Civil Procedure by the Court executing its decree shall be attracted. Since the Civil Judge (Junior Division), Allahabad to whom order of District Forum has been sent for its enforcement is executing the order as if it were its own decree or order, all objections relating to execution, discharge and satisfaction, that is to say, the issues relating to executability of the order can be raised before the Civil Judge (Junior Division). Allahabad who is seized of the matter and in case any objection relating to execution, discharge or satisfaction of the order is filed, it shall be the duty of the Court executing the orders of the Forum to adjudicate the objections under Section 47 of the Code of Civil Procedure read with related provisions of Order XXJ of the Code. I am also of the view that the party aggrieved by the order that may be passed by the Execution Court on the objection shall have such remedy as may be available to the aggrieved party under Code of Civil Procedure against an order passed under Section 47 of the C.P.C. and thereafter the remedy of writ under Articles 226 and 227 of the Constitution of India.

9. In the circumstances stated above, I refrain from expressing any opinion about the legality or otherwise of the orders dated 29.4.98 and 17.7.98 and dispose of the writ petition with the observation that the petitioners may avail of the alternative remedy available to them under the Act and/or the Code of Civil Procedure, as discussed above.

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