

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

WRIT PETITION NO.6897 OF 2014

1. Manager,
Parle Products Pvt. Ltd.
North Level Crossing,
Vile Parle (East)
Mumbai-57.

2. Manager
Sujan Food Pvt. Ltd.
M.I.D.C. Pune-Solapur Road,
National Highway No.9, Chincholi,
Solapur.

... Petitioners

Versus

1. Premchand Motichand Bedmutha
Age: Major, Occu: Business,
R/o: Tuljabawani Shopping Centre,
Opposite S.T. Stand, Osmanabad.

2. Proprietor, Nagagaonkar Medical
& General Stores,
Tuljabhawani Shopping Centre,
Opposite S.T. Stand, Osmanabad.

... Respondents

...

Mr. Ankush N. Nagargoje, Advocate for the Petitioners.

Mr. Ostwal Abhaykumar D. a/w Mr. Mohit L. Deoda, Advocate for
Respondent Nos.1 & 2

...

CORAM : NITIN B. SURYAWANSHI, J.

DATE : 3rd January, 2022

ORAL JUDGMENT :

. **RULE.** Rule made returnable forthwith. Heard finally with the consent of the parties.

2. This petition challenges the order of dismissal of appeal filed by the petitioners/appellants in default, passed by the Maharashtra State Consumer Dispute Redressal Commission, Mumbai Circuit Bench at Aurangabad (for short “the Commission”). While dismissing the appeal, the Commission observed that, the copy of judgment impugned before the Commission was perused, so also copies of complaint, written version and other documents and the Commission found that the impugned judgment and order is just legal and proper. Hence, on any count, appeal deserves to be dismissed and accordingly, it is dismissed.

3. Heard the learned advocate for the petitioners and the learned advocate for the respondents.

4. The learned advocate for the petitioners submits that, the impugned order cannot be sustained as the same is in violation of principles of natural justice. He further submits that even the pleadings of the parties were not complete before the Commission and the Commission has erred in dismissing the appeal without giving an opportunity of hearing to the petitioners.

5. The learned advocate for the respondents, on the other hand, vehemently opposed the prayer of the petitioners contending that the petitioners have a remedy of appeal before the National Commission and therefore, the petition may not be entertained. By placing reliance

in **Cicily Kallarackal Vs. Vehicle Factor** reported in **(2012) 8 SCC 524**, he submitted that, this Court may not exercise the jurisdiction under Article 226 of the Constitution of India to entertain the present challenge, as the petitioners have an alternate remedy of appeal.

6. I have given anxious consideration to the rival submissions advanced by both the parties. Perused the record. It is clear from the impugned order that, the Commission has dismissed the matter in default. Admittedly, pleadings before the Commission were not complete. In this view of the matter, though the Commission has observed that, record was perused, so also the judgment impugned, that by itself is not sufficient compliance of principles of natural justice. The appeal is a statutory remedy available to the appellants/petitioners and the Commission ought to have given fair opportunity of hearing to the parties. The impugned order is, therefore, vitiated for violation of principles of natural justice.

7. The Kerala High Court entertained a writ petition against the judgment and order passed by the National Consumer Disputes Redressal Commission. In these facts, in *Cicily Kallarackal (Supra)*, the Supreme Court held that, when a statutory remedy of appeal in terms of Section 27-A (1)(c) lies before the Supreme Court, the High Court was not right in exercising its jurisdiction under Article 226 of the Constitution of India. The facts of case in hand are different.

8. In Writ Petition No.3985/2012, the learned Single Judge of this Court [Coram: Ravindra V. Ghuge, J.] has allowed the petition in similar facts.

9. In **R. B. Upadhyay Vs. State Commission for Consumer Disputes Mumbai** reported in **AIR 2010 Bombay 139**, the Hon'ble Supreme Court held that;

“Thus from the clear and literal language of Section 21 (b) the revisional jurisdiction can only be if a consumer dispute is pending before or has been decided by the State Commissioner. In other words the National Commission would have no jurisdiction if the order is passed in exercise of the Appellate power or Revisional jurisdiction exercised by the State Commission under Section 17(b). The power under Section 21(b) is in respect of a complaint filed before the State Commission. In our opinion, therefore, the first contention as urged is devoid of merit.”

10. In view of the above ratio, it is clear that, the National Commission has no jurisdiction if the order is passed in exercise of the Appellate power or revisional jurisdiction exercised by the State Commission. The contention of the respondents that appellate remedy is available to the petitioners and is liable to be rejected.

11. Since in the present case, the appeal is dismissed for non appearance of the petitioners/appellants, though the pleadings of the parties were not complete before the Commission, the impugned order is unsustainable.

12. For the aforesaid reasons, writ petition is allowed. The impugned order dated 02/06/2014 passed by the Maharashtra State Consumer Dispute Redressal Commission, Mumbai, Circuit Bench at

Aurangabad, is hereby quashed and set aside. First Appeal No.313/2009 is restored. Parties are directed to appear before the State Commission on 15/02/2022.

13. Rule is made absolute in the above terms with no order as to costs.

(NITIN B. SURYAWANSHI, J.)

Sameer