

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

953 WRIT PETITION NO. 9352 OF 2015

**THE ASSISTANT GENERAL MANAGER STATE BANK OF HYDERABAD
AURANGABAD**

VERSUS

**GODAVARI MARATHWADA IRRIGATION DEVELOPMENT CORPORATION THRU
ITS CHIEF ACCOUNTANT**

...

Advocate for Petitioner : Mr. Siddharth R. Deshpande

Advocate for Respondent sole : Mr.S. G. Bhalerao

CORAM : V. K. JADHAV, J.

DATE : 10th February, 2016

PER COURT :

1. Heard finally with consent of the parties at admission stage.

2. The present respondent filed a complaint before the District Consumer Forum bearing Consumer Complaint No.164/2013 against the present petitioner Bank claiming 9% interest on certain amount for the financial year 2006-07 and further interest @ 9% from April, 2006 till payment of interest and cost of Rs.2,00,000/- from the petitioner. The petitioner herein has strongly resisted the said complaint by filing its written statement on record. After hearing the parties, the District Consumer Disputes Redressal Forum, Aurangabad has dismissed the said Consumer Complaint No. 164/2013. Being aggrieved by

the same, the present respondent/original complainant has preferred first appeal before the State Consumer Disputes Redressal Commission, Maharashtra State, Circuit Bench at Aurangabad. On 21.04.2015 an order to proceed exparte hearing came to be passed against the petitioner Bank by the Commission and accordingly the first appeal was adjourned for admission. Thereafter, on 03.08.2015, the petitioner has filed application before the Commission for setting aside the order of exparte hearing dated 21.04.2015. However, the same is rejected by the Commission on the ground that the Commission has no power to set aside its own order. Hence this writ petition.

3. The learned counsel for the petitioner submits that the order to proceed exparte hearing came to be passed on 21.04.2015 and the application for setting aside the said exparte order came to be filed on 03.08.2015. The petitioner has contended in the said application that the Assistant General Manager of the petitioner Bank fell seriously ill on account of some life threatening disease. He was undergoing medical treatment at the relevant time in the Hospital. Therefore, the petitioner could not appear before the

Commission and even thereafter could not file application for setting aside the exparte order immediately. The learned counsel submits that the petitioner has strongly resisted the application filed by the respondent original complainant by filing written statement and therefore, in the interest of justice, the order to proceed exparte passed by the Commission may be set aside and an opportunity of being heard may be afforded to the petitioner.

4. Learned counsel for the respondent submits that alternate remedy is available to the petitioner and under very exceptional circumstance, this court can exercise its inherent power. In order to substantiate his submission, the learned counsel for the respondent has relied on the judgments of this court in the case of **Mandatai Sambhaji Pawar & another vs. The State of Maharashtra and others**, reported in 2011 (4) Mh.L.J.790, and in the case of **Bajirao Dagduji Sirsat Vs. Sanjay Prakashchand Kothari and others**, reported in 2015 (1) Mh.L.J.278.

5. The learned counsel for the respondent submits that the petitioner has not produced any documentary

evidence on record to substantiate its contention before the Commission. The learned counsel submits that notice has been duly served on the petitioner and no reasonable explanation is tendered before the Commission for non appearance.

6. It appears from the impugned order that the Commission has refused to set aside the exparte order passed against the present petitioner only on the ground that the Commission has no power to set aside its own order. The petitioner has strongly resisted the complaint filed before the District Consumer Redressal Forum. Being aggrieved by dismissal of the complaint by the District Consumer Redressal Forum, the respondent/ original complainant has preferred the appeal. Thus, it would be just and proper, if the petitioner is given an opportunity of being heard while disposing of the first appeal before the Commission. Hence, following order:

O R D E R

- i. The order dated dated 21.04.2015 in First Appeal No.A/15/4 passed by the State Consumer Dispute Redressal Commission, Maharashtra State, Circuit Bench at Aurangabad is hereby quashed and set

aside.

ii. The application dated 03.08.2015 in First Appeal No.A/15/4 is allowed in terms of prayers therein.

iii. Writ petition is accordingly disposed of. In the circumstances, no order as to costs.

(V. K. JADHAV, J.)

JPC