

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

WRIT PETITION NO.6808 OF 2015

The Latur District Central Cooperative Bank,
Through its Managing Director,
Shri Hanmant s/o Jaisingrao Jadhav,
Age 56 years, Occu. Service,
r/o. LDCC, Head Office, Main Road, Latur,
District Latur.

...PETITIONER

VERSUS

The Maharashtra State Cooperative
Housing Finance Crop Ltd., Mumbai
Through its District Manager,
Tapadia Market, Latur Dist. Latur.

...RESPONDENTS

...
Mr. Pawan Lakhotiya h/f Mr. Amit S.Deshpande,
Advocate for Petitioner.
Mr.A.R.Nikam, Adv., for Respondent / Sole

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CORAM: P.R.BORA, J.

DATE : December 1st, 2015

ORAL JUDGMENT:

1. Learned Counsel appearing for the petitioner seeks leave to amend the petition, as well as the prayers in the petition. Prayer granted. The amendment be carried out forthwith.

2. Heard. Rule. Rule made returnable and

heard forthwith with the consent of respective learned Counsel.

The respondent herein had filed a complaint before the District Consumer Redressal forum, Latur. The said complaint was allowed by the District Forum against which an appeal was preferred by the petitioner before the State Consumer Disputes Redressal Commission. The appeal so filed by the petitioner came to be dismissed for default vide order passed by the State Commission on 3.5.2012. The said order was challenged by the petitioner by filing Writ Petition No.1308/2013. The writ petition so filed by the petitioner was allowed on 13.6.2013. While allowing the said writ petition, this Court had directed the petitioner to pay costs of Rs.5,000/- to the respondent within the period of three weeks from the date of order and subject to deposit of the said amount, the appeal preferred before the State Commission was directed to be restored to its original file.

3. Learned Counsel for the petitioner submitted that accordingly, within the stipulated period, the petitioner deposited the costs of Rs.5,000/- in the State Commission on 26.6.2013. Learned Counsel further submitted that, however, this fact could not be brought to the notice of the State Commission on 17.06.2014, when the appeal was fixed for hearing and, in such circumstances, the State Commission, again, dismissed the appeal so filed by the petitioner for not depositing the amount of costs. Learned Counsel further submitted that immediately

thereafter an application was preferred before the State Commission praying for recall of the said order dated 17.6.2014. However, vide order passed on 5.9.2014, the State Commission dismissed the said application stating that the Commission has no jurisdiction to restore, modify, or set aside its own order. Learned Counsel, in the circumstances, prayed that the petition so filed by the petitioner Bank be allowed and by setting aside the orders dated 5.9.2014 and 17.6.2014, the appeal preferred before the State Commission be restored and be directed to be heard on merits. Learned Counsel for the petitioner further submitted that the petitioner undertakes to proceed with the appeal, after it is restored to original file, expeditiously, and without seeking any adjournment.

4. Shri A.R.Nikam, learned Counsel appearing for the respondent, has strongly opposed for entertaining the request of the petitioner. Learned Counsel submitted that on 17.6.2014, the appeal was dismissed not only for failure on the part of the petitioner to deposit the amount of costs but also for the reason that nobody was present on behalf of the petitioner even on that date. In the circumstances, learned Counsel submitted that petitioner has not made out any case for granting any relief in his favour.

5. I have carefully considered the submissions advanced on behalf of the parties and perused the impugned orders. It seems that on 17.6.2014, nobody

was present on behalf of the petitioner i.e. the appellant therein before the State Commission and, as such, the fact that the cost has already been deposited could not be brought to the notice of the State Commission and, in the circumstances, the order came to be passed dismissing the appeal in default.

6. The record shows that an effort was made by the petitioner to get aforesaid order recalled by filing an application therefor, bringing to the notice of the State Commission that the cost, as directed by the High Court has already been deposited within the stipulated period. The State commissioner, however, has dismissed the said application stating that it has no power to restore, modify or set aside its own order. The petitioner has, therefore, invoked the jurisdiction of this Court seeking quashment of both the aforesaid orders; first, dated 17.6.2014 and the subsequent dated 5.9.2014.

7. The petitioner has filed on record copy of the receipt evidencing the deposit of the cost amount of Rs.5,000/- by it in the State Commission on 26.6.2013. The order in Writ Petition No.1308/2013 was passed on 13.6.2013 and the petitioner was expected to deposit the costs within the period of three weeks from the said date as directed by this Court. The petitioner has thus deposited the cost amount within the period stipulated in the order passed by the High Court.

8. The order passed by the State Commission on 17.6.2014 shows that non deposit of the amount of Rs.5,000./- was held to be the default committed by the petitioner and the appeal was dismissed on the said ground. From the material on record now it has become quite clear that the petitioner had already deposited the cost and there was no default on the part of the petitioner in that regard. The appeal, therefore, ought not have been dismissed on that ground. In the order dated 5.9.2014, the State Commission has also accepted the fact of deposit of the amount by the petitioner within the period stipulated therefor. It has, however, rejected the application as stated here-in-above for the reason that it has no power to modify its own order.

9. In the above circumstances, both the orders impugned in the present petition deserve to be set aside and the petitioner needs to be granted an opportunity to contest the appeal filed by it on merits. However, it also cannot be ignored that, on the given date if the petitioner or its Counsel would have remained present before the State Commission and pointed out the fact of depositing the amount, the factually incorrect order might not have been passed by the State Commission. In the circumstances, the demand made by the respondent to impose certain costs on the petitioner deserves to be considered. Hence, the following order:

ORDER

a) The writ petition is allowed.

b) The orders dated 17.6.2014 and 5.9.2014 passed by the Maharashtra State Consumer Disputes Redressal Commission, Mumbai, Circuit Bench, at Aurangabad, impugned in this petition, are quashed and set aside subject to costs of Rs.5,000/- (Rs. five thousand) to be deposited by the petitioner in the State Commission within two weeks from the date of this order.

c) On depositing of the costs by the petitioner, the First appeal No.347/2011 shall stand restored to its original file and the State Commission may hear the appeal on its own merits.

d) The respondent is entitled to withdraw the aforesaid costs.

Rule is made absolute in aforesaid terms.

(P.R.BORA)
JUDGE

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AGP/6808-15wp