

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 7918 OF 2016
WITH CA/5891/2017 IN WP/7918/2016

DINESH DHARAMSI KAKKAD AND OTHERS
VERSUS
DHARAMCHAND NAGRAJ RAKA AND OTHERS

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Advocate for Petitioners : Shri Natu Sharad V.
Advocate for Respondent 1 : Shri Bora Satyajit S.
Advocate for Respondent 2 : Shri Patil Vijay B.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: July 24, 2017

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PER COURT :-

1. This petition is filed for challenging the judgment dated 12.2.2015, delivered by the District Consumer Redressal Forum, Jalgaon in Complaint No. 153 of 2013.

2. By order dated 1.8.2016, this Court (Coram : Sunil P. Deshmukh, J.) has granted ad-interim relief in terms of prayer clause (C) and the impugned judgment has been stayed.

3. Learned Advocates for the respondents rely upon the judgment of this Court in the matter of Mandatai Sambhaji Pawar and another Vs. State of Maharashtra [2011 (4) Mh. L.J. 790] and the judgment of the Honourable Supreme Court in the

matter of Nivedita Sharma Vs. Cellular Operators Association of India and others [(2011) 14 SCC 337]. Shri Natu relies upon the judgment of the learned Full Bench of this Court in the matter of Shireen Sami Gadiali and another Vs. Spenta Cooperative Housing Society and others [2011 (3) BCR 465].

4. It is trite law that when it comes to exercising the supervisory jurisdiction of this Court, an alternate remedy being available, may not be a complete embargo. In Shireen's case (supra), this Court has held that if the law is settled, availability of an alternate remedy would not be a bar to entertain the petition. It is however, held that if a question raised in the petition is capable of being decided in the revisional jurisdiction of a statutory authority, this Court may decline to entertain the petition. No general rule could be made applicable.

5. In Mandatai's case (supra), the learned Division Bench of this Court considered that since the State Commission was a statutory remedy under Section 17(1)(b) of the Consumer Protection Act, 1986, the parties need to be relegated to the statutory remedy available.

6. The Honourable Apex Court in the case of Nivedita

(supra), has concluded that the rule of self imposed restraint in entertaining a Writ Petition on availability of an alternate remedy needs to be practiced. When a statutory forum is created, a Writ Petition should not be entertained ignoring statutory dispensation.

7. Considering the above, since the remedy under Section 17 of the Act of 1986 is a statutory remedy available to the petitioner, this petition is not being entertained and is disposed off with liberty to the petitioners to approach the State Consumer Commission. Needless to state, the interim protection granted earlier on 1.8.2016 shall continue to operate for a further period of six weeks so as to enable the petitioners to prefer their appeal before the State Commission along with an application for interim relief, subject to the provisions of the Consumer Protection Act. This Court has not considered the merits of this matter. As such the State Commission, shall consider the stay application on its own merits and on such terms as are permissible under the Consumer Protection Act.

8. In the event of delay, the time spent by the petitioners from the date of lodging of this petition which is 5.7.2016 till the passing of this order shall be a ground for condonation.

9. Pending Civil Application, therefore, does not survive and is disposed off.

(RAVINDRA V. GHUGE, J.)

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