

STATE CONSUMER DISPUTES REDRESSAL COMMISSION  
MAHARASHTRA, MUMBAI  
EXECUTION APPLICATION NO.EA/17/09

1. Mr.Himanshu Gautam  
House No.2-L-20,  
Mahaveer Nagar 3<sup>rd</sup>,  
Kota 324 005,  
Rajasthan.

**Old address-**

- Flat No.503,  
Building No.12,  
Palm Grove Society,  
Patliputra Nagar,  
Oshiwara,  
Jogeshwari(W),  
Mumbai 400 102.
2. Mr.Dinesh Chandra Gautam  
House No.2-L-20,  
Mahaveer Nagar 3<sup>rd</sup>,  
Kota 324 005,  
Rajasthan.

Appliant(s)

versus

1. Kamala Landmarc Group  
Terminal 9, Nehru Road,  
Vile Parle (E),  
Mumbai 400 099.
2. Mathura Enterprises LLP  
Shanti Vimal, Gr.Floor,  
Pherozechah Mehta Road,  
Vile Parle(E),  
Mumbai 400 099.

2A. Jitendra Ramesh Jain  
Partner  
M/s.Mathura Enterprises LLP  
Shanti Vimal, Ground Floor,  
Sir P.M.Road,

Vile Parle(E),  
Mumbai 400 057.

2B. Jitendra Ramesh Jain  
M/s.Mathura Enterprises LLP  
Shanti Vimal, Ground Floor,  
Sir P.M.Road,  
Vile Parle(E),  
Mumbai 400 057.

2C.Ketan Shah Anandilal  
M/s.Mathura Enterprises LLP  
Shanti Vimal, Ground Floor,  
Sir P.M.Road,  
Vile Parle(E),  
Mumbai 400 057.

2D.Nikesh Mohanlal Jain  
M/s.Mathura Enterprises LLP  
Shanti Vimal, Ground Floor,  
Sir P.M.Road,  
Vile Parle(E),  
Mumbai 400 057.

2E.Sanjay Mehta  
M/s.Mathura Enterprises LLP  
Shanti Vimal, Ground Floor,  
Sir P.M.Road,  
Vile Parle(E),  
Mumbai 400 057.

Respondent(s)

**BEFORE:**

Hon'ble Mr.Justice A.P.Bhangale, President  
Hon'ble Mr.A.K.Zade, Member

**ORDER**

**Per: Hon'ble Mr.Justice A.P.Bhangale, President**

[1] Heard Shri.Bhavesh Thakur i/b Prateik Parija, Advocate for the execution applicant. Shri.Ketan Anandilal Shah and Shri.Jitendra Ramesh

Jain –Accused are not produced before the State Consumer Disputes Redressal Commission, Maharashtra, Mumbai from Jail custody though we had directed the Jail Superintendent, Mumbai Central Prison, Mumbai to produce the accused on each and every date of hearing of this execution proceeding bearing No.09 of 2017. Final Order in consumer complaint No.550 of 2015 was passed on 04/05/2016 whereby opponents were directed jointly and severally to pay sum of Rs.48,00,000/-towards refund of earnest money, together with interest thereon @18% p.a. w.e.f. 12/12/2012 till realization of amount by the complainants and also litigation costs in the sum of Rs.25,000/- payable to the complainants.

[2] We had in the course of inquiry as to why opponents did not obey the final Order passed by us gave opportunity to the accused Shri.Ketan Anandilal Shah and Shri.Jitendra Ramesh Jain who are the Directors of 'Kamala Landmarc Group' also Partners of Mathura Enterprises LLP. We inquired as to why amount payable under the final Order as aforesaid is not yet paid to the complainants and recorded statements dated 15/10/2018 of Shri.Ketan Anandilal Shah and Shri.Jitendra Ramesh Jain separately. From their statements made before us they pleaded that since they were arrested in respect of some litigation pending before the Hon'ble High Court and that their accounts are frozen and pleaded that they may be in a position to pay the amounts, if accounts are released by the Hon'ble High Court. According to them, one Commercial Arbitration is pending before the Hon'ble High Court. They also expressed difficulties to pay the amount as ordered alongwith interest and pleaded that because of litigation in Hon'ble High Court construction remained incomplete. They clearly made statements that they will pay principal amount, if they have the amount, but payment of interest is not possible. Though assured, they did not produce details of litigation pending before the Hon'ble High Court. They also expressed difficulty that permission of Hon'ble High Court is necessary to sell their assets. However, admitted that complainants are not parties to the

litigation pending before the Hon'ble High Court. No any document is produced before us by the accused to exhibit bonafides of their alleged inability to comply with the final order. In our view, since it is an Award monetary in nature the accused were and liable to pay the entire Award amount together with interest. Their plea of inability or impossibility to comply with the final Order due to pendency of litigation in Hon'ble High Court, that too without producing any document in connection with proceeding in Hon'ble High Court in which complainants are not parties, we must record finding that despite long period which has lapsed since we passed final Order on 04/05/2016 in the absence of any appeal/ revision or stay order from any superior Court or Commission, in our view, the accused have grossly failed and made no arrangement whatsoever to pay, as per final Order.

[3] On the other hand, complainants are helplessly awaiting the fruits of Award passed in their favour and cannot be blamed, if they prayed for maximum punishment imprisonable u/s 27 of the Consumer Protection Act, 1986 to relegate Shri.Ketan Anandilal Shah and Shri.Jitendra Ramesh Jain, both the accused to the imprisonment for a period of three years maximum provided that if they comply with the final Order in consumer complaint No.550 of 2015 they shall be released forthwith from Jail. We, therefore, record that Shri.Ketan Anandilal Shah and Shri.Jitendra Ramesh Jain-both accused have deliberately disregarded final Order dated 04/05/2016 as they did not make any arrangement to comply with the final Order. In the result, therefore, we find them blameworthy and guilty of contravening section 27 of the Consumer Protection Act, 1986 holding them guilty **and convicting them sentencing them to a period of three years maximum provided that if they comply with the final Order in consumer complaint No.550 of 2015, they shall be released forthwith. Proceedings u/s 27 of the Consumer Protection Act, 1986 bearing No.EA/17/09 is therefore disposed of accordingly.** Free copy of this Order be sent to the accused

through Jail Superintendent, Mumbai Central Prison, Mumbai with direction that copy of this Order be served upon the accused Shri.Ketan Anandilal Shah and Shri.Jitendra Ramesh Jain under their written acknowledgement. Written acknowledgement shall be sent back to the Registrar (Legal).

[4] Later on Shri.Ketan Anandilal Shah and Shri.Jitendra Ramesh Jain-accused are produced before us by the Superintendent, Mumbai Central Prison, Mumbai. Copy of this order be served upon Shri.Ketan Anandilal Shah and Shri.Jitendra Ramesh Jain-accused and under written acknowledgement.

[5] Certified copy of this order be supplied to both the parties and also be sent to the Jail Superintendent, Mumbai Central Prison, Mumbai. Registrar (Legal) is directed to do the needful.

Certified copy of this order be supplied to both the parties.

Pronounced on  
30<sup>th</sup> October, 2018.

**[JUSTICE A.P.BHANGALE]**  
**PRESIDENT**

**[A.K.ZADE]**  
**MEMBER**

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