

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

**LETTER PATENT APPEAL NO. 7 OF 2018
IN
WRIT PETITION NO. 2950 OF 2010**

1. Sunil Sudhakar Fegde,
Age 33 years, Occu. Business,
R/o. Bamnod, Tq. Yawal,
Dist. Jalgaon.
2. Yogita Sunil Fegde,
Age 30 years, Occu. Household,
R/o. Bamnod, Tq. Yawal,
Dist. Jalgaon.

....Appellants.

Versus

1. Kishor Devram Rane,
Age 30 years, Occu. Labour,
R/o. Yawal, Tq. Yawal,
Dist. Jalgaon.
2. Rajesh Ramdas Fegde,
Age 27 years, Occu. Labour,
R/o. Yawal, Tq. Yawal,
Dist. Jalgaon.
3. Jay Ganraya Urban Co-op. Credit
Society Ltd., Faizpur,
Tq. Yawal, Dist. Jalgaon.
4. Lalit s/o. Madhukar Patil,
Age 36 years, Occu. Manager,
Jay Ganraya Urban Co-op. Credit
Society Ltd., Faizpur,
Tq. Yawal, Dist. Jalgaon.
5. Madhukar s/o. Tukaram Patil,
Age 41 years, Occu. Chairman,
Jay Ganraya Urban Co-op. Credit
Society Ltd., Faizpur,
Tq. Yawal, Dist. Jalgaon.

6. Prabhakar s/o. Vishwanath Chaudhari,
Age 42 years, Occu. Business,
R/o. Behind Rajabaug, Faizpur,
Tq. Yawal, Dist. Jalgaon.
 7. Atul s/o. Madhukar Vaykole,
Age 36 years, Occu. Business,
R/o. Deviwada, Faizpur,
Tq. Yawal, Dist. Jalgaon.
 8. Bhojraj s/o. Shridhar Patil,
Age 54 years, Occu. Business,
R/o. Laxminagar, Faizpur,
Tq. Yawal, Dist. Jalgaon.
 9. Manoj s/o. Umakant Patil,
Age 36 years, Occu. Business,
R/o. Deviwada, Faizpur,
Tq. Yawal, Dist. Jalgaon.
 10. Sandip s/o. Ashok Bendale,
Age 39 years, Occu. Business,
R/o. Bamnod, Tq. Yawal,
Dist. Jalgaon.
 11. Pradip s/o. Vishnu Chaudhari,
Age 36 years, Occu. Business,
R/o. Behind Bus Stand, Faizpur,
Tq. Yawal, Dist. Jalgaon.
 12. Vrushali w/o. Lalit Patil,
Age 44 years, Occu. Business,
R/o. Saraf Galli, Faizpur,
Tq. Yawal, Dist. Jalgaon.
 13. D.V. Kadam,
Assistant Registrar,
Cooperative Societies, Yawal,
Tq. Yawal, Dist. Jalgaon.
-Respondents.**

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Advocate for Appellants : Mr. Swapnil S. Patil

Advocate for Respondents 1 & 2 : Mr. R.C. Misal h/f. Mrs.

Chaitali R. Kutti Choudhary

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**CORAM : T.V. NALAWADE AND
SUNIL K. KOTWAL, JJ.**
DATED : 23/01/2019

JUDGMENT :

1. Appeal admitted. Notice after admission made returnable forthwith.

2. The proceeding is filed to challenge the judgment and order of learned Single Judge of this Court delivered in Writ Petition No. 2950/2010. Heard both the sides.

3. The aforesaid petition was filed by respondent Nos. 1 and 2 of the present proceeding only. The counsel of these two respondents are heard. Other respondents had filed other petitions, though the petitioners of those other petitions are made party respondents hearing to them was not necessary as the present appellants are interested in getting relief only in respect of one institution of which present respondent Nos. 1 and 2 were directors.

4. The petition was filed by respondent Nos. 1 and 2 for challenging the decision of District Consumer Forum by which

penalty was imposed on the Directors and they were held personally responsible for payment of amount to the complainant. The complainant was depositor and as his amount was not returned by the concerned society, the claimant had approached the Consumer Forum. The District Consumer Forum issued directions against the concern Cooperative Society and also against the concerned Director to return the amount as well as interest and damages. The order of Consumer Forum was challenged on the ground that the procedure given in Maharashtra Cooperative Societies Act ought to have been followed before fixing liability on the Directors and further, the provisions of the said Act ought to have been used and dispute ought to have been filed before proper forum. The learned Single Judge allowed the petition and set aside the orders of District Consumer Forum, saddling the liability on the Directors.

5. The decision was given by the learned Single Judge on 22.12.2010. Similar point had arisen before the Division Bench of this Court in the case reported as **2012(3) Bom.C.R. 843 [Mandatai Sambhaji Pawar & Anr. Vs. State of Maharashtra & Ors.]**. This Court has laid down that the Consumer Forum is additional forum available and it has

jurisdiction to entertain such complaints. It is held that the remedy before the District Consumer Forum is not excluded expressly by section 91 of Maharashtra Cooperative Societies Act. Further, the Division Bench observed that there is possibility of lifting of corporate veil and Directors can be held liable in such cases.

6. Reliance was placed by the learned counsel for petitioner on law laid down by the Apex Court in the case reported as **(2011) 14 SCC 337 [Nivedita Sharma Vs. Cellular Operators Association of India and Ors.]**. In this case, the Apex Court has laid down that when there is decision of District Consumer Forum, the remedy available is of appeal under Consumer Protection Act, 1986 and writ petition cannot be entertained when there is challenge to the decision given by the Consumer Forum. It is laid down that rule of self-imposed restraint in entertaining writ petition when alternate remedy is available needs to be followed by the High Court and so, when there is statutory forum for redressal of the grievance, writ petition should not be entertained. Thus, there is question of tenability of writ petition which was filed by respondent Nos. 1 and 2 before the learned Single Judge. For both the aforesaid

reasons, this Court holds that the appeal needs to be allowed. In the result, the appeal is allowed. The decision of the learned Single Judge given in Writ Petition No. 2950/2010 on 22.12.2010 which was filed by respondent Nos. 1 and 2 is quashed and set aside. The said petition is dismissed. It is made clear that the decision of the matter is limited only in respect of the decision given by the learned Single Judge in Writ Petition No. 2950/2010.

[SUNIL K. KOTWAL, J.]

[T.V. NALAWADE, J.]

ssc/