

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 8209 OF 2015

SHRIRAM TRANSPORT FINANCE CO. LTD. AND ANOTHER
VERSUS
JAYRAM JANARDHAN ADSUL

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Advocate for Petitioners : Shri Shah J.R.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: March 09, 2016

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PER COURT :-

1. The petitioners are before this Court challenging the order dated 30.4.2015 delivered by the Maharashtra Consumer Disputes Redressal Commission, Aurangabad by which the First Appeal No.13/131 has been dismissed in default.
2. The petitioners submit that the order of the District Consumer Commission, dated 10.4.2013 in case No.90 of 2012 has already been partly complied with by depositing the said amount before the State Commission.
3. Shri Shah, learned Advocate submits that this Court has already restored such matters by the order dated 5.10.2012, passed in Writ Petition No.6384 of 2012, dated 20.3.2013 in Writ Petition No.379 of 2013, order dated 16.1.2014 in Writ Petition No.8401 of 2013 and similar other orders. He, therefore, prays for the restoration of the First Appeal before the Commission by allowing this petition.

4. The sole respondent has been served through Court notice. He has not entered an appearance, either through an Advocate or in person. This matter was adjourned on two occasions after service on the respondent. It is in this backdrop, that I have considered the submissions of the learned Advocate for the petitioners.

5. The State Consumer Commission has dismissed the First Appeal on 30.4.2015. The petitioners have approached this Court on 1.7.2015.

6. This Court, vide order dated 5.10.2012, in Writ Petition No.6384 of 2012 in the matter of Branch Manager, HDFC Vs. Pravin Devidas Pawar has observed in paragraph Nos.6 and 7 as under:-

“6] It is true that when the matter was dismissed in default, the advocate for petitioner was absent. But, on that day, the representative of petitioner was present and he had made a request to keep back the matter. The Commission could have considered for keeping back the matter. It also appears that immediately an application was given on the same day for recalling the order of dismissal. The said application was rejected on the ground that the Commission has no power.

7] Considering the above, I am inclined to offer one more opportunity to the petitioner. Hence, the impugned order is quashed and set aside. Appeal is restored to its original position, on condition that the petitioner deposits the cost which were levied by the State Consumer Dispute Redressal Commission, by 22nd October, 2012. Parties shall appear before the State Consumer Dispute Redressal Commission on 22nd October, 2012. If cost as directed by

the Commission is deposited by the petitioner, the Commission shall hear the Appeal on its own merits as per its convenience. Taking into account the fact that the matter is remanded, the Commission shall endeavour to dispose of the matter expeditiously.”

7. Similarly, this Court by its order dated 20.3.2013, delivered in Writ Petition No.397 of 2013 in the matter of United India Insurance Company Limited Vs. Yogesh Gorakhlal Jaiswal has observed in paragraph Nos.5 and 6 as under:-

“5. Once the Appeal is filed, it is normally advocate who appears in the matter. Due to personal difficulty, advocate of the petitioner could not appear. Moreover, it does not appear that notice was issued to the parties notifying the date. I deem it appropriate to give one opportunity to the petitioner to contest the Appeal on merits, at the same time the petitioner also deserves to be mulct with some cost.

6. *In the result, I pass the following order:*

(i) Impugned order dated 19.01.2012 is hereby quashed and set aside. The First Appeal bearing No. 320 of 2011 is restored to its original position on condition that the petitioner pays cost of Rs.5000/- to the respondent within a period of four weeks from today.

(ii) The cost may be directly paid to the petitioner or be deposited in the office of Maharashtra State Consumer Dispute Redressal Commission Mumbai, Circuit Bench at Aurangabad. In case it is deposited in the office of Commission, as directed above, respondent is entitled to

withdraw the same.

(iii) The parties shall appear before the State Commission on 17.04.2013.”

8. In yet another matter, by order dated 16.1.2014, delivered in Writ Petition No.8401 of 2013 in the matter of Hemalata Kantilal Thole Vs. United India Insurance Co. Ltd., this Court has observed in paragraph Nos.5 and 6 as under:-

“5. The application for condonation of delay inter alia appeal is dismissed on the count that the present petitioner and her counsel did not comply the formalities and supply the envelop and postage charges. The reason is given by the petitioner that, the clerk of the advocate had taken wrong date and as such compliance could not be made. The appeal is substantive right of the party. It appears that, even the complaint filed by the petitioner is partly allowed by the District Consumer Forum. Considering the reasons given, I am inclined to grant one opportunity to the petitioner to contest the matter. However, the petitioner deserves to be mulct with cost.

6. In the light of the above, the impugned order is quashed and set aside on condition that the petitioner pays cost of Rs. 3,000/- (Rs. Three thousands only) to the respondent within a period of four (4) weeks from today. In case the cost as directed is deposited, the respondent is entitled to withdraw the same.”

9. Considering the above, as the petitioners have approached this Court within reasonable time and since there is no inordinate delay, I am inclined to allow this petition by setting aside the impugned order.

10. As such, this petition is allowed. The impugned order dated 30.4.2015, by which the First Appeal No.13/131 has been dismissed in default, is set aside, subject to costs of Rs.3,000/-, which the petitioners shall deposit before the State Consumer Dispute Redressal Commission, Bench at Aurangabad within a period of two weeks from today. First Appeal No.13/131 is restored to the file of the State Consumer Dispute Redressal Commission, Bench at Aurangabad, at the stage at which it was dismissed in default.

11. The petitioners shall appear before the State Consumer Dispute Redressal Commission, Bench at Aurangabad on 21.3.2016 and shall deposit the costs within two weeks from today, failing which this order shall stand recalled, this petition shall then stand dismissed and the impugned order dated 30.4.2015 shall then be restored.

12. After compliance of this order, the State Consumer Commission shall issue notice to the respondent and decide the First Appeal on its merits.

(RAVINDRA V. GHUGE, J.)

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