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IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

WRIT PETITION NO. 2995 of 2014

Dhanaji S/o Zumbar Thorat,
age major occupation agriculture
R/o Therwadi Taluka Karjat Dist. Ahmednagar.

...PETITIONER

VERSUS

1. Dr. Smt. Shilpa Rajiv Suryawanshi,
age major occupation Medical Practitioner
R/o Surya Speciality Surgery Center,
Prasanna Brain and Spine Center,
near Prerna Archade, infront of Tarakpur Bus Stand,
Ahmednagar.
2. Dr. Rajiv Suryawanshi,
age major occupation and R/o as above.

...RESPONDENTS.

Mr Shantanu A. Deshpande, Advocate holding for Mr N.V. Gaware,
Advocate for petitioner.

Mr Mahesh S. Taur, Advocate for respondent No.1

Mr Abhijit G. Choudhary, Advocate for respondent No.2.

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CORAM : NITIN W. SAMBRE, J.

DATE: 6th September 2017

ORAL ORDER:

The State Consumer Disputes Redressal Commission, Mumbai, vide order dated July 1, 2013, dismissed an appeal preferred by present appellant/original complainant. As such, this petition.

2. Based on the judgment of the Apex Court in the matter of **Nivedita Sharma Vs. Cellular Operators Association of India and others**, reported in {(2011) 14 Supreme Court Cases 337}, particularly paragraphs No. 15 and 16, which reads thus:

*“15. In the judgments relied upon by Shri Vaidyanathan, which, by and large, reiterate the proposition laid down in **Baburao Prakash Chandra Maheshwari Vs. Antarim Zila Parishad (AIR 1969 SC 556)**, it has been held that an alternative remedy is not a bar to the entertaining of writ petition filed for the enforcement of any of the fundamental rights or where there has been a violation of the principles of natural justice or where the order under challenge is wholly without jurisdiction or the vires of the statute is under*

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challenge.

*16. It can, thus, be said that this Court has recognised some exceptions to the rule of alternative remedy. However, the proposition laid down in **Thansingh Nathmal V. Supt. of Taxes (AIR 1964 SC 1419)** and other similar judgments that the High Court will not entertain a petition under Article 226 of the Constitution if an effective alternative remedy is available to the aggrieved person or the statute under which the action complained of has been taken itself contains a mechanism for redressal of grievance still holds the field.”,*

the learned Counsel for the respondents placed preliminary objection on the issue of maintainability of the petition.

3. The learned Counsel for the respondents also placed reliance on the Judgment in the matter of **Cicily Kallarackal Vs. Vehicle Factory, (2012) 8 SCC 524**, particularly, paragraphs 4 and 9, on the said issue of availability of alternative statutory remedy, wherein the Apex Court has observed thus:

“4. Despite this, we cannot help but state in absolute terms that it is not appropriate for the High Courts to entertain writ petitions under Article 226 of the Constitution of India against the orders passed by the Commission, as a statutory appeal is provided and

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lies to this Court under the provisions of the Consumer Protection Act, 1986. Once the legislature has provided for a statutory appeal to a higher Court, it cannot be proper exercise of jurisdiction to permit the parties to bypass the statutory appeal to such higher Court and entertain petitions in exercise of its powers under Article 226 of the Constitution of India. Even in the present case, the High Court has not exercised its jurisdiction in accordance with law. The case is one of improper exercises of jurisdiction. It is not expected of us to deal with this issue at any greater length as we are dismissing this petition on other grounds.

9. *While declining to interfere in the present special leave petition preferred against the order passed by the High Court in exercise of its extraordinary jurisdiction under Article 226 of the Constitution of India, we hereby make it clear that the orders of the Commission are incapable of being questioned under the writ jurisdiction of the High Court, as a statutory appeal in terms of section 27-A(1)(c) lies to this Court. Therefore, we have no hesitation in issuing to a direction of caution that it will not be a proper exercise of jurisdiction by the High Courts to entertain writ petitions against such orders of the Commission.”*

According to him, an alternative remedy is available. The petition is

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liable to be rejected with an appropriate liberty to the petitioner.

4. So as to overcome said preliminary objection, the learned Counsel for the petitioner has invited attention of this Court to the judgment reported in the matter of **Maharashtra University of Health Sciences Vs. Sachin Manohar nagpure and others**, reported in **2013 (6) ALL MR 607**, wherein, according to him, the bar of alternate remedy as is pointed out to this Court, has been dealt with and it was held that the petition in given eventuality is very much maintainable under Article 226 and 227 of the Constitution of India and cannot be restricted so as to prove of the complaint on the count of alternate remedy. He would rely upon the observations made in paragraph No. 11 of the said judgment.

5. Considered the submissions on the issue of preliminary objection raised. The present petitioner/original appellant remained absent before the State Consumer Disputes Redressal Commission and the State Consumer Disputes Redressal Commission was pleased to dismiss the appeal by the impugned order dated July 1, 2013. In the said eventuality, since opportunity of hearing is not offered, claim of the petitioner that bar of alternate remedy do not

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operate per claim that he was not heard and an opportunity was not given to him, cryptic order of dismissal in default came to be passed. In this eventuality, the petition is sought to be pressed before this Court.

6. What could be inferred from the submissions and the law laid down in the above referred matters, is the bar of alternate remedy while entertaining the petition under Articles 226 and 227, will operate as statutory remedy of filing an appeal is available and such bar in the wake of Supreme Court Judgment in the matter of **Cicily Kallarackal**, cited supra, is binding on the parties. Even if the order impugned is passed without hearing, i.e. in violation of principles of natural justice. It is not the case of petitioner that order impugned is without jurisdiction.

7. The order impugned reflects that petitioner remained absent before the State Consumer Disputes Redressal Commission, which prompted the Commission to pass order of dismissal of the appeal in default. It is not that the statute does not prescribe any remedy against such order, as said order is very much appealable before the National Consumer Disputes Redressal Commission. Petitioner on his own remained absent before the Tribunal.

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8. In the aforesaid backdrop, the claim of the petitioner that the order impugned was passed without hearing him, is without any basis and such contention is contrary to the record. As such, it is liable to be rejected.

9. In the given set of circumstances, as narrated here-in-above, the judgment in the matter of **Maharashtra University of Health Sciences**, cited supra, will also have hardly any application, when the law laid down in the matters of **Nivedita Sharma** and **Cicily Kallarackal Vs. Vehicle Factory**, cited supra, speak of the bar to entertain the Writ Petition when there is alternate remedy available to aggrieved person, particularly, under the Consumer Protection Act.

10. In the aforesaid background, in my opinion, no case for exercise of jurisdiction is made out. The petition, as such, is dismissed on the ground of availability of alternate remedy.

(NITIN W. SAMBRE, J.)

pjm