

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

WRIT PETITION NO. 9793 OF 2014

Shivaji s/o Rangnath Khilari,
Age: 51 years, occup. Agriculturist,
R/o Kharwandi, Tq. Newasa, Petitioner/
Dist. Ahmednagar Orig. complainant

versus

1. The Manager,
Wasan Automobiles,
at Sahayadri Chowk, MIDC,
Nagapur, Tq. and Dist. Ahmednagar

2. Mahindra & Mahindra Ltd.,
Aakurdi road, Kantiwali Estate,
Mumbai - 400 101
Respondents

Mr. Abhijeet C. Darandale, Advocate for petitioner
Mr. S. L. Bhapkar, Advocate for respondent no. 1

CORAM : SUNIL P. DESHMUKH, J.
27TH JULY, 2015

Oral judgment:

1. Rule. Rule made returnable forthwith and heard the parties finally, by consent.

2. Petitioner is the original opponent in complaint bearing number 517 of 2009 before the District Consumer Redressal Forum, Ahmednagar. The complaint appears to have been allowed on 19-12-2009 aggrieved by which, appeal bearing first

appeal number 67 of 2010 had been preferred before the State Consumer Disputes Redressal Commission, Aurangabad.

3. The appeal had been pending since 2010. It appears that on 05-02-2014 which was the adjourned date, the appeal came to be dismissed for want of appearance on behalf of the appellant-present petitioner. An oral application appears to have been made on the very day, requesting for restoration of appeal. However, request had not been considered.

4. Mr. Darandale, learned counsel appearing for the petitioner places reliance on series of orders passed by this court in the matters which come close to the present matter and also a decision of Division Bench reported in *Maharashtra University of health Science vs. Sachin Manohar Nagapure* reported in *2013 (6) ALL MR 607* which, on facts, comes closer to the case in hand.

5. On the other hand, Mr. Bhapkar, learned counsel appearing for respondent no. 1, refers to an order passed in writ petition no.3985 of 2012 dated 08-04-2013 wherein learned single judge of this court had opined that in view of section 21 of the Consumer Protection Act, 1986, he was not inclined to entertain the writ petition.

6. Mr. Darandale, learned counsel appearing for petitioner, relying on aforesaid judgment of a division bench of this court, submitted that this court has ample powers under articles 226 and 227 of the Constitution of India to remedy the situation which would otherwise cause hardship, inconvenience and difficulties to litigating parties. He submits that in this case, there has been application to seek restoration of appeal but the same has been considered.

8. Looking at aforesaid, I would prefer to follow the course as in the orders passed in writ petitions no. 2190 of 2013, 6384 of 2012, 397 of 2013 and 9987 of 2012.

9. Taking into account aforesaid, I deem it appropriate to set aside the impugned order. Accordingly, impugned order dated 05-02-2014 is set aside and the appeal bearing no. 67 of 2010 is restored to its position as had been subsisting immediately before impugned order dated 05-02-2014, on the condition that the petitioner shall deposit an amount of Rs.5,000/- as costs in the State Commission in the appeal within a period of six weeks from today and the same shall be a condition precedent. The amount of costs shall be payable to the original complainant. Parties agree to appear before the State Consumer Redressal

Commission, Aurangabad Bench on 14-10-2015 in order to obviate issuance of further notice by the Commission. Petitioner is at liberty to deposit costs before said date.

10. Rule is made absolute in aforesaid terms. Writ petition stands disposed of as such.

SUNIL P. DESHMUKH, J.

pnd