

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO. 460 OF 2022

Nagesh Narayan Marathe and Ors

...Petitioners

Versus

The State of Maharashtra and Ors.

...Respondents

Mr Ajit D. Hon, for the Petitioners.

Mrs P.P. Shinde, A.P.P for Respondent – State.

Mr Nilesh Wable, for Respondent No.2.

**CORAM: REVATI MOHITE DERE &
GAURI GODSE, JJ.**

DATE : 6th JUNE 2023

ORDER (*Per Gauri Godse, J.*)

1. This Petition is filed to challenge the order dated 1st October 2021 passed on an application filed by Respondent Nos. 2 and 3 in an appeal bearing number FA/21/428 as well as to challenge the order dated 6th October 2021 passed in Review Application bearing No. RA/21/30 passed by the State Consumer Redressal Commission, Maharashtra, Mumbai. By the impugned order dated 1st October 2021 Application filed by Respondent No.3 is allowed, and the order of

conviction passed by the District Consumer Redressal Forum, Maharashtra, Pune, in execution, proceedings is suspended, and Respondent No. 3 is released on bail. Petitioners had filed the said Review Application seeking review of the said order dated 1st October 2021. By the impugned order dated 6th October 2021, Review Application filed by the Petitioners was rejected.

2. Petitioners had filed the complaint before the Consumer Redressal Forum against Respondent Nos. 2 and 3, complaining about a deficiency in service regarding a flat. The said complaint was partly allowed, and Respondent Nos. 2 and 3 were directed to comply with the terms and conditions entered into by the parties and to pay compensation to the Petitioners. The Petitioners had filed an Appeal before the State Consumer Redressal Commission, Maharashtra, Mumbai bearing No. FA/2006/1964. The said Appeal was allowed on 24th April 2016, and compensation awarded to the Petitioners was enhanced. Petitioners filed an execution application which was allowed on 15th March 2021, and Respondent No. 2 was directed to

deposit the fine of Rs. 10,000/- and Respondent No.3 was sentenced to suffer simple imprisonment for a period of one year. Respondent Nos. 2 and 3 filed First Appeal bearing No. FA/21/428, before the State Consumer Redressal Commission, Maharashtra, Mumbai, for challenging the order dated 15th March 2021.

3. Petitioners had filed a Miscellaneous Application before the District Commission seeking issuance of a warrant of conviction against Respondent Nos. 2 and 3. Since there was no order passed, suspending the sentence against Respondent No.2, the warrant of conviction was executed, and Respondent No.2 was taken into custody and sent to Yerwada Central Prison, Pune. Thereafter, by Order dated 1st October 2021, the Application filed by Respondent Nos. 2 and 3 was allowed, and the sentence of conviction against Respondent No.2 was suspended, and he was released on bail.

4. Learned Advocate for the Petitioners submitted that the order dated 1st October 2021 passed by a learned single member of the State

Commission was beyond jurisdiction as the learned single member is appointed as an expert member and not a judicial member. Hence, the order impugned in Writ Petition is passed without following the principle of natural justice. Learned Advocate further submitted that the constitution of a bench comprising of Single Member to hear an Appeal against the conviction is bad in law and against the provision of the Consumer Protection Act 2019. Learned Advocate, therefore, submitted that the impugned order suspending the sentence against Respondent No.3 and releasing him on bail is without jurisdiction. He further submitted that the Review Application is rejected without considering the objections raised by the Petitioners regarding the jurisdiction of the learned single member bench deciding the Application for suspension of sentence.

5. The learned Advocate appearing for Respondent Nos. 2 and 3 submitted that the present Writ Petition is not maintainable as the Petitioners have an alternate remedy under the provisions of the Consumer Protection Act, 2019, by approaching the National

Consumer Dispute Redressal Commission.

6. Learned Advocate appearing for the Petitioners was unable to point out as to why the orders impugned in the Petition cannot be challenged by adopting an appropriate remedy under the provisions of the Consumer Protection Act, 2019. In view of the provisions of the Consumer Protection Act, 2019 and in particular, Section 58, in our view the Petitioners have an efficacious alternate remedy available. Hence, we do not find any reason to entertain the Petition. The Petition is dismissed as not maintainable. We make it clear that we have not expressed any view on merits and all the contentions of both the parties are kept open. The Petitioners are at liberty to adopt appropriate alternate remedy as permissible in law.

GAURI GODSE, J.

REVATI MOHITE DERE, J.