

*Sequeira*

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

**CIVIL APPLICATION NO. 2524 OF 2018  
In  
WRIT PETITION No. 12970 OF 2018**

Nisha Amish Shah ... Applicant / Org. Resp  
No.2.

*In the matter between*

Jyotsna Nitin Mehta and another ... Petitioners  
Vs

Mrs.Jyotsna Pravin Shah & others ... Respondents

Mr.Samir A.Vaidya, for the Applicant.

Ms.Sumedha Rao, for Respondent Nos.1 and 2.

***CORAM : B. P. DHARMADHIKARI &  
SARANG V. KOTWAL, JJ.***

***Date : 7 December, 2018.***

***P.C. :***

The Consumer who is aggrieved by orders dated 22 November 2018 in Writ Petition No.12970 of 2018 is before this Court contending that the State Consumer Commission has passed the order impugned in that Writ Petition, in furtherance of directions issued by National Forum. Any order of National Forum Commission needs to be questioned only before Hon'ble Apex Court. It is further submitted that the nature of proceedings before the State

Commission in execution are not civil in nature and therefore, Civil Writ Petition is not maintainable. It is pointed out that the husband of Petitioner has already questioned those orders before the learned Single Judge of this Court, on criminal side and hence present Writ Petition is not maintainable. Lastly, it is pointed out that though Petitioner was given time of two weeks to raise appropriate grievance before the State Commission, that has not been so done.

2. Prayer in Civil Application No.2524 of 2018 is therefore, to vacate the order passed by this Court on 22 November 2018.

3. Learned counsel appearing for original Petitioner states that necessary application is already moved by original Petitioner before the State Commission within stipulated time.

4. Learned counsel for Applicant- Consumer has relied upon Judgment of Hon'ble Supreme Court reported in the case of *Cicily Kallarackal Vs Vehicle Factory - (2012) 8 Supreme Court Cases 524*, which considers intervention by High Courts under Article 226 of the Constitution and finds it improper. Therein the Hon'ble Apex Court has found that when statute had provided remedy of appeal the intervention by High Court by-passing the remedy cannot be allowed.

5. In present matter before us it is admitted position that Petitioner wife is not party to proceedings filed by Consumer. The

State Commission has by order impugned in Writ Petition taken note of fact that Petitioner is joint owner and Tahsildar has been asked to attach the flat with due notice to her with further directions to keep the flat under lock and seal. The keys of flat are to be handed over to Registrar (Legal) till further orders. It is therefore, nothing but eviction of a joint owner who is legal and independent owner and not party to proceedings.

6. It is in this situation that we have passed orders on 22 November 2018 and keeping in mind the other facts, also direct the Petitioner to move appropriate application to the State Commission within two weeks. Interim order granted by this Court was made contingent upon it.

7. We therefore, find the arguments made by learned counsel for consumer misconceived.

8. Accordingly Civil Application is rejected.

*(Sarang V. Kotwal, J.)*

*(B.P.Dharmadhikari, J.)*