IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

# WRIT PETITION NO.2591 OF 2020

(MANGESH MADHUKAR KATARKAR...VS.. M/S. SAHARA INDIA INVESTMENT CORPN.& OTH.)

| Office Notes, Office Memoranda of Coram, appearances, Court's orders of directions and Registrar's orders | Court's or Judge's orders |
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Shri Rahul Tajne, Advocate for Petitioner.
Shri Kunal Nalamwar, Advocate for Respondent No.3.

**CORAM : ANIL S. KILOR, J.**
**DATED : JANUARY 31, 2023.**

1. The learned counsel for the petitioner seeks permission to delete name of Respondent No.2.

2. Permission is granted at the risk of the petitioner. Necessary correction be carried out forthwith.

3. Heard.

4. In this petition the order dated 03/12/2019 dismissing the complaint in default passed by State Consumer Disputes Redressal Commission, Nagpur is under challenge.

5. The learned counsel for the respondent No.3 strongly opposed the present petition on the ground that alternate remedy is available to the petitioner by way of an appeal before the National Consumer Commission.

6. In reply to the same, the learned counsel for the petitioner has cited following judgments of the coordinate Bench of this Court entertaining the writ petition against the similar order :

(i) *Virumal ..vs.. S.H. & R. Centre*, reported in **2005(3) Mh.L.J. 671**

(ii) *Arun ..vs.. Sangmeshwar T.A.D.*, reported in **2014(4) Mh.L.J. 757**.

(iii) Judgment and order dated 08/03/2017 in the case of *Dr. Babasaheb Ambedkar Urban Co-operative Bank Ltd. ..vs.. The State Consumer Disputes Redressal Commission & oth*, in **Writ Petition No.1184/2016.**

7. The Coordinate Bench of this Court in *Virumal* (supra) has observed thus:

"*9. After hearing the parties, it is to be noted that the provisions of Section 15 of Consumer Protection Act, 1986, provide for a remedy of appeal before the State Commission. The appeals are provided against the order passed by the District forums. The provisions of Section 20 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (hereinafter referred to as Recovery of Debts Act) also provide for appeal to the Appellate Tribunal. Section 20(1) also uses word "order" only. This section has been interpreted by the Division Bench of this Court in 2004(4) Mh.L.J. 1006 (supra). The Debts Recovery Tribunal Pune, vide its order dated 16-6-2003 allowed the Central Bank of India to lead secondary evidence and respondent Nos. 1 & 2 i.e. the Debtor challenged said order before the Debts Recovery Appellate Tribunal in appeal. The Appellate Tribunal on 10-2-2004 allowed the said appeal. The High Court has considered said provision and has found that the appeal contemplated by Section 20(1) of Recovery of Debts Act, will not lie unless the impugned order formally adjudicates or affects the rights of parties. It is held that an appeal against the order which is merely a procedural order could not lie under that* *section. The order passed by the Debts Recovery Tribunal, Pune, was to be procedural order and it was held that the appeal could not lie under Section 20(1) of Recovery of Debts Act. This view has been taken after placing reliance upon the judgment of the Apex Court in the case of one Central Bank of India Ltd. v. Gokal Chand, reported at A.I.R. 1967 S.C. 799, where the Apex Court was considering the provisions of Section 38 of Delhi Rent Control Act which uses the word "every order of controller made under this Act." and the Hon'ble Apex Court said that though these words are very wide, they do not include interlocutory orders which are merely procedural and do not affect the rights and liabilities on of the parties.*

*10. Section 15 of the Consumer Protection Act, 1986, reads as under:*

> *"15. Appeal - Any person aggrieved by an order made by the District Forum may prefer an appeal against such order to the State Commission within a period of thirty days from the date of the order. In such form and manner as may be prescribed:*
>
> *Provided that the State Commission may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that there was sufficient cause for not finding it within that period:*
>
> *Provided Further that no appeal by a person, who is required to pay any amount in terms of an order of the District Forum, shall be entertained by the State Commission unless the appellant has deposited in the prescribed manner fifty per cent of that amount or twenty-five thousand rupees, whichever is less.)"*

*Under the circumstances, it is apparent that the provisions of Section 15 also use the word "order" and therefore, it follows that the orders which are in any way adjudicate the rights of the parties or affect their interest can only be subjected to appeal under Consumer Protection Act, 1986. As the impugned order dated 31-1-2004 passed by the District forum does not in any way decide either the rights or liabilities of any of the attesting parties, no appeal is provided against it. It is further apparent that it is only a procedural order. The rulings on which reliance has been placed by Shri Solat, Advocate for respondents No. 1 & 2 have not considered this issue at all. Insofar as the judgment of Madras High Court reported at 2001(1) C.P.R. 589 (supra) is concerned, it appears that writ petition has been held to be not maintainable because the Cooperative Bank which approached the High Court in writ petition could have filed appeal before the National Forum under Section 21 of Consumer Protection Act. The discussion does not reveal whether the order is either interim or final. The ruling of the Calcutta High Court reported at 1996(2) C.P.R. 129 lays down that appeal under Section 21 of the Consumer Protection Act, is available not only against the judgment but also against the order. It appears that the Consumer forum has taken cognizance of the complaint of medical negligence and concerned doctor filed writ petition before the Calcutta High Court complaining that the complaint does not disclose any cause of action. The learned Single Judge has held that against order issuing said notice passed by the State Commission, remedy of appeal was available. The argument that the remedy of appeal was not available against an interlocutory order was negatived by placing reliance upon Section 17 of the Consumer Protection Act, 1986. However, the issue as is considered by the Division Bench of this Court in 2000(4) Mh.L.J. 1006 (supra) has not been considered by the learned Single Judge of the*

> *Calcutta High Court. The Allahabad High Court in 1998(3) C.P.R. 356 has considered the petition which was filed agaisnt an order passed by the Civil Judge, Junior Division Allahabad, in execution and the order of District Consumer Forum as also the order of State Commission. In para 4, however, Allahabad High Court has observed that the order dated 14-5-1998 passed by the State Commission is interlocutory order, not appealable to the National Commission under Section 19 of the Act. The facts discussed above also reveal that the coordinate Bench i.e. Additional District Consumer Redressal Forum, Nagpur, on 11-5-2004 in Complaint No. 80 of 2003 called for expert opinion from the Dean, Medical College, Nagpur, and for that purpose, forwarded the complaint and case before it to the Dean for obtaining his expert opinion. The expenses for that purpose were ordered to be borne by the complainant and same view could have been taken even by the District Forum which has passed the impugned order on 31-1-2004. The reason assigned that there is no machinery is totally irrelevant and it is not possible to sustain the said order. Even otherwise, considering the prayer made and the facts that other local doctors are not in a position to give any opinion in the matter of present petitioner, it will be in the fitness of things to forward his case to the Civil Surgeon, Nagpur, for medical expert opinion. At the same time, it will not be proper to ask him to go to Mumbai to file appeal against such order and to obtain the same relief."*

8. Considering the above referred observations of the Co-ordinate Bench of this Court, I am of the opinion that the present petition needs to be allowed, however, subject to costs.

9. The learned counsel for the petitioner, on instructions, undertakes to attend the case on every date unless there is any unavoidable circumstances.

10. Thus, considering the undertaking given by the petitioner and considering the nature of the dispute and the above observations of the coordinate Bench of this Court, I am of the opinion that the petitioner should get opportunity to pursue his case. Accordingly, I pass the following order:

i) The writ petition is allowed.

ii) The impugned order dated 03/12/2019, passed by State Consumer Disputes Redressal Commission, Nagpur is hereby quashed and set aside, subject to payment of costs of Rupees Ten Thousand, to be paid by the petitioner to respondent No.3, within three weeks from today and the receipt of the same shall be filed in the Registry of this Court within one week thereafter.

iii) The proceedings before the State Commission is restored to its file.

iv) Both the parties shall appear before the State Consumer Disputes Redressal Commission, Nagpur on 1st March 2023 at 11:00 a.m.

The Writ Petition is **disposed of** accordingly. No order as to costs.

**JUDGE**

*RRaut..*