

BEFORE THE LEARNED DISTRICT CONSUMER DISPUTES REDRESSAL
FORUM, PANCHKULA

Sudesh Kharbanda & others Vs. HUDA and another

In Re: Execution No.19 of 2008

Application for taking up of the Execution
Application for today and for dismissal of the same
and for recalling of the bailable warrants issued
against the Chief Administrator, HUDA, Panchkula.

RESPECTFULLY SHOWETH:-

1. That the above mentioned execution application is pending before this L.d. Forum and is fixed for further proceedings for 20.06.2008.
2. That the execution was fixed for 19.05.2008 and notice under Section 27 had been issued against the Chief Administrator, HUDA, Panchkula and Estate Officer, HUDA, Panchkula. Thereafter, bailable warrants have been issued against the Chief Administrator HUDA, Panchkula and Estate Officer, HUDA, Panchkula for 20.06.2008.
3. That the order of the Ld. Consumer Forum issuing bailable warrants against the Chief Administrator, Panchkula on 19.05.2008 returnable for 20.06.2008, is not maintainable in the eyes of law. The L.d. Forum has erred in law by issuing bailable warrants against the Chief Administrator, HUDA, Panchkula without even arriving at a conclusion that prima facie any offence has been committed by the Chief Administrator.
4. That the order of the L.d. Forum dated 19.05.2008 is not sustainable in the eyes of law and is in contravention with the provisions of Section 24 of the Consumer Protection Act. Section 24 is being reproduced hereunder for the kind perusal of this Hon'ble Court:-

"Finality of Orders- Every order of a District Forum, State Commission or the National Commission shall, if no appeal has been preferred against such order under the provisions of this Act, be final."

5. That a bare perusal of Section 24 makes it amply clear that the order of the District Forum attains finality if no appeal is preferred against the said order. However, if an appeal is filed against the order of the Ld. District Forum, in that eventuality the order of the Ld. District Forum does not become final.

6. That it is a settled law that execution can be filed only of the final order.

7. That it is submitted, that in the present case the HUDA has preferred an appeal before the Hon'ble State Commission, Haryana which is now fixed for 20.11.2008.

8. That it is also extremely relevant to note, that the complainant has also filed a cross appeal before the Hon'ble State Commission, Haryana meaning thereby that the complainant is also not satisfied with the orders of the Hon'ble District Forum and therefore, the order of District Forum has not attained finality even from the point of view of the complainant.

9. That as per the provisions of Section 24 of the Consumer Protection Act, since the orders of the Ld. District Consumer Forum has not attained finality, the execution filed by the complainant is premature and not maintainable.

10. That since the execution is premature and not maintainable, therefore, the subsequent proceedings in the execution are also null and void and need to be dropped immediately.

11. That a single application has been filed for taking action against the opposite party under Section 25 which provides for civil action and under Section 27 which provides for criminal liability. A single application praying for civil and criminal liabilities is not maintainable in the eyes of law.

12. That moreover, the action of the Ld. District Consumer Forum under Section 27 of the Consumer Protection Act, 1986 of issuing notice and subsequently bailable warrants against the Chief Administrator HUDA, Panchkula is not sustainable in the eyes of law, to the extent that Section 27(2) of the Act provides, that the District Forum shall have the power of Judicial Magistrate of the First Class for the Trial of offences under this Act upon conferment of powers. Section 27 (2) of the Act is being reproduced hereunder for the kind perusal of this Hon'ble Forum:-

"Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the District Forum or the State Commission or the National Commission, as the case may be, shall have the power of a Judicial Magistrate of the First Class for the Trial of offences under this Act, and on such conferment of powers, the District Forum or the State Commission or the National Commission, as the case may be, on whom the powers are so conferred, shall be deemed to be a Judicial Magistrate of the First Class for the purpose of the Code of Criminal Procedure, 1973 (2 of 1974)."

It is submitted that a bare perusal of this provision makes it clear that the power of Judicial Magistrate First Class is to be conferred upon the District Forum. It is extremely relevant to note that the Hon'ble High Court is the only authority under the provisions of Criminal Procedure Code, 1973 who can confer the power of Judicial Magistrate First Class upon the District Forum. It is submitted that no such power has been conferred by the Hon'ble Punjab & Haryana High Court upon the District Consumer Disputes Redressal Forum, Panchkula till date.

As far as the proviso clause is concerned i.e. "Notwithstanding anything contained in Code of Criminal Procedure, 1973 (2 of 1974)" is concerned, it is submitted that the same has been inserted in the Section on account of the fact that under the Criminal Procedure Code, the power of Judicial Magistrate can be conferred by the Hon'ble High Court only on any Member of the judicial service of the State functioning as a Judge in Civil Court. In view of the same to confer the powers of Judicial Magistrate to other persons also i.e. quasi judicial Courts, this proviso was added. However, from the plain reading of Section 27 (2) of the Act, it is clear that the powers of Judicial Magistrate 1st Class have to be conferred on the District Forum before the same are exercised by it and it is a settled proposition of law that it is only the High Court who has the authority to confer powers of Judicial Magistrate.

It is submitted that since, no power of Judicial Magistrate has been conferred on the District Consumer Disputes Redressal Forum, Panchkula, therefore, the action of the Ld. District Forum Panchkula of issuing notice under Section 27 and subsequently issuing bailable warrants against the Chief Administrator, HUDA, Panchkula is illegal and beyond its jurisdiction. Consequently, the proceedings undertaken by the Ld. District Consumer Forum in the execution are void ab initio and null & void and need to be dropped immediately.

13. That the execution filed by the complainant is badly time barred to the extent that Regulation 14 of the Consumer Protection Regulations, 2005 provides for the limitation within which the application is to be filed. Regulation 14 (iv) is being reproduced hereunder for the kind perusal of this Hon'ble Forum:-

"The period of limitation for filing any application, for which no period of limitation has been specified in the Act, the Rules of these Regulations, shall be 30 days from the date of the cause of action or the date of knowledge."

In the present case, the complaint was decided by the Ld. District Consumer Forum, Panchkula on 23.02.2004 and the order was to be complied with within a period of one month. The certified copy of the order was issued on 25.02.2004. As per Regulation 14 (iv) the limitation to file the execution was till 25.04.2004. The

complainant has preferred the execution application in the year 2008, i.e. beyond the period of limitation and the same is badly time barred. The Ld. District Forum has not condoned delay in filing the Execution Application as provided for under Regulation 14 (2) by giving valid and sufficient reasons to its satisfaction. Infact, the complainant has not sought any condonation of delay while filing the Execution Application & same should have been dismissed on the grounds of limitation alone as provided in the above Regulations.

In view of the same the execution is liable to be dismissed on this ground also.

It is, therefore, most respectfully prayed that the present application be allowed and the execution application be dismissed out rightly and bailable warrants issued against the Chief Administrator, HUDA, Panchkula be recalled immediately, in the interest of justice.

Place: Panchkula

Dated:

(T.C. Gupta)
Applicant
Chief Administrator,
HUDA, Panchkula

Through Counsel

(ATUL AGGARWAL)
Advocate