

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

WRIT PETITION NO.8505 OF 2018

The Oriental Insurance Company Ltd.,
Through its Sr. Divisional Manager,
Adalat Road, Aurangabad

..Petitioner

Vs.

1. Anand Arvind Verma,
Age : Major, Occ. Business,
r/o. D-39, 1/2,
Ravi Nagar, N-11, HUDCO,
Aurangabad

2. M/s. M.D. India Health Care
Services Pvt. Ltd.,
Escape, A-2, 4th Floor,
Pune – Nagar Road,
Wadgaon Sheri,
Pune 411 014

..Respondents

Mr. R.F.Totla, Advocate for petitioner
Mr. S.C.Arora, Advocate for respondent no.1

CORAM : R.G. AVACHAT, J.
RESERVED ON : AUGUST 29, 2019
PRONOUNCED ON : SEPTEMBER 09, 2019

JUDGMENT :-

The challenge in this Writ Petition under
Article 227 of the Constitution of India, is to the

order passed by Maharashtra State Consumer Disputes Redressal Commission ("State Commission", for short), Mumbai, Circuit Bench at Aurangabad, dismissing the application (221 of 2017) along with First Appeal (377 of 2017).

2. Heard. Rule. Rule made returnable forthwith. Head finally with the consent of learned Counsel for the parties.

3. The petitioner herein is an Insurance Company. Respondent no.1 had obtained from the petitioner - Company a medi-claim insurance policy namely, Happy Family Floater Policy. A son of respondent no.1 took ill. He had to be hospitalised and operated upon. Respondent no.1, therefore, placed a claim before the petitioner - company for release of the amount under the insurance cover. The petitioner - company repudiated the claim. Respondent no.1 had, therefore, approached the District Consumer Dispute Redressal Forum. On hearing the parties, the

District Consumer Dispute Redressal Forum was pleased to allow respondent no.1's claim with 10% interest. The petitioner - company preferred the appeal against the order passed by the District Consumer Dispute Redressal Forum, to the State Commission. As there was delay of about 25 days in preferring the appeal, an application for condonation of delay was moved along with appeal. During hearing of the application, the State Commission directed the petitioner - company to deposit the entire claim amount. Pursuant to the direction, the petitioner - company deposited an amount of Rs.06,05,740/- (claim amount plus 10% interest thereon) and also deposited a sum of Rs.25,000/- as per the statutory requirement. The Commission was pleased to reject the delay condonation application. As a result thereof, the appeal also came to be dismissed. The order rejecting the application for condonation of delay, is under challenge in this Writ Petition.

4. Learned Counsel for respondent no.1 would submit that the petitioner has an equally efficacious remedy in the nature of appeal under Section 21 of the Consumer Protection Act, 1986 ("the Act", for short). Thus, respondent no.1 has raised an objection as to maintainability of this application. Learned Counsel would submit that each and every day's delay has not been explained. He supported the impugned order. In support of his contentions, learned Counsel for respondent no.1 relied on a judgment of Gujarat High Court in the Case of **Kirit Ramnaji Thakore Vs. Vodafone Essar Gujarat Ltd.**, LEX(GJH)2013 3 178.

5. On 01.08.2018, while the order regarding issuance of notice was passed, the point of alternative remedy has been kept open. The petitioner - company, in paragraph 9(VIII) of the petition, has, in unequivocal terms, stated as under :-

VIII) There is an alternate remedy for preferring Appeal against impugned order, but that remedy is not

efficacious and speedy remedy and it will consume time and more so, it is inconvenient to both the parties i.e. petitioner and respondent no.1, because National Consumer Dispute Redressal is at Delhi and as it is not against final judgment of Appeal and it is merely arising out of rejection of delay condonation application, the petitioner is praying to invoke the jurisdiction under Article 226 of the Constitution of India."

6. Mr.Totla, learned Counsel for the petitioner, has relied on the judgment of the Apex Court in the Case of **Maharashtra Chess Association Vs. Union of India and ors.**, [Civil Appeal No.5654 of 2019 @ Special Leave Petition (C) No.29040 of 2018] and a judgment of this Court dated 22.03.2016 in Writ Petition No.3985 of 2012 (Miss. Radhika d/o. Rajesh Mandhani Vs. Dr. Dilip Patwardhan and anr.).

7. I have carefully perused the authorities relied upon by learned Counsel for the petitioner -

company and learned Counsel for respondent no.1. In the case of **Kirit Ramnaji Thakore** (supra), the Division Bench of Gujarat High Court has observed that when the National Consumer Disputes Redressal Commission has jurisdiction to call for the records from the State Commission and to set aside the order containing any perverse findings, if the State Commission has exercised jurisdiction not vested in it by law or has acted in exercise of its jurisdiction illegally or with material irregularity, naturally alternative remedy is available to approach the National Consumer Disputes Redressal Commission and when the said remedy is not exhausted, the act of approaching High Court under Article 226 and 227 cannot be maintainable. The powers of supervision of all judicial authorities within State by the High Court, under the Constitution cannot be acquitted with such power of Revision as it is provided specifically under the statute to the judicial authorities like National Consumer Disputes Redressal

Commission and therefore, it would be patently illegal exercise of jurisdiction by the High Court, if such Writ Petitions are entertained.

8. While, in the case of **Om Prakash Saini Vs. DCM Ltd. and ors., AIR 2010 SC 2608**, the Apex Court has observed that there has to be some justification to make departure from the rule that High Court will not entertain Writ Petition when alternative remedy is available.

9. The judgment of this Court in the case of **Miss. Radhika** (Supra) indicates to have entertained a Writ Petition against the order of the State Commission, Bench at Aurangabad. In the very judgment, a few decisions of this Court have also been referred to, wherein, Writ Petitions under Article 227 of the Constitution of India, have been entertained against the orders passed by the State Commission. The Division Bench of Gujarat High Court in the case of **Kirit Ramnaji Thakore** (supra), in

paragraph 18 of its judgment, observed that the law is well settled by the Apex Court in the aforesaid cases that where the remedy of appeal or revision is available to the party, the High Court should use the power to issue writ of certiorari or supervisory jurisdiction sparingly and only in appropriate cases where the judicial conscience of the High Court dictates it to act lest a gross failure of justice or grave injustice should occasion. Though it is a settled law by the Apex Court that existence of alternative remedy does not affect the jurisdiction of the writ Court but it would be a good ground for not entertaining the petition or the alternative remedy is neither efficacious nor effective.

10. In the case of **Maharashtra Chess Association** (Supra), the Hon'ble Supreme Court has observed as under :-

"12. The role of the High Court under the Constitution is crucial to ensuring the rule of law throughout its

territorial jurisdiction. In order to achieve these transcendental goals, the powers of the High Court under its writ jurisdiction are necessarily broad. They are conferred in aid of justice. This Court has repeatedly held that no limitation can be placed on the powers of the High Court in exercise of its writ jurisdiction. In **A.V. Venketeswaran, Collector of Customs, Bombay Vs. Ramchand Sobhraj Wadhwani, (1962)1 SCR 753**, a Constitution Bench of this Court held that the nature of power exercised by the High Court under its writ jurisdiction is inherently dependent on the threat to the rule of law arising in the case before it:

10... We need only add that the broad lines of the general principles on which the court should act having been clearly laid down, their application to the facts of each particular case must necessarily be dependent on a variety of individual facts which must govern the proper exercise of the discretion of the Court, and

that in a matter which is thus pre-eminently one of discretion, it is not possible or even if it were, it would not be desirable to lay down inflexible Rules which should be applied with rigidity in every case which comes up before the court.

The powers of the High Court in exercise of its writ jurisdiction cannot be circumscribed by strict legal principles so as to hobble the High Court in fulfilling its mandate to uphold the rule of law.

13. While the powers the High Court may exercise under its writ jurisdiction are not subject to strict legal principles, two clear principles emerge with respect to when a High Court's writ jurisdiction may be engaged. First, the decision of the High Court to entertain or not entertain a particular action under its writ jurisdiction is fundamentally discretionary. Secondly, limitations placed on the court's decision to

exercise or refuse to exercise its writ jurisdiction are self-imposed. It is a well settled principle that the writ jurisdiction of a High Court cannot be completely excluded by statute. If a High Court is tasked with being the final recourse to upholding the rule of law within its territorial jurisdiction, it must necessarily have the power to examine any case before it and make a determination of whether or not its writ jurisdiction is engaged. Judicial review under Article 226 is an intrinsic feature of the basic structure of the Constitution.

14. These principles are set out in the decisions of this Court in numerous cases and we need only mention a few to demonstrate the consistent manner in which they have been re-iterated. In **State of Uttar Pradesh Vs. Indian Hume Pipe Co. Limited**, (1977)2 SCC 724, this Court observed that the High Court's decision to exercise its writ jurisdiction is essentially discretionary:

"4. ... It is always a matter of discretion with the Court and if the discretion has been exercised by the High Court not unreasonably, or perversely, it is the settled practice of this Court not to interfere with the exercise of discretion by the High Court."

15. The principle was dwelt upon even prior to this. In **Sangram Singh Vs. Election Tribunal, Kotah, (1955)2 SCR 1**, the court highlighted the discretionary nature of the High Court's writ jurisdiction. The court added that courts had themselves imposed certain constraints on the exercise of their writ jurisdiction to ensure that the jurisdiction did not become an appellate mechanism for all disputes within a High Court's territorial jurisdiction. The court stated:

14... The High Courts do not, and should not, act as courts of appeal under Article 226. **Their powers**

are purely discretionary and though no limits can be placed upon that discretion it must be exercised along recognized lines and not arbitrarily; and one of the limitations imposed by the courts on themselves is that they will not exercise jurisdiction in this class of case unless substantial injustice has ensued, or is likely to ensue. They will not allow themselves to be turned into courts of appeal or revision to set right mere errors of law which do not occasion injustice in a broad and general sense, for, though no legislature can impose limitations on these constitutional powers it is a sound exercise of discretion to bear in mind the policy of the legislature to have disputes about these special rights decided as speedily as may be."

(Emphasis supplied)

The intention behind this self-imposed rule is clear. If High Courts were to

exercise their writ jurisdiction so widely as to regularly override statutory appellate procedures, they would themselves become inundated with a vast number of cases to the detriment of the litigants in those cases. This would also defeat the legislature's intention in enacting statutory appeal mechanisms to ensure the speedy disposal of cases.

....

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21. The mere existence of alternate forums where the aggrieved party may secure relief does not create a legal bar on a High Court to exercise its writ jurisdiction. It is a factor to be taken into consideration by the High Court amongst several factors."

11. As such, the legal position is very much clear that there is no legal bar on High Court to exercise its writ jurisdiction. Now, the question is, whether, in the factual backdrop of this case, this Court shall exercise its writ jurisdiction. The

record indicates that there was 25 days delay in preferring the appeal. The reason cited for the delay is that time consumed in obtaining approval from higherer to prefer the appeal. The Presiding Member of the State Commission observed that nothing is mentioned as to when the papers were forwarded to the higher authority and when consent was received. No chronological development is shown in the application.

12. It needs no mention that the application for condonation of delay needs to be liberally construed. The petitioner - company has deposited the entire claim amount along with interest. The issue involved in this petition is limited, as to whether, the delay occurred in preferring the appeal has been satisfactorily explained. It would also be in the interest of respondent no.1 to entertain this petition, since he is resident of Aurangabad. Approaching the National Consumer Disputes Redressal Commission, Delhi, would be expensive and time

consuming, in view of a small issue as to condonation of delay being involved herein. So as to give an opportunity to the parties and ensure that the matter is decided on its own merits, the petition deserves to be allowed.

13. In the result, the petition succeeds. It is allowed in terms of prayer clause (B). The State Consumer Disputes Redressal Commission shall hear the First Appeal (377 of 2017) on merits. The petitioner – company to pay respondent no.1 Rs.5,000/- towards costs. Rule made absolute accordingly.

[R.G. AVACHAT, J.]