

**FARAD CONTINUATION SHEET
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.4564 OF 2017

Central Board of Trustees Employees
Provident Fund

.. Petitioner

vs.

Shri Ismail Habib Shaikh

.. Respondent

Mr.V.K.Wasnik for the petitioner

Mr.Suhas S. Inamdar for the respondent

**CORAM : K. K. TATED, J.
DATE : APRIL 18, 2017**

PC.:

1 Not on board. At the request of Advocate for the petitioner, matter is taken on board for urgent orders.

2 Heard the learned counsel for the parties.

3 By this petition under Article 227 of the Constitution of India, the Petitioner challenges the order dated 16.1.2017 passed by District Consumer Dispute Redressal Forum, Solapur in Recovery Application No.177 of 2016 directing petitioner to pay pension amount to the respondent.

4 The learned Counsel for the respondent raised preliminary objection about the maintainability of the present Writ Petition itself.

He submits that in the present proceeding, the petitioner is challenging the order dated 16.1.2017 passed by District Consumer Dispute Redressal Forum, Solapur. He submits that as per section 27-A of the Consumer Protection Act, 1986, Appeal is maintainable against the order passed by District Forum to the State Commission and thereafter, from the State Commission to the National Commission. He relies of section 27-A of the said Act which reads thus:

“27-A. Appeal against order passed under section 27.—

(1) Notwithstanding anything contained in the Code of Criminal Procedure 1973 (2 of 1974), an appeal under section 27, both on facts and on law, shall lie from—

(a) the order made by the District Forum to the State Commission;

(b) the order made by the State Commission to the National Commission; and

(c) the order made by the National Commission to the Supreme Court.

(2) Except as aforesaid, no appeal shall lie to any court from any order of a District Forum or a State Commission or the National Commission.

(3) Every appeal under this section shall be preferred within a period of thirty days from the date of an order of a District Forum or a State Commission or, as the case may be, the National Commission: Provided that the State Commission or the National Commission or the Supreme Court, as the case may be, may entertain an appeal after the expiry of the said period of thirty days, if, it is satisfied that the appellant had sufficient cause for not preferring the appeal within the period of thirty days.”

5 The learned Counsel for the respondent submits that as

efficacious alternate remedy is available to the petitioner, petition is required to be dismissed with costs.

6 The learned Counsel for the petitioner submits that they are challenging the order passed by District Consumer Dispute Redressal Forum dated 16.1.2017 under Article 227 of the Constitution of India. He submits that the State Commission as well as National Commission has already taken contrary view against them. Hence, he is challenging the said order before this court under Article 227 of the Constitution of India. He submits, to that effect, petitioner has made appropriate averments in the petition particularly paragraph 9, 10 and 11 which reads thus:

“9. The Petitioner states that the petitioner has a remedy to approach the Hon'ble State Consumer Dispute Redressal Commission by filing an appeal and in fact, in an identical case the Hon'ble State Commission vide an order dated 09.06.2014, has given correct interpretation of the formula for calculation of pension. In the said judgment there was no occasion for the State Commission to deal with the law of limitation.

10. The Petitioner states that here is a highest Appellate body i.e. National Consumer Disputes Redressal Commission. However, the National Commission, in one of the judgments, has ruled that under section 27 of the Consumer Protection Act there is no provision for limitation and therefore, held in one of the cases of Prem Varshney versus Murarilal Sharma and others reported in IV (2007) CPJ 229.

11. The Petitioner states that the view taken by the National Commission is likely to be followed by the State Commission as in the order of the State Commission referred to above, it has not occasion to deal with law of limitation except interpretation of the two provisions of the Scheme and therefore, the Petitioner has no efficacious remedy than to

approach this Hon'ble Court.”

7 The learned Counsel for the Petitioner further submits that Bombay High Court Bench at Nagpur in Criminal Writ Petition No.742 of 2015 entertained the Writ Petition against the order passed by District Consumer Forum. To that effect, he relies on oral judgment dated 16.8.2016 in the matter of *M/s.Aditya Developers vs. Manish Ranganath Thorat in Criminal Writ Petition No.742 of 2015*.

8 On the basis of these submissions and the judgment of the Bombay High Court, Bench at Nagpur dated 16.8.2016, the learned Counsel for the petitioner submits that the present Writ Petition is maintainable under Article 227 of the Constitution of India.

9 I have heard both the sides.

10 It is to be noted that there is a specific provision in Consumer Protection Act, 1986 under section 27-A to prefer an Appeal against the order passed by District Forum to the State Commission. Just because State Commission has taken contrary view which is against the petitioner, petitioner has no right to challenge the same under Article 227 of the Constitution of India. The authority cited by the learned Counsel for the petitioner in the matter of *M/s.Aditya Developers vs. Manish Ranganath Thorat* (Supra) does not disclose whether respondent raised any objection about maintainability of the petition itself before that Court. Apart from that, said Writ Petition was filed under the provisions of Code of Criminal Procedure, 1973 whereas case in hand is filed under Article 227 of the Constitution of India. Hence, same is not applicable in the facts and circumstances of the present

case.

11 Considering the fact that alternate efficacious remedy is available to the petitioner, I do not find any reason to entertain the present petition. Hence, Writ Petition stands dismissed. No order as to costs.

(K.K.TATED, J.)