

Karnataka Housing Board vs K.A. Nagamani on 6 May, 2019

Equivalent citations: AIR 2019 SUPREME COURT 2290, (2019) 198 ALLINDCAS 28 (SC), AIR ONLINE 2019 SC 255, 2019 (5) ADR 201, (2019) 134 ALL LR 908, (2019) 198 ALLINDCAS 28, (2019) 2 CURCC 280, (2019) 2 ICC 975, (2019) 2 WLC(SC)CVL 410, (2019) 3 CIVILCOURT 321, (2019) 3 RECCIVR 22, (2019) 3 UC 1636, (2019) 4 ANDHLD 151, (2019) 4 JCR 75 (SC), (2019) 4 KANT LJ 645, 2019 (6) SCC 424, (2019) 7 SCALE 404, AIR 2019 SC (CIV) 1869

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Bench: Indu Malhotra, Uday Umesh Lalit

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.4631 OF 2019
(Arising out of SLP (Civil) No. 6276 of 2019)

Karnataka Housing Board

...Appellant

versus

K. A. Nagamani

...Respondent

JUDGMENT

INDU MALHOTRA, J.

Leave granted.

1. The present Civil Appeal arises out of execution proceedings initiated by the Respondent – Complainant from an Order passed by the State Commission in a consumer dispute. The issue which has arisen for consideration is whether a Revision Petition under Section 21(b) of the Consumer Protection Act, 1986 (herein after referred to as “the 1986 Act”) is maintainable before the National Commission Dispute Redressal Commission (herein after referred to as “National Commission”) against an Order passed by the State Commission in an execution proceeding.

2. The factual matrix in which the present jurisdictional issue has been raised, is as follows:

2.1. The Respondent – Complainant applied for allotment of a HIG B Flat under the Self-Financing Housing Scheme at Kengeri, Bangalore. The Appellant – Karnataka Housing Board (hereinafter referred to as “the Board”) vide letter dated 25.03.1992 allotted Flat No. 116, Type B on the First Floor to the Respondent – Complainant. The Board issued a Provisional Allotment letter dated 23.04.1992 informing the Respondent – Complainant that the cost of the flat was Rs. 3,15,000 which was to be paid in the instalments as specified.

It is an admitted position that the Respondent – Complainant deposited a total amount of Rs. 2,67,750 in four instalments.

2.2. The Board issued letter dated 24.06.1995 whereby the Respondent – Complainant was allotted another flat, in lieu of the earlier flat for which the provisional allotment had been made. The Respondent – Complainant was informed that the cost of the flat was Rs. 5,90,000. Since the Respondent – Complainant was not willing to pay the final cost demanded by the Board, she sought a refund of the amount deposited by her.

2.3. The Board refunded the amount of Rs. 2,63,813 after deducting Rs. 3,937 deposited by the Respondent – Complainant.

2.4. The Respondent – Complainant made a representation to the Board demanding refund of the amount deducted, and also Interest @ 27% p.a. on the entire amount deposited from the date of payment of each instalment, till the date of refund.

The Board however refused to accept the demand of the Respondent – Complainant.

2.5. The Respondent – Complainant filed a Consumer Complaint alleging deficiency of service under Section 2(1)

(c)(iii) of the 1986 Act before the District Consumer Disputes Redressal Forum, Bangalore, and prayed for compensation.

The District Forum vide Order dated 21.12.2006 allowed the Complaint, and directed payment of Interest @ 12% p.a. on the amount deposited being Rs. 2,67,750 from the date of deposit of the respective instalments, till the date of realization. The Board was also directed to refund the amount of Rs. 3,937 to the Respondent – Complainant. It was directed that the amounts be paid within 45 days from the date of the Order.

2.6. Being dissatisfied with the compensation awarded by the District Forum vide Order dated 21.12.2006, the Respondent – Complainant preferred Appeal No. 166 of 2007 before the Karnataka State Consumer Disputes Redressal Commission, Bangalore.

The State Commission vide Order dated 06.02.2007 dismissed the Appeal of the Respondent – Complainant. 2.7. The Respondent – Complainant filed Revision Petition No. 1839 of 2007 before

the National Commission. The National Commission vide Order dated 04.08.2011 dismissed the Revision Petition and affirmed the Order passed by the District Forum.

2.8. The Respondent – Complainant filed SLP (Civil) No. 35226 – 35227 of 2011 before this Court, which was allowed, and the Order passed by the National Commission was set aside. This Court vide Judgment and Order dated 19.09.2012 directed the Appellant – Board to pay Interest @ 18% p.a. on the amount deposited being Rs. 2,67,750 from the date of deposit till the date of realization; refund the amount of Rs. 3,937 which had been deducted by the Board; pay Rs. 50,000 towards compensation for deficiency in service, and Rs. 20,000 towards Costs of litigation to the Respondent – Complainant. The operative part of the Order is set out herein below for ready reference :

“For the reasons aforesaid, we allow the appeals and pass the following order:□

(i) The respondent is directed to pay the appellant□complainant interest at the rate of 18% per annum on Rs.2,67,750/□from date of its respective deposit till the date of realization with further direction to refund the amount of Rs. 3,937/□to her, as directed by the Consumer Forum.

(ii) The respondent is directed to pay the appellant□complainant further sum of Rs.50,000/□as compensation for deficiency in service on their part.

(iii) The respondent is also directed to pay the appellant□complainant a sum of Rs.20,000/□towards cost of the litigation incurred by her.” The ‘consumer dispute’ stood finally adjudicated by this Court vide Judgment and Order dated 19.09.2012 which conclusively determined the rights and obligations of the parties.

2.9. The Respondent – Complainant filed Execution Application No. 2 of 2014 before the District Forum. The Respondent – Complainant claimed payment of an amount of Rs. 3,58,749 towards execution of the Order dated 19.09.2012 passed by this Court. Both parties submitted their Memo of calculation before the District Forum. The District Forum vide Order dated 16.08.2014 held that the Memo of calculation filed by the Respondent – Complainant was partly correct, and directed the Appellant – Board to make an additional payment of Rs. 1,07,057. The Board satisfied the Decree by payment of the sum of Rs. 1,07,057 vide Demand Draft dated 09.09.2014. 2.10. On 22.09.2014, the Respondent – Complainant filed Execution Appeal No. 1238 of 2014 under Section 15 of the 1986 Act, challenging the Order dated 16.08.2014 before the State Commission.

The State Commission vide Order dated 01.03.2016 allowed the Appeal filed by the Respondent – Complainant, and set aside the Order dated 16.08.2014 passed by the District Forum in E.P. No. 2 of 2014. It was directed that the amount of Rs. 2,67,750 already paid by the Board, would be appropriated first towards the Interest component and then towards the principal amount. The State Commission remitted the matter to the District Forum for fresh computation in compliance with the Order.

2.11. Aggrieved by the Order of the State Commission, the Appellant – Board preferred a Revision Petition u/S. 21(b) of the 1986 Act before the National Commission being R.P. No. 1362 of 2016.

The Respondent – Complainant filed I.A. No. 299 of 2017 to challenge the maintainability of the Revision Petition filed by the Appellant – Board. The Revision Petition filed by the Board was allowed vide Order dated 10.02.2017. The stand taken by the Respondent – Complainant was rejected as being devoid of merit.

2.12. The Respondent – Complainant thereafter preferred M.A. No. 281 of 2017 for referring I.A. No. 299 of 2017 to a larger bench; and filed M.A. No. 282 of 2017 for declaring the Order dated 10.02.2017 to be a nullity. The National Commission vide Order dated 02.02.2018 rejected the applications filed by the Respondent – Complainant.

2.13. Being aggrieved by the Orders dated 10.02.2017 and 02.02.2018 passed by the National Commission, the Respondent – Complainant filed W.P. (Civil) No. 1746 of 2018 before the Delhi High Court.

The Delhi High Court vide the Impugned Judgment dated 13.11.2018, set aside the Orders passed by the National Commission, and held that the National Commission had no jurisdiction to entertain a Revision Petition against the Order passed in Execution Proceedings by the State Commission. It was held that the nature of enforcement proceedings is materially different from the proceedings for adjudication of the consumer dispute. The Order passed in an Execution Petition was not amenable to a challenge before the National Commission in exercise of its Revisional Jurisdiction.

2.14. Aggrieved by the Order dated 13.11.2018 passed by the Delhi High Court, the Appellant filed the present Appeal.

3. The learned Counsel for the Appellant submitted that:

3.1. A Revision Petition is maintainable before the National Commission under Section 21(b) of the 1986 Act. The revisional jurisdiction exercised by the National Commission is wide, and intended to encompass all proceedings before the State Commissions. 3.2. The intent of Section 21(b) is clearly to provide revisional jurisdiction to the National Commission, over the State Commission. The reference under Section 21(b) is specifically to orders passed in any consumer dispute which is pending before, or has been decided by any State Commission.

3.3. The phrase “consumer dispute” under Section 21(b) of the 1986 Act must be understood to mean any dispute which arises under the 1986 Act.

3.4. Execution proceedings are a continuation of the original proceedings i.e. the Consumer Complaint.

Reliance in this regard was placed on the judgment of this Court in *Dokku Bhushayya v. Katragadda Ramakrishnayya & Ors.*¹

4. On the other hand, the Respondent who appeared in person, inter alia contended that :

4.1. A Revision Petition is not maintainable under Section 21(b) of the 1986 Act, against an order of the State Commission passed in execution proceedings.

4.2. The impugned judgment does not merit interference. 4.3. Section 3 of the Consumer Protection Act, 1986 provides that the provisions of the Act shall be in addition to, and not in derogation of the provisions of any other law for the time being in force. Therefore, the National Commission cannot go beyond the limitation placed by the CPC. Order 45, Rule 16 of CPC bars revision in execution appeals. 4.4. An execution petition cannot be termed as a continuation of the ‘consumer dispute’. The definition of a ‘complaint’ and a ‘consumer dispute’ u/S. 2(1)(c) and (e) respectively, 1 (1963) 2 SCR 499.

cannot be given a wide interpretation to encompass execution proceedings.

4.5. An Order in execution proceedings is not an Order in a “consumer dispute” pending before the State Commission. The “consumer dispute” filed by the Respondent – Complainant was finally adjudicated by this Court vide Judgment and Order dated 19.09.2012.

4.6. In an execution proceeding, the executing forum only has the jurisdiction ‘to execute’ the order in accordance with Order XXI CPC.

5. We have heard both the parties and perused the pleadings and written submissions filed.

6. The issue which arises for our consideration in the present Appeal is whether a Revision Petition is maintainable before the National Commission u/S. 21(b) of the 1986 Act against an Order passed by the State Commission in an appeal arising out of execution proceedings.

6.1. The right to file a Revision Petition, like an appeal, is a right conferred by statute.² In the absence of a statutory conferment, there is no inherent right to file a revision. Section 21 sets out the jurisdiction of the National Commission which is reproduced hereunder:

“21. Jurisdiction of the National Commission. — Subject to the other provisions of 2 P.S. Sathappan (Dead) by Lrs. v. Andhra Bank Ltd. and Ors. (2004) 11 SCC 672. this Act, the National Commission shall have jurisdiction—

(a) to entertain—

(i) complaints where the value of the goods or services and compensation, if any, claimed exceeds rupees one crore; and

(ii) appeals against the orders of any State Commission; and

(b) to call for the records and pass appropriate orders in any consumer dispute which is pending before or has been decided by any State Commission where it appears to the National Commission that such State Commission has exercised a jurisdiction not vested in it by law, or has failed to exercise a jurisdiction so vested, or has acted in the exercise of its jurisdiction illegally or with material irregularity.” (emphasis supplied) The National Commission has :

(i) original jurisdiction to entertain complaints where the value of goods or services exceeds rupees one crore;

(ii) jurisdiction to entertain appeals against Orders of any State Commission; and

(iii) supervisory jurisdiction over any State Commission in any “consumer dispute” pending or decided by a State Commission, which is challenged on the ground of lack or excess of jurisdiction.

6.2. The exercise of revisional jurisdiction u/S. 21(b) by the National Commission is limited to a consumer dispute which has been filed before the State Commission. The jurisdiction u/S. 21(b) of the 1986 Act can be exercised by the National Commission only in case of a “consumer dispute” filed before the State Commission. The National Commission in exercise of its supervisory jurisdiction u/S. 21(b) is concerned about the correctness or otherwise of the orders passed by the State Commission in a “consumer dispute”.

6.3. A Revision Petition has a narrower scope than an ‘appeal’.

In *Dattopant Gopalvarao Devakate v. Vithalrao Maruthirao Janagaval*,⁴ 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 3 *Galada Power and Telecommunication Ltd. v. United India Insurance Co. Ltd. & Ors.* (2016) 14 SCC 161.

4 (1975) 2 SCC 246.

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.” (emphasis supplied) 6.4. Reference must also be made to the judgment of this Court in Hindustan Petroleum Corporation Ltd. v. Dilbahar Singh,⁵ 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 co-extensive with that of the trial court. Ordinarily, appellate jurisdiction involves rehearing on facts and law but such jurisdiction may be limited by 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.” (emphasis supplied) 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.

7. The revisional jurisdiction conferred on the National Commission u/S. 21(b) is with respect to a pending or disposed of ‘consumer dispute’ before the State Commission.

5 (2014) 9 SCC 78

7.1. The consumer dispute, in the present case, had already been finally adjudicated by this Court vide Judgment and Order dated 19.09.2012. The second round of litigation emanated from the execution of the final order passed by this Court.

7.2. Section 25 of the 1986 Act, provides for the enforcement of Orders passed by the District Forum, State Commission or National Commission.

Section 25(3) states :

25. Enforcement of orders of the District Forum, the State Commission or the National Commission.

(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, the State Commission or the National Commission, as the case may be, and such District Forum or the 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. An Order passed for enforcement, would not be an order in the 'consumer dispute' since it stands finally decided by the appellate forum, which has conclusively determined the rights and obligations of the parties. 7.3. The nature of execution proceedings is materially different from the nature of proceedings for adjudication of a consumer complaint. Execution proceedings are independent proceedings. Orders passed for enforcement of the final order in the Consumer dispute, cannot be construed to be orders passed in the 'consumer dispute'. 7.4. During the course of the hearing, learned Counsel for the Appellant raised a contention that execution proceedings are a continuation of the 'appeal', and must therefore be considered to be a continuation of the 'consumer dispute'. Reliance in this regard was placed on the decision of the Bombay High Court in *Satguru Construction Co. Pvt. Ltd. & Ors. v. Greater Bombay Co-operative Bank Ltd.*,⁶ and *Raghunath R. Shingate v. Jayant Gajanan Pathak & Ors.*,⁷ as well as the Patna High Court in *M/s. Parshava Properties Ltd. v. A.K. Bose*,⁸ wherein it was held that execution proceedings are a continuation of the Suit. 7.5. On the other hand, the Respondent – Complainant has placed reliance on a Full Bench of the Andhra Pradesh High Court in *Guntupalli Rama Subbayya v. Guntupalli Rajamma*,⁹ wherein it was held that :

“Execution Proceedings, in our view, cannot be regarded as continuation of the suit in the sense in which the proceedings in appeal are treated.” (emphasis supplied) 6 2007 (3) MhLJ 843.

7 2011 (6) MhLJ 799.

8 AIR 1979 Pat 308.

9 AIR 1988 AP 226.

7.6. A Full Bench of the Patna High Court in *Masomat Narmada Devi & Anr. v. Nandan Singh & Ors.*,¹⁰ has similarly held that execution proceedings cannot be regarded as a continuation of the Suit. 7.7. We affirm the view taken by the Full Bench of the Andhra Pradesh High Court and Patna High Court. Execution proceedings even though they are proceedings in a suit, cannot be considered to be a continuation of the original suit. Execution proceedings are separate and independent proceedings for execution of the decree. The merits of the claim or dispute, cannot be considered during execution proceedings. They are independent proceedings initiated by the decree holder to enforce the decree passed in the substantive dispute.

7.8. There is no remedy provided under Section 21 to file a Revision Petition against an Order passed in appeal by the State Commission in execution proceedings.

Section 21(b) does not provide for filing of a Revision Petition before the National Commission against an Order passed by the State Commission in execution proceedings. 7.9. In the present case, the National Commission committed a jurisdictional error by entertaining the Revision Petition 10

AIR 1987 Pat 33.

u/S. 21(b) filed by the Appellant – Board against an appeal filed before the State Commission, in Execution proceedings.

8. The National Commission erroneously allowed the Revision Petition u/S. 21(b) which was not maintainable. Furthermore, the National Commission modified the decree passed by this Court vide Order dated 19.11.2012 wherein this Court had directed the Board to pay Interest @ 18% p.a. on the principal amount of Rs. 2,67,750/□(which included an amount of Rs. 3,937 which had been initially deducted by the Board). The National Commission has awarded Interest on the amount of Rs. 3,937/□twice, by first including it in the principal amount of Rs. 2,67,750/□ and thereafter awarding Interest @ 18% on the same amount of Rs. 3,937/□ which would amount to a double payment.

9. In view of the aforesaid discussion, we affirm the judgment of the Delhi High Court, which has rightly set aside the Order passed by the National Commission on the ground that a Revision Petition was not maintainable against the Order passed by the State Commission in an appeal arising out of execution proceedings.

The Appeal is accordingly disposed of.

.....J. (UDAY UMESH LALIT)J. (INDU MALHOTRA) New Delhi,
May 6, 2019