

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

WRIT PETITION NO. 3735 OF 2016

**ASHABAI LAXMAN NAYAKWAL
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

Mr.S.B.Sontakke, Advocate for petitioner

Mr.K.N.Lokhande, AGP for respondent nos.1 to 4

Mr.S.G.Chapalgaonkar, Advocate for respondent no.5

**CORAM : S.V. GANGAPURWALA AND
R.G. AVACHAT, JJ.
DATE : OCTOBER 30, 2018**

PER COURT

Mr.Sontakke, learned Counsel for the petitioner, submits that the claim of the petitioner under the Shetkari Janata Apghat Vima Yojna has been negated. He submits that the petitioner had approached the District Consumer Dispute Redressal Forum ("District Forum", for short). The dispute filed by the petitioner came to be dismissed. The petitioner filed an appeal before the State Consumer Disputes Redressal

Commission ("the Commission", for short). The appeal also has been dismissed. Learned Counsel submits that the order dismissing claim of the petitioner by the District Forum and upheld by the Commission would not preclude this Court from exercising its jurisdiction under Article 226 of the Constitution of India. He submits that the jurisdiction of this Court under Article 226 of the Constitution of India is extraordinary jurisdiction and can be invoked to do the complete justice. He submits that in similar cases, this Court has entertained such Writ Petition.

2. Mr.Chapalgaonkar, learned Counsel for respondent – Insurance Company, submits that once the petitioner has availed of the remedy before the District Forum and the Commission by preferring appeal, present Writ Petition would not be tenable. He relies on the judgment of the Division Bench in Writ Petition No.4585 of 2016 (Jijabai wd/o. Rambhau Gochade Vs. The State of Maharashtra) decided on 22.03.2018.

3. It is not disputed that the petitioner, for the same relief, had approached the District Forum. The District Forum dismissed the claim of the petitioner. The petitioner assailed that decision before the Commission by preferring appeal, which also came to be dismissed. The petitioner now has a remedy before the National Consumer Disputes Redressal Commission.

4. As of today, the judgment delivered by the District Forum and confirmed by the Commission has become final, unless set aside by the higher forum. The said judgments are not subject matter of challenge in present petition. In such a scenario, it would not be appropriate for the petitioner invoke the writ jurisdiction under Article 226 of the Constitution of India. The Apex Court in the case of **Cicily Kallarackal Vs. Vehicle Factory, 1(SC) CPJ (Dec.) 2012** has in paragraph 7 observed thus :-

"7. 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 order of the Commission are incapable of being questioned under writ jurisdiction of the High Court, as a statutory appeal in terms of Section 27A(1) (c) lies to this Court. Therefore, we have no hesitation in issuing a direction of caution that it will not be proper exercise of jurisdiction by the High Courts to entertain writ petitions against such orders of the Commission."

5. In the light of the above, no relief can be granted to the petitioner. The Writ Petition, as such, is disposed of. No costs.

6. The petitioner, if so advised, may take up appropriate proceedings before the appropriate forum against the order of the State Consumer Disputes Redressal Commission.

[R.G. AVACHAT, J.]

[S.V. GANGAPURWALA, J.]