

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

WRIT PETITION NO.13440 OF 2017

Prabhakar Indrabhan Tambe = **PETITIONER**

VERSUS

1. The Divisional Manager,
Non-suit Claim Hub,
The New India Assurance
Co.Ltd.,Aurangabad = **RESPONDENT**

Mr.Amol A.Kokad,Advocate for Petitioner;

Mr.MR Deshmukh, Advocate for Respondent

CORAM : SMT. BHARATI H.DANGRE,J.

DATE : 25th January, 2022.

PER COURT :-

1. Heard learned Counsel for petitioner and
learned Counsel for Respondent.

2. Being aggrieved by the decision of
Maharashtra State Consumer Dispute Redressal
Commission, Mumbai, Circuit Bench at Aurangabad in
First Appeal No.925/2016, the petitioner has
approached this Court.

3. The appeal is dismissed on account of its
non-prosecution by recording that since last two
dates the appellant did not remain present himself
before the Commission and even a copy of
compilation is not provided to the respondent.

Hence, the appeal is dismissed.

4. Learned Counsel for the respondent has placed reliance upon decision of the Apex Court in the case of CICILY Kallarackal Vs. Vehicle Facktory, - (2012) 8 SCC 524, wherein the Hon'ble Apex Court, in Para 4, has laid down the proposition of law to the following effect, -

"4. Despite this, we cannot help but to state in absolute terms that it is not appropriate for the High Courts to entertain writ petitions under [Article 226](#) of the Constitution of India against the orders passed by the Commission, as a statutory appeal is provided and lies to this Court under the provisions of the [Consumer Protection Act](#), 1986. Once the legislature has provided for a statutory appeal to a higher court, it cannot be proper exercise of jurisdiction to permit the parties to bypass the statutory appeal to such higher court and entertain petitions in exercise of its powers under [Article 226](#) of the Constitution of India. Even in the present case, the High Court has not exercised its jurisdiction in accordance with law. The case is one of improper exercise of jurisdiction. It is not expected of us to deal with this issue at any greater length as we are dismissing this petition on other grounds."

5. The aforesaid authoritative verdict of the Apex Court makes it clear that when the legislature has provided a statutory appeal, the High Court, in the wake of doing justice, bypassing the statutory appeal, cannot entertain a writ

(3)

petition. The Counsel is unable to persuade me to take a view otherwise only on the basis of his arguments that the dismissal of the appeal was not on merit but on technical grounds as the appeal is dismissed in default. In any case, even if it is so, if he is aggrieved by the decision passed by the State Consumer Redressal Forum, the appeal available under the Consumer Protection Act is before the National Consumer Disputes Redressal Commission. As far as the contention of the counsel for the petitioner that power of review has now become available to the Maharashtra State Consumer Disputes Redressal Commission, in the wake of the amendment in the statute in the year 2019, if such remedy is available, it is for him to exhaust the remedy. However, the writ petition, which is completely prohibited in the wake of the statutory scheme, cannot be entertained and is dismissed.

(SMT. BHARATI H.DANGRE,J.)