

FARAD CONTINUATION SHEET No.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 7796/2017

(PURUSHOTTAM NARAYAN BHANGE **VERSUS** ADDITIONAL DISTRICT CONSUMER DISPUTES
REDRESSAL FORUM, NAGPUR & ANOTHER)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri B.N. Mohta, counsel for petitioner.
Mrs. K.R. Deshpande, A.G.P. for R-1 & 2.
Shri D.V. Dhondarkar, counsel for R-3 to 8.
Shri Lalit Limaye, counsel for applicant in CAW No.2591/2018.
Shri D. Deshpande, counsel for applicant in CAW No.2771/2018

CORAM : A.S. CHANDURKAR, J.

DATE : APRIL 15, 2019.

By the present writ petition, the petitioner who is a partner of M/s Subhadra Real Estate has challenged the orders passed in proceedings under Section 27 of the Consumer Protection Act, 1986 (for short, 'the said Act') and has also questioned the jurisdiction of the District Consumer Forum to entertain complaints under Section 12 of the said Act.

The principal ground of challenge to the jurisdiction of the District Consumer Forum is that complaints filed under Section 12 of the said Act in respect of sale of plots of land cannot be adjudicated by the Forum in view of the decision in *Ganeshlal Versus Shyam* [(2014) 14 SCC 773]. According to the learned counsel for the petitioner since all the complaints filed before the said Forum relate to agreements for sale of plots of land and it having been held that the District Consumer Forum has no jurisdiction to entertain such complaints, the present writ petition deserves to be entertained without relegating the petitioner to the District Consumer Forum to contest the complaints. It is the further submission that in the light of the law as laid down aforesaid, the

petitioner cannot be directed to avail the statutory remedies provided for under the said Act. By placing reliance upon the decisions in *Municipal Corporation of City of Amravati Versus Ashok Ramkrishna Kamble & Others* [1994 Mh.L.J. 1004], *Whirlpool Corporation Versus Registrar of Trade Marks Mumbai & Others* [AIR 1999 SC 22], *S.Govinda Menon Versus Union of India & Another* [AIR 1967 SC 1274], *Calcutta Discount Co. Ltd. Versus Income-tax Officer, Companies District I, Calcutta & Another* [AIR 1961 SC 372], *Bhargavi Construction & Another Versus Kothakapu Muthyam Reddy & Others* [AIR 2017 SC 4428] and the judgment of the Calcutta High Court in **WP 23027 (W) of 2017** [*M/s Universal Consortium of Engineers (P) Ltd. & Another Versus State of West Bengal & Others*], it was submitted that mere fact that a statutory remedy was available under the provisions of the said Act cannot be a reason not to entertain the writ petition filed under Articles 226 and 227 of the Constitution of India especially when it was the case of the petitioner that the Consumer Forum had no jurisdiction to entertain the proceedings.

Shri D.V. Dhondarkar, learned counsel for respondent nos.3 to 8 who are the complainants before the Consumer Forum opposed aforesaid submissions. Similarly, Shri Lalit Limaye and Shri Deodutt Deshpande, learned counsel who have filed C.A.W. Nos. 2591 of 2018 and 2771 of 2018 respectively on behalf of the other partners of the partnership firm also opposed aforesaid submissions. It was submitted that the contentions as regards lack of jurisdiction of the Consumer Forum to entertain the proceedings can be raised before the said Forum which was competent to adjudicate the same. Referring to the order passed by the Division Bench in **Writ Petition No.2198 of 2016** [*Dyandevi Santosh*

Burewar Versus The District Consumer Disputes Redressal Forum, Nagpur & Others] dated 03.08.2018, it was submitted that after referring to the decision in the case of *Ganeshlal* (supra) the petitioner therein was permitted to raise objection to the jurisdiction of the Consumer Forum and the writ petition was not entertained. It was submitted that the partnership firm that had entered into various agreements with the original complainants comprises of three partners. The petitioner is one of the partners while the intervenors are the other two partners. The intervenors were willing to execute the sale-deeds in terms of the agreements entered into by the partnership firm. The said partners did not intend to join cause with the petitioner and have made statements on oath that said partners were willing to execute sale-deeds in favour of the complainants. In C.A.W. No.2771 of 2018 it has also been stated that the petitioner had executed nineteen sale-deeds in favour of the prospective purchasers of similar properties.

After hearing learned counsel for the parties, it is seen that the agreements in question have been entered into by various complainants with the partnership firm. The present writ petition has been filed only by one partner who seeks to challenge the jurisdiction of the District Consumer Forum. The other two partners who are also the opposite parties in the complaints have sought to intervene in the present writ petition by stating that they were willing to execute sale-deeds in favour of the other complainants. This vital aspect of the matter cannot be ignored while considering the aspect as to whether the petitioner can be permitted to invoke the extraordinary jurisdiction of this Court bypassing the statutory remedies provided under the said Act. There cannot be any quarrel with the proposition that availability of an alternate statutory remedy would not be a bar to exercise writ

jurisdiction. Similarly, absence of jurisdiction of the District Consumer Forum in an appropriate case could be raised as challenge by filing proceedings under Articles 226 and 227 of the Constitution of India. However, when the facts of the case in hand are considered it can be seen that out of the three partners who form the partnership firm, only one partner has preferred to challenge the jurisdiction of the District Consumer Forum to entertain the complaints. The other two partners who form the majority have appeared before this Court and have stated on oath that they are willing to execute the agreements entered into with various complainants. In this factual backdrop, I do not find that the present is an appropriate case to exercise writ jurisdiction and to consider whether the District Consumer Forum lacks jurisdiction to entertain the complaints. On the other hand, it would be open for the petitioner who is only one of the partners of the firm to contest the complaints on merits especially when various factual aspects are involved including the fact that majority of the partners of the partnership firm have not joined the cause with the petitioner.

Hence, for aforesaid reasons, the writ petition is not entertained. It is open for the petitioner to contest the complaints as filed before the District Consumer Forum and raise all permissible defences. If such defences are raised, the consumer shall decide the same in accordance with law. Keeping the points raised in the writ petition open, the writ petition is disposed of. Pending civil applications are also disposed of.

JUDGE