

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

WRIT PETITION NO. 4935 OF 2020

Deelip Vijaykumar Kotecha
Age: 56 years, Occu: Business,
Director of Mahavir Civil Engineering and
Services Private Limited
Office: 131 Khandesh Mill Shopping Complex,
Railway Station Road, Jalgaon 425 001

...Petitioner

Versus

1. The Jalgaon Peoples Co-operative Bank Ltd.,
Jalgaon, Head Office, Jalgaon,
Through its Manager,
152, Polan Peth, Dana Bazar,
Main Branch Jalgaon – 425 001
 2. S. P .M. L. Infra Ltd.,
Through its Authorised Signatory
Shri Sanjaykumar Singh,
F-27/2 Okhla Industrial Area,
Phase-II, New Delhi-110 020
 3. Shri Sunil Manakchand Kotecha
Age: 56 years, Occu: Business,
Director of Siddharth Infratech Pvt.Ltd.,
A-4, 2nd Floor, Plot No. 10/11,
Suman Residency, Ganpati Nagar,
Jalgaon – 425 001.
 4. Shri Chandrakant Baliram Sonawane
Age: 58 years, Occu: Business,
396, Jay Kishan Wadi,
Jalgaon – 425 001
- ...Respondents

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Mr. P. R. Katneshwarkar, Advocate h/f Mr. D. S. Bagul, Advocate for the petitioner

Mr. V. D. Hon, Senior Advocate a/w Mr. A. V. Hon, Advocate for respondent No.1

Mr. L. S. Mahajan, Advocate for respondent No.2

Mr. R.S. Deshmukh, Senior Advocate a/w Mr. Devang Deshmukh, Advocate for respondent No.3

Mr. A. K. Gawali, Advocate for respondent no.4

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**CORAM : S. V. GANGAPURWALA AND
R. G. AVACHAT, JJ.**

JUDGMENT RESERVED ON : 13th AUGUST, 2020

JUDGMENT PRONOUNCED ON : 20th AUGUST, 2020

JUDGMENT (Per R. G. AVACHAT, J.)

. The challenge in this writ petition is to the order dated 15.05.2020, passed by the District Consumer Disputes Redressal Forum, Jalgaon (for short, 'District Forum') in a complaint, being Consumer Complaint No.137 of 2020. By the impugned order, respondent No.1 - The Jalgaon Peoples Co-operative Bank Ltd., has been directed to allow respondent Nos. 2 and 3 and the petitioner, to operate in proportion to their share, the escrow account, pending the hearing of the complaint. It has further been directed that the amount standing credit in the name of the complainant (respondent No.3 herein) in the escrow account be operated under the signature of the Official Liquidator, High Court of Judicature at Bombay.

2. The facts in brief, giving rise to the present petition are as follows:

The petitioner is the original respondent No.2 in the complaint before the District Forum. He claims to be the Director of Mahavir Civil Engineering and Services Private Limited (for short 'Mahavir'). Mahavir is in construction business. Respondent No.3 - the complainant before the District Forum, was the Director of the Siddharth Infratech Private Limited (for short 'Siddharth'). The petitioner and respondent Nos. 2 and 3 herein, formed a joint venture. Siddharth – Mahavir - S.P.M.L. (for short 'joint venture'). A deed of joint venture came to be executed between them. The joint venture was successful in bidding for construction of 132/33 K.V. substation at Nandura @ Yerli (Roti), double circuit transmission 33 K.V. distribution line and allied work of Jigaon project from the Government. An escrow account of joint venture was opened with respondent No.1 Bank. Escrow account agreement was executed between the bank on one hand and all the three parties of the joint venture on the other for operating the current and escrow account. The joint venture subcontracted the said work to Mahavir and Siddharth in equal share. All was well until 31.03.2019. The work

was done smoothly. Due to the financial crises, Siddharth gave consent for pre-closure of sub-contract agreement. It was agreed to sub-contract the said work to Mahavir. Mahavir agreed to takeover all existing liability of mobilisation advance, purchase advance and interest thereof. An additional joint venture deed therefore was executed. According to the petitioner, it was he, who was solely authorized to operate the escrow account after cancellation of the power of attorney executed in his favour and respondent No.3 to operate the said account.

3. In Company Petition No.708/2016 (B.N.C. Power Project Ltd. Vs. Siddharth Infratech Pvt.Ltd.,) this Court at Principal Seat, appointed the Liquidator on Siddharth. The Official Liquidator wrote a letter to the Government Department in December-2019 regarding 53% shares of Siddharth in RA bill and made a demand therefor. He also wrote a letter to the respondent bank to freeze the escrow account. Mahavir filed interim application in Company Petition No.708/2016. On 06.03.2020, the Court recorded minutes of the order and all the letters written by the Official Liquidator were withdrawn.

Respondent No.3 herein, filed a complaint before the District Forum, alleging therein that the dispute arose between him and the petitioner herein. The power of attorney executed in favour of the petitioner was stated to be cancelled and therefore the bank was informed that the petitioner shall not be allowed to operate the escrow account. An apprehension was expressed that the petitioner is likely to transfer the balance amount in the escrow account to his personal account.

4. The complainant asked the bank to give him statement/extract of the escrow account. The bank refused to give the same. The complaint was, therefore, filed against the bank before the District Forum for compensation of Rs.1,00,000/- (Rupees One Lakh) on account of deficiency in services i.e. failure to give account extract. An application for interim relief came to be preferred therein for the reliefs stated herein above.

5. On hearing the parties to the complaint, the District Forum was pleased to allow interim application by passing the impugned order. The petitioner is therefore before this Court.

6. Heard the learned Counsel for the parties, at length. Perused the pleadings and the documents relied upon. We propose to dispose of this writ petition on the ground of there being equally efficacious remedy available to the petitioner. The contentions raised on the merits of the matter, are therefore not adverted to.

Shri R. S. Deshmukh, learned Senior Counsel, Shri Gawali, learned Counsel appearing for respondent Nos. 3 and 4, respectively, would submit that the petitioner has an alternate remedy of appeal to the State Consumer Disputes Redressal Forum (for short 'State Forum') against the impugned order. The present writ petition, is therefore, not maintainable. Both of them, therefore, urged for dismissal of the petition in limine. Shri Gawali, learned Counsel would submit that the petitioner has suppressed very many facts from the petition itself. He has, therefore, become disentitled for the reliefs prayed.

Shri Katneshwarkar, learned counsel appearing for the petitioner, would on the other hand submit that the jurisdiction of this Court under Article 226 of the Constitution of India, is not altogether barred even when there is equal efficacious remedy

available to the petitioner. He has relied upon a Constitution Bench judgment of the Hon'ble Supreme Court of India in the case of *A. V. Venkateswaran, Collector of Customs, Bombay Vs. Ramchand Sobhraj Wadhwani and another* reported in *AIR 1961 SC 1506*. According to him, respondent No.3 has played a fraud on the District Forum. The subject matter of the complaint is worth Crores of rupees. The District Forum has jurisdiction to entertain the complaint, subject matter of which is not more than rupees twenty lakh. The impugned order has been passed beyond the powers of the District Forum. The petition, is therefore, maintainable.

7. Relevant portion of Section 17 of the Consumer Protection Act, 1986, reads as follows:

“17. Jurisdiction of the State Commission – [(1)] Subject to the other provisions of this Act, the State Commission shall have jurisdiction

(a) to entertain -

(i) complaints where the value of the goods or services and compensation, if any, claimed [exceeds rupees twenty lakhs but does not exceed rupees one crore]; and

(ii) appeals against the orders of any District Forum within the State;”

It is clear from Section 17(a)(i) and (ii), that an interim order passed by the District Forum is amenable to the appellate jurisdiction of the State Forum. The learned counsel for the petitioner does not dispute the same.

8. The averments in the petition suggest that the petitioner had instructed his lawyer to approach the State Forum. However, due to Covid-19 pandemic, there was Nation-wise lockdown until 17.05.2020. Nashik, whereat State Forum has seat, was in red zone. The President of the State Consumer Disputes Redressal Forum, Mumbai, had issued circular on 15.04.2020, informing that the State Consumer Forum and the District Forums will remain closed till 31.05.2020 or until the lockdown period is over. Since the impugned order caused great injustice to the petitioner, the writ petition came to be filed. Close reading of the averments made in the petition would indicate that issue of jurisdiction of the District Forum, has faintly been raised. It appears that the learned Single Judge of this Court entertained the writ petition in the aforesaid factual backdrop.

9. It is true that in the case of *A. V. Venkateswaran* (supra), the Constitution Bench of the Apex Court has observed :

“9. the Rule that the party who applies for the issue of a high prerogative writ should, before he approaches the Court, have exhausted other remedies open to him under the law, is not one which bars the jurisdiction of the High Court to entertain the petition or to deal with it, but is rather a Rule which Courts have laid down for the exercise of their discretion. The law on this matter has been enunciated in several decisions of this Court but it is sufficient to refer to two cases: in Union of India v. T.R. Varma Venkatarama Ayyar speaking for the Court said:

“It is well settled that when an alternative and equally efficacious remedy is open to a litigant, he should be required to pursue that remedy and not invoke the special jurisdiction of the High Court to issue a prerogative writ. It is true that the existence of another remedy does not affect the jurisdiction of the Court to issue a writ; but, as observed by this Court in Rashid Ahmed v. Municipal Board, Kairana ‘the existence of an adequate legal remedy is a thing to be taken into consideration in the matter of granting writs’. Vide also K.S. Rashid and Son v. Income Tax Investigation Commission. And where such remedy exists, it will be a sound exercise of

discretion to refuse to interfere in a petition under Article 226, unless there are good grounds therefor.”

There is no difference between the above and the formulation by Das, C.J., in State of Uttar Pradesh v. Mohammad Nooh where he observed;

“..... It must be borne in mind that there is no Rule, with regard to certiorari as there is with mandamus, that it will lie only where there is no other equally effective remedy. It is well established that, provided the requisite grounds exist, certiorari will lie although a right of appeal has been conferred by statute. The fact that the aggrieved party has another and adequate remedy may be taken into consideration by the superior court in arriving at a conclusion as to whether it should, in exercise of its discretion, issue a writ of certiorari to quash the proceedings and decisions of inferior courts subordinate to it and ordinarily the superior court will decline to interfere until the aggrieved party has exhausted his other statutory remedies, if any. But this Rule requiring the exhaustion of statutory remedies before the writ will be granted is a Rule of policy, convenience and discretion rather than a Rule of law and instances are numerous where a writ of certiorari has been issued in spite of the fact that the aggrieved party had other adequate legal remedies.”

10. In the case of *Maharashtra Chess Association v. Union of India and others* reported in 2019 SCC OnLine SC 932, it has been observed thus:

“12. Article 226(1) of the Constitution confers on High Courts the power to issue writs, and consequently, the jurisdiction to entertain actions for the issuance of writs. The text of Article 226(1) provides that a High Court may issue writs for the enforcement of the fundamental rights in Part III of the Constitution, or “for any other purpose”. A citizen may seek out the writ jurisdiction of the High Court not only in cases where her fundamental right may be infringed, but a much wider array of situations.

13. Echoing the sentiments of Lord Coke, this Court in Uttar Pradesh State Sugar Corporation Limited v. Kamal Swaroop Tondon observed that:

“35. It is well settled that the jurisdiction of the High Court under Article 226 of the Constitution is equitable and discretionary. The power under that Article can be exercised by the High Court “to reach injustice wherever it is found.”

11. In the very judgment, it has further been observed thus:

“18. The principle was dwelt upon even prior to this. In Sangram Singh v. Election Tribunal, Kotah 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.”

12. The legal position is clear that the jurisdiction of High Court under Article 226 of the Constitution in appropriate cases is not barred, even when the petitioner has an equally efficacious remedy available in law. It is also well settled that, rule of alternate remedy is rule of self restraint. In cases wherein factual matrix is to be proved, it is appropriate that the appellate forum deals with the same. We are of the view that State Forum, in its exercise of appellate jurisdiction is very much competent to decide question/issue of jurisdiction of the District Forum to entertain the complaint *vis-a-vis* the factual matrix. We do not propose to decide the matter on its merits. The lockdown is gradually relaxed. It is informed that the State Forum has resumed its functioning. The order impugned in this petition is an interim order. Even if the writ petition is disposed of on merits of the matter, the proceedings in the original complaint before the District Forum would go on. The decision that may be passed finally, would always be subject to appeal, if any, that may be filed there against before the State Forum. We therefore propose to relegate the petitioner to the remedy of appeal to the State Forum.

13. In view of the above, the writ petition is disposed of with liberty to the petitioner to approach the State Forum and file appeal. It is also clarified that the State Forum shall consider the time spent in prosecution of the present petition. With a view to enable the petitioner to avail the equally efficacious remedy of appeal, the interim order to continue for a period of next three weeks.

14. In view of disposal of the writ petition, Civil Application No.4420 of 2020 also stands disposed of.

[R. G. AVACHAT, J.]

[S. V. GANGAPURWALA, J.]

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