

FITEM NO.121

COURT NO.6

SECTION IVA

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

CIVIL APPEAL NO(s). 4319 OF 2006

H.K.K. BAIL AND ANR

Appellant (s)

VERSUS

M/S CYMA EXPORTS AND ANR

Respondent(s)

(With office report)

Date: 19/01/2011 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE MARKANDEY KATJU
HON'BLE MRS. JUSTICE GYAN SUDHA MISRA

For Appellant(s) Ms. Anitha Shenoy,Adv.

For Respondent(s) Mr. Navin Prakash,Adv.

UPON hearing counsel the Court made the following
O R D E R

On an oral prayer, the name of respondent No.1-M/s.
Cyrre Exports Pvt. Ltd. be corrected as M/s. Cyma Exports
Pvt. Ltd.

The Appeal is allowed. No costs.

(Parveen Kr. Chawla)
Court Master

(Indu Satija)
Court Master

[signed order is placed on the file]
IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.4319 OF 2006

H.K.K. Bail & Another

..Appellants

versus

M/s. Cyma Exports Pvt. Ltd. & Another

..Respondents

O R D E R

Heard learned counsel for the parties.

This Appeal has been filed against the impugned

judgment and order dated 07th April, 2005 passed by the High Court of Karnataka at Bangalore in C.R.P. No.1470 of 2002.

The facts giving rise to this appeal are that the appellants filed a complaint petition before the Karnataka State Consumer Disputes Redressal Commission, Bangalore, which was allowed by the State Commission by its order dated 16th December, 1993., copy of which is Annexure P-4 to this appeal. Admittedly, no appeal was filed against that order and the same became final. The relief sought in the complaint was to the following effect:

"To issue a decree in the nature of direction directing the opposite party to complete the construction of flat No.3 on the 3rd floor of the Rajanigandha Building at No.21, Grant Road, Bangalore, in terms of the agreement dated 21.4.1980 and 23.4.1983 and handover the same to the complainants at the cost of Rs.3,60,000/- and further directing the opposite parties to pay sum of Rs.3,60,000/- as compensation for the negligence and failure of the opposite party to render prompt service to the complainant, loss of interest, mental agony, inconvenience together with interest thereon at market rates from the date of filing of this complaint until the
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realisation of the amount.

To award costs of this complaint."

The State Commission allowed the complaint and passed the following order:

"In the result, therefore, this complaint is allowed. The opposite party is directed to pay interest to the complainant at the rate of 18% p.a. on the sum of Rs.2,11,363.79 from 1.1.1987 till the date of delivery of the possession of the flat to the complainant in a condition fit to occupy the same with all necessary amenities by collecting the balance consideration amount of Rs.1,48,636.21 from the complainant.

The opposite party shall also pay a sum of Rs.2,500/-(Rupees Two Thousand and five hundred only) to the complainant towards costs of the proceedings."

Since, the aforesaid order of the State Commission

has attained finality, obviously, the same had to be executed.

Thereafter, the appellants filed an execution petition before the Additional City Civil Judge, Bangalore to execute the order of the State Commission dated 16th December, 1993. Respondents filed objections therein and the main objection taken is that the Civil Court has no power to execute an order passed by the Consumer Forum on the ground that this was not the decree passed by the Civil Court. This objection was turned down by the said Court relying upon a decision of the Karnataka High Court

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rendered in Vhshvabharathi House Building Cooperative Society Ltd. vs. Union of India reported in AIR 1999 page 210 in which it was held that the Civil Court has jurisdiction to enforce the decree under execution. Accordingly, the execution petition was allowed.

Learned counsel for the respondents submitted that subsequently the Additional City Civil Judge, Bangalore by order dated 20th February, 2002 dismissed the execution petition on the ground that it has no jurisdiction. We have gone through the said order. The Additional City Civil Judge, Bangalore has dismissed the execution petition by observing as follows:

"....In the present case, the order is obtained against the registered company. In the complaint, the office of the Registered Company is situated at No.21, Grant Road, Bangalore-1. Therefore, this Court had jurisdiction to execute the decree as against the Judgment-debtors, but unfortunately, the Decree-Holder has not filed the present execution petition against the said office of the company. On the other hand, the execution petition is filed against the Judgment-debtor who has got their registered office at Mumbai. Consequently, by virtue of Sec.25(a) of the Consumer Protection Act, 1986, this Court has no power to execute the decree against the company which has got its registered office in

Mumbai."

The aforesaid order was challenged by the appellants herein by filing a revision petition before the High Court which has been dismissed by the impugned order.

Having heard learned counsel for the parties and
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having carefully perused the record, we are of the opinion that once the order of the State Commission dated 16th December, 1993 has attained finality, the same has to be executed and hyper-technicality should not come in the way of executing the said order. It is because of these hyper-technicalities that the judiciary in India is getting a bad name. All sorts of objections are raised to linger on the matter as much as possible. There is a first inning in which the dispute often comes up to this Court to secure a final order. Then, the second inning starts to execute the said order in which again all kinds of objections are raised to linger on the matter as much as possible and to avoid execution of the decree. Now the time has come when people of India are fed up and are not going to tolerate such delaying tactics to subvert the operation of the judicial orders.

In the circumstances and exercising our powers under Article 142 of the Constitution of India to do substantial justice between the parties, we allow this appeal, set aside the impugned judgment of the High Court dated 07th April, 2005 and the order of the Additional City Civil Judge, Bangalore dated 20th February, 2002.

Learned counsel for the appellants has submitted that possession has been delivered to the appellants and the interest has to be paid only, as ordered by the State Commission. Learned counsel for the respondents has

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submitted that the balance consideration is yet to be recovered from the appellants.

If any balance amount is due, the respondents shall adjust the same before making

the payment of interest which we reduce to 12 per cent per annum from 18 per cent per annum.

No costs.

.....J.
[MARKANDEY KATJU]

NEW DELHI;
JANUARY 19, 2011

.....J.
[GYAN SUDHA MISRA]