

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE**

The Hon'ble **JUSTICE SUVRA GHOSH**

C.R.R. 1499 of 2024

**Abdul Manim Mollah
v/s.
The State of West Bengal & Anr.**

For the Petitioner: Adv. Krishnendu Banerjee,
Adv. Md. Idrish,

Judgment delivered on: 02-04-2025

SUVRA GHOSH, J. :-

1. The petitioner has sought quashing of the proceedings of execution case (EA) no. 41 of 2018 arising out of C.C. no. 80 of 2016 including orders dated 13th December, 2019, 22nd September 2022 and subsequent orders till the order dated 28th March, 2024.
2. Learned counsel for the petitioner has submitted that the petitioner was never made a party in the case before the District Consumer Disputes Redressal Forum (in short the Consumer Forum) or the execution case. The private opposite party entered into an agreement with the petitioner for purchasing a tractor on 20th November, 2013 upon payment of an advance of Rs. 10, 000/- out of total consideration of Rs. 7, 78, 710/-. At the time of the delivery of the vehicle, the opposite party paid Rs. 5,30, 000/- by taking loan of the said amount from L&T Finance and a sum of Rs. 2,18,716/- was due. It was agreed that the registration

certificate and other relevant documents pertaining to the vehicle would be made over to the private opposite party upon clearance of the entire due amount. The private opposite party paid Rs. 1, 93,000/- to the petitioner at different times and Rs. 25,716/- was due. The private opposite party failed to pay the monthly instalments to the finance company (L&T) for which the company took possession of the vehicle upon execution of a surrender letter by the opposite party on 20th May, 2015. The finance company sold out the vehicle to one Shib Nath Das who is the present owner thereof.

3. The private opposite party filed a complaint before the Consumer Forum under section 11/12 of the Consumer Protection Act which was registered as Consumer Case no. 80 of 2016. The private opposite party sought a direction upon the respondent therein to hand over the registration certificate of the tractor and also release the tractor and trailer in his favour. He further claimed compensation to the tune of Rs. 4, 00, 000/- and litigation expenses. The complaint was filed against the branch manager, S&S Automobiles, Bilshara Road Branch, Police Station-Pandua, District:- Hooghly. The case was contested by the respondent therein and by an order passed on 27th July, 2018, the Forum directed the respondent to issue/hand over the registration certificate of the tractor after receiving the due amount from the complainant to the tune of Rs. 25,716/- within 30 days from the date of the order. Execution case being EA 41 of 2018 was filed by the private opposite party and warrant of arrest issued against the petitioner vide order dated 13th December, 2019.

4. The legal issue involved herein is as to whether the Consumer Forum has the authority to issue warrant of arrest against the judgment debtor/the petitioner in the execution proceeding. The petitioner has claimed that he was not impleaded as a party in the consumer case or in the execution case and learnt about the same only when warrant of arrest was issued. The case has been filed against the branch manager, S&S Automobiles whereas the petitioner is the sole proprietor of S&S Automobiles. The said fact was brought to the knowledge of the Consumer Forum by the officer in charge, Pandua Police Station in the execution case on 22nd September, 2022. Since learned counsel for the petitioner has submitted that this issue is being agitated before the Hon'ble State Commission, this Court refrains from making any comment on this issue.
5. With regard to the issue as to whether the Consumer Forum can issue warrant of arrest in an execution proceeding, the issue has been elaborately dealt with by a coordinate Bench of this Court in a judgment delivered on 12th August, 2022 in CRR 2955 of 2022. The learned Bench has held that in an execution application the Commission cannot issue warrant of arrest in enforcement of its order. The Commission can issue warrant for detention of the judgment debtor in civil prison in accordance with the provision laid down under the Code of Civil Procedure.
6. To elaborate, section 71 of the Consumer Protection Act, 1986 deals with the procedure for enforcement of the order of the District Commission, State Commission, and National Commission. It shall be profitable to reproduce section 71 of the Act.

“Enforcement of orders of District Commission, State Commission and National Commission.- Every order made by a District Commission, State Commission or the National Commission shall be enforced by it in the same manner as if it were a decree made by a Court in a suit before it and the provisions of Order XXI of the First Schedule to the Code of Civil Procedure, 1908, (5 of 1908) shall, as far as may be, applicable, subject to the modification that every reference therein to the decree shall be construed as reference to the order made under this Act.”

7. Therefore an order granting specific performance of an agreement as in the present case is executable under the provision of Order XXI of the Code of Civil Procedure and may be executed by putting the judgment debtor in civil prison or by attachment and sale of his property or by both. Warrant of arrest can be executed by the executing Court to compel the attendance of the judgment debtor and cost of execution of the warrant of arrest as well as civil prison is required to be borne by the decree holder upon assessment of the same by the Forum.
8. Section 72 of the Act envisages penalty for non-compliance of the order of the District Commission, State Commission or National Commission, as the case may be, meaning thereby, that the Commission is empowered to initiate proceeding under section 72 of the Act for penalty for non-compliance of the order. The decree holder may take recourse to section 71 or section 72 of the Act for execution of the order passed by the Consumer Forum. The law does not authorize the Forum to issue warrant

of arrest for enforcement of its order under the Code of Criminal Procedure.

9. In view of the above, this Court is inclined to hold that the orders impugned dated 13th December, 2019 directing issuance of warrant of arrest and further orders consequent thereto are de hors the provision laid down in the Act and are accordingly quashed.
10. The revisional application being CRR 1499 of 2024 is allowed.
11. Urgent certified website copies of this judgment, if applied for, be supplied to the parties expeditiously on compliance with the usual formalities.

(Suvra Ghosh, J)