

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

51 WRIT PETITION NO. 8789 OF 2015

SACHEEN MADHUKARRAO MULEY AND ANOTHERS
VERSUS
MADHUKAR WAMANRAO JADHAV

Shri. Umesh N. Shete, Advocate, for petitioners.

Shri. Mayur Salunke, Advocate, holding for Shri. V.D.
Salunke, Advocate, for respondent.

CORAM: T.V. NALAWADE, J.

DATE : 27 SEPTEMBER 2016

ORDER:

1) The petition is filed to challenge the decisions of the Maharashtra State Consumer Dispute Redressal Commission given in Revision Nos.52/2014 and 24/2015. The orders made by the District Consumer Forum on the objection taken like limitation and pecuniary jurisdiction are decided in favour of the complainant and the delay is condoned. The decision given by the District Consumer Dispute Redressal Forum is confirmed in the revision. This Court had made query as to how the present proceeding under Articles 226 and 227 of the Constitution is tenable in High Court in view of the scheme of the Consumer

Protection Act, 1986. On this point both sides cited many reported and unreported cases and even some cases of the National Commission and State Commission.

2) In the cases reported as:

(1) (2011) 14 SCC 337 (Nivedita Sharma v. Cellular Operators Association of India),

(2) 2010 (11) SCC 622 (Om Prakash Saini v. DCM Ltd.),

(3) SLP No.17068/2010 (M/s Advance Scientific Equip. Ltd. v. West Bengal Pharma) decided on 9-7-2010, and

(4) SLP No.24228/2012 (Cicily Kallarackal vs. Vehicle Factory) decided on 6-8-2012,

the Apex Court has discussed the point involved. In the case of Omprakash Saini (cited supra) the Apex Court has made some observations and those are at paragraph 12 :

"12. We have considered the respective submissions. The 1986 Act was enacted to provide for better protection of the interests of consumers by making provisions for establishment of consumer councils and other authorities for settlement of consumer disputes and adjudication thereof. The 1986 Act is a complete Code upto itself. It defines the various terms like consumer, consumer dispute, defect, deficiency, goods, manufacturer, restrictive trade practice, service, unfair trade practice. It provides for establishment of consumer councils and adjudicatory forums at the District, State and National levels. Any person aggrieved by an order passed by the District Forum can file an appeal before the State Commission. If he is not satisfied with the order of the State Commission, a further remedy is available by

way of revision before the National Commission. If the complaint is decided by the State Commission, the aggrieved person can file an appeal before the National Commission. Elaborate procedure has been laid down for filing of the complaints and disposal thereof. Since the 1986 Act is a special statute enacted by the Parliament for better protection of the interest of consumers and wholesome mechanism has been put in place for adjudication of consumer disputes, the remedy of appeal available to a person aggrieved by an order of the State Commission cannot but be treated as an effective alternative remedy."

3) When the Apex Court has observed that the mechanics given in this special legislation is wholesome mechanism and there is no mention of High Court in this mechanism, this Court holds that it is not possible to entertain the writ petition. Though there are some observations made by Division Bench of this Court, in support of the case that petition under Articles 226 and 227 can be entertained, this Court holds that this Court is bound by the observations made by the Apex Court which are quoted above. In the result, the petition stands dismissed. The learned counsel for the petitioners requests for continuation of interim relief for further two weeks. The request is rejected.

Sd/-
(T.V. NALAWADE, J.)

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