

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

WRIT PETITION NO. 5120 OF 2015

Pratap S/o Ram Patil,
Age: 30 years, Occu :LIC Agent,
R/o : Sant Dnaneshwar Nagarbdhind
Guru Hotel, Rajiv Gandhi Chowk, Latur,
Tq. Dist. Latur .

...PETITIONER
(Ori. Complainant)

versus

Dr. Venkat Pandurang Yelale,
Age: Major, Occu.: Doctor,
R/o Yelale Hospital, behind
Muktai Mangal Karayalaya,
Ambejogai Road, Latur,
Tq. Dist. Latur

...RESPONDENT
(Ori. Respondent)

.....
Mr. Hanmant V. Patil, Advocate for petitioner
Mr. S.S. Panale, Advocate for respondent
.....

CORAM : SUNIL P. DESHMUKH, J.

DATED : 14th MARCH, 2016.

ORAL JUDGMENT :-

1. Rule. Rule made returnable forthwith and with consent of learned advocates for parties heard, finally.

2. Present writ petition has been moved against orders dated 07-04-2015 passed by Presiding Member, Maharashtra State Consumer Disputes Redressal Commission, Maharashtra State, Circuit Bench at Aurangabad, whereunder revision petition no. 05 of 2015 came to be dismissed in default observing that no report about service to the other side had been produced and the petitioner or his counsel had not been present. It appears that immediately thereafter, an application had been moved for recall of said order and restoration of revision petition

no. 05 of 2015. However, on the very same day, said application came to be rejected holding that the commission has no power to set aside its own order of dismissal.

3. Learned counsel for petitioner earnestly requests to take sympathetic, lenient and compassionate view while considering the matter taking into account that the revision petition for the first time had appeared before the commission on 07-04-2015 after issuance of notice and on the very day little delay had been caused under the circumstances referred to in the petition, and impugned order came to be passed just few minutes before counsel making it before the commission. Immediately measures had been taken to have the impugned order set aside, yet said request also had not been acceded to.

4. Learned counsel for petitioner relies on order dated 25th April, 2013 in writ petition No. 2190 of 2013 of this court in the case of *Mahadev Shankarappa Here Vs. The New India Assurance Company Ltd.* as well as a decision in case of *Arun Sudamrao Modale Vs. Sanmeshwar Tractor Authorized Dealer Ahmedpur and another* reported in 2014(4) Mh.L.J. 757. With reference to the same, learned counsel states that in quite a few matters as have been referred to in the reported decision, this court has taken a view that having regard to circumstances, such orders as impugned in present writ petition can be set aside.

5. Learned counsel Mr. Panhale, appearing for respondent, however, purports to oppose request on behalf of the petitioner and he

refers to a decision in the case of *Cicily Kallarackal Vs. Vehicle Factory*, reported in 2012(8) SCC 524. The Supreme Court perhaps facing situation when High Court had decided the matter in spite of statutory appeal having been provided against decision in consumer disputes. In the context of that case, it had been observed by the Supreme Court that it is not appropriate for High Court to entertain in respect of such orders against statutory remedy is provided under Consumer Protection Act. So far as nature of order with which present petition is concerned, such situation does not appear to have been before the Supreme Court.

6. Having regard to the situation, interest of justice can be met with in present case by following order dated 25th April, 2013 in writ petition No. 2190 of 2013 of this court in the case of *Mahadev Shankarappa Here Vs. The New India Assurance Company Ltd.* as well as in the matters as have been referred to in paragraph No. 13 of the decision in case of *Arun Sudamrao Modale (Supra)*.

7. Taking overall view in the matter, I deem it appropriate that following suit of aforesaid orders subject, of course, to payment of costs to be to the respondent, the impugned orders deserve to be set aside.

8. In view the same, the impugned orders dated 07-04-2015 passed by the commission, Aurangabad dismissing revision in default as well refusing to recall said order stand set aside on payment of costs of Rs. 5000/- to be payable to respondent which shall be deposited with the State Commission within a period of four weeks from the date

of receipt of writ of this order.

9. Writ petition is allowed in aforesaid terms. Rule is made absolute accordingly.

Sd/-

(SUNIL P. DESHMUKH, J.)

MTK
