

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 11173 OF 2014

The Manager,
Parshwanath Sahakari Bank Ltd.
Kolhapur & Ors.

.. Petitioners

vs.

Sou. Shobha Manohar Patil & Anr.

.. Respondents

Mr. A. M. Kulkarni for Petitioners.
None for Respondents.

CORAM : M. S. SONAK, J.
DATE: 13 JANUARY 2015

P.C. :-

1] The learned counsel for the petitioners has filed affidavit of service from which it is clear that the respondents have been served.

2] This petition is directed against the order dated 7 November 2014, made by the State Commission, under the Consumer Disputes Act, 1986, declining to recall the order dismissing the petitioners first appeal no.A/99/2208 for default. The impugned order, which is self explanatory reads thus :

"After the matter was taken out from sine-die list notices were issued to both the parties. Notices issued to the parties have been duly served as per postal

acknowledgements received. None appeared for the parties. Hence, appeal is dismissed for want of prosecution.

Later on Advocate Mr. Sarthak Diwan appears for the appellant and requests for recall of the order. His request is rejected as order passed cannot be called."

3] From the aforesaid, it is apparent that the matter was placed for *sine die* list and thereafter notices were issued to the parties to attend on 7 November 2014. It is the case of the petitioners that there was some confusion with regard to the Member to which the matter was assigned and accordingly the petitioners' Advocate reached slightly late. The matter was mentioned on the same day with a plea for recall of the order dismissing the appeal for default. However, in view of the law laid down by the Supreme Court in the case of ***Rajeev Hitendra Pathak & Ors. vs. Achyut Kashinath Karekar & Anr.***¹, it is possible that the State Commission might have felt itself disabled from recalling the order dismissing the appeal for default.

4] This Court, in almost identical circumstances in its **judgment and order dated 2 April 2014**², after relying upon several earlier precedents has held that in such circumstances, if sufficient cause

1 2011 (9) SCC 541

2 Writ Petition No. 10144 of 2013 (Arun s/o. Sudamrao Modale vs. Sangmeshwar Tractor)

is shown, this Court would set aside orders made by the State Commission dismissing appeals for default and restore the matter before the State Commission for a decision on merits. In the present case, sufficient cause has been shown by the petitioners and therefore there can be no difficulty in following the course of action laid down by this Court. The impugned order dated 7 November 2014 is accordingly set aside and the petitioners' first appeal is restored to the State Commission for decision in accordance with law and on its own merits.

5] As a precondition for said restoration however, the petitioners shall deposit with the State Commission the entire amount, which the petitioners were directed to pay under order dated 2 November 1999 made by the District Consumer Redressal Forum, which forms the subject matter of the appeal before the State Commission, within a period of four weeks from today. It is clarified that in case the petitioners have already deposited this amount before the Consumer Forum or the State Commission, then there shall be no necessity to make such deposit twice over. Upon deposit, such amount shall be duly invested and the same shall abide the final result of the appeal.

6] The petitioners to appear before the State Commission on 21 January 2015 at 11.00 a.m. and obtain further directions in the matter.

7] In view of the direction to deposit, the interim protection granted to the petitioners by this Court shall continue until the disposal of the appeal by the State Commission. However, in case the petitioners have not deposited the amount in terms of the order of the District Forum or fail to make a deposit in terms of the directions herein above, such interim protection shall not be available and the appeal itself stand dismissed. This is because the order of restoration now made is conditional upon deposit as per the orders of the District Forum.

8] The petition is disposed of in the aforesaid terms.

(M. S. SONAK, J.)

Chandka