

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

WRIT PETITION NO. 4585 OF 2016

Jijabai wd/o. Rambhau Gochade, .. Petitioner

Versus

The State of Maharashtra & Ors. .. Respondents

Mr.A.S. Pavase, Advocate for the petitioner.
Mr.P.N. Kutti, AGP for respondent Nos. 1 & 2.
Mr.S.R. Bodade, Advocate for respondent No.3.

**CORAM : S.S.SHINDE &
S.M.GAVHANE, JJ.**

**RESERVED ON : 01.02.2018
PRONOUNCED ON : 22.03.2018**

ORDER : [PER : S.M. GAVHANE, J.] :-

1. By this petition under Article 226 of the Constitution of India, the petitioner has claimed following substantive reliefs :-

"B) By issuing writ of certiorari or any other appropriate writ, order or direction, the repudiation letter dated 05.08.2011 (Exh. "D") issued by respondent No.3 Insurance Company, thereby repudiating the insurance claim of the petitioner filed under Farmer Personal Accident Insurance Scheme, claiming insurance claim of

Rs.1,00,000/- may kindly be quashed and set aside;

C) By issuing appropriate writ, order or direction, the proposal submitted by the petitioner under Farmer Personal Accident Insurance Scheme, claiming Rs.1,00,000/- may kindly be allowed with penal interest @ 15% from the date of submission of proposal with further direction to respondent No.3 to pay the said amount within 15 days.

D) By issuing writ of mandamus or any other appropriate writ, order or directions, the respondents may kindly be directed to pay compensation of Rs.25000/- towards mental torture, cost of the proceeding & financial suffering"

2. We have heard learned Advocate appearing for the petitioner, learned AGP appearing for respondent Nos.1 and 2 and learned advocate appearing for respondent No.3. With their assistance, we have perused the pleadings in the petition, reply affidavit filed on behalf of respondent No.3 and the documents produced by the petitioner.

3. There is no dispute that one late Rambhau Raghunath Gochade, who died on 14.09.2010 due to drowning

in the well, was husband of the petitioner and an agriculturist. On account of his death, the petitioner claimed compensation as per Government Resolution dated 04.12.2009 and Corrigendum dated 05.03.2011 issued by the Government for proper, speedy and effective implementation of the Farmer Individual Accident Insurance Scheme, 2005 with respondent No.3 – New India Assurance Co. Ltd. Along with all necessary documents the petitioner submitted proposal to the Taluka Agricultural Officer, District-Beed, within limitation. Said proposal was rejected by the insurance company, by the impugned order dated 05.08.2011.

4. Further, it is not disputed that aggrieved by the impugned order, the petitioner filed complaint bearing No.97 of 2011 before the District Consumer Disputes Redressal Forum, Beed. The District Consumer Disputes Redressal Forum rejected the said complaint. Aggrieved by the same, the petitioner filed appeal before the Maharashtra State Consumer Disputes Redressal

Commission, Mumbai, Circuit Bench at Aurangabad, bearing No.126 of 2013. Said appeal was dismissed. Aggrieved by the dismissal of the said appeal, the petitioner filed Revision Petition No.1957 of 2015 before the National Consumer Disputes Redressal Commission at New Delhi. Said Revision Petition was dismissed for non-prosecution as well as in default.

5. According to the petitioner, the repudiation letter dated 05.08.2011 (Exh. "D") of respondent No.3 is illegal.

6. In the affidavit-in-reply, submitted on behalf of respondent No.3-Insurance Company, it is submitted that insurance company has rightly repudiated the claim of the petitioner on 05.08.2011 on the ground that as per exclusion clause-4 of the said policy, death of the petitioner's husband is not covered under the policy in question. The petitioner exhausted available remedy right from the District Consumer Disputes Redressal Forum

up to the National Consumer Disputes Redressal Commission by filing complaint, appeal and revision petition respectively and as such failed to establish her claim up to the National Consumer Disputes Redressal Commission and after being unsuccessful she has filed present writ petition as a last attempt, though having remedy to approach Hon'ble Supreme Court of India. The claim of the petitioner was repudiated raising a serious dispute which requires oral and documentary evidence for its determination. The proper remedy is civil suit and not writ petition. As such, as the petitioner is having alternate remedy to prefer appeal before the Hon'ble Supreme Court, the writ petition is not maintainable.

7. Learned Advocate appearing for respondent No.3-insurance company made submissions in the light of aforesaid contentions and relying upon the ratio laid down by the Hon'ble Supreme Court in the case of **Cicily Kallarackal Vs. Vehicle Factory, 1(SC) CPJ (Dec.) 2012** submits that the writ petition is not maintainable as

High Court has no jurisdiction to deal with the matter as the statutory appeal is provided against the judgment and order passed by the National Consumer Disputes Redressal Commission. In the said case, in paragraph 7, the Hon'ble Supreme Court has 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."

8. In the present case as observed earlier, admittedly the petitioner has exhausted all the remedies available to her after the rejection of her claim by the letter dated 05.08.2011 by respondent No.3 right from the District Consumer Disputes Redressal Forum up to the National Consumer Disputes Redressal Commission, by way of complaint, appeal and revision. Therefore, applying

the ratio laid down in the case of **Cicily (Supra)**, when the remedy available to the petitioner is by way of statutory appeal to the Hon'ble Supreme Court, as per section 27A(1)(c) of the Consumer Protection Act, 1986 the writ petition is not maintainable. Thus, when the writ petition is not maintainable on the said ground alone, same is liable to be dismissed. Therefore, we do not wish to go into other contentions raised in the petition. Therefore, the writ petition is dismissed. No costs.

[S.M.GAVHANE, J.]

[S.S.SHINDE, J.]