

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 97 OF 2017

M/S ASHWINI TRADING COMPANY
VERSUS
PANJABRAO GULABRAO BODKHE AND OTHERS

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Advocate for Petitioner : Shri Shah Subodh P.
AGP for Respondents 6, 13, 15, 18, 20 & 24 :
Shri Lakhotiya P.K.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: January 06, 2017

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PER COURT :-

1. The Consumer Disputes Redressal State Commission, Maharashtra, Circuit Bench at Aurangabad has declined to recall its order in the nature of "Proceed ex-parte" or "No WS".

2. The petitioner, who is respondent No.2 before the State Forum in First Appeal No.730 of 2016, is aggrieved by the order dated 1.12.2016, by which, the State Commission declined to recall its "Proceed ex-parte" order passed on 1.12.2016, though an application was filed on the very same date before the State Commission. The ground set forth by the Commission is that the Commission has no jurisdiction to set aside its order.

3. I have heard learned Advocate for the petitioner and the learned Advocate appearing on behalf of respondent Nos.1 to 33. Respondent Nos.34 and 35 are formal parties as they are unconcerned with the impugned order with regard to the petitioner.

4. This Court (Coram : S.S.Shinde, J.) by its order dated 22.7.2014, in Review Application No.72 of 2013, placed reliance upon the case of R.V.Upadhyay Vs.State Commission for Consumer Disputes [AIR 2010 Bom. 139] and has concluded that the order dismissing the appeal in default can be assailed before this Court.

5. In similar circumstances, this Court (Coram : S.V. Gangapurwala, J.) by its order dated 5.10.2012 in the matter of Branch Manager, HDFC Limited Vs. Pravin Devidas Pawar and others - Writ Petition No. 6384 of 2012, has held that if the State commission dismisses the First Appeal, this Court can entertain such a petition.

6. Issue before this Court is whether an order of the nature of "Proceed ex-parte" / "No WS" could be recalled by the State Commission. The Honourable Apex Court in the matter of Rajiv Hitendra Pathak and others Vs. Achyut Kashinath Kahalekar and another [2011 (9) SCC 541], has concluded that the District Forum and the State Commission will not have the powers to set aside their

own ex-parte orders or review their own orders. It was concluded in paragraph Nos.36 and 37 as under:-

“36. On careful analysis of the provisions of the Act, it is abundantly clear that the Tribunals are creatures of the Statute and derive their power from the express provisions of the Statute. The District Forums and the State Commissions have not been given any power to set aside ex parte orders and power of review and the powers which have not been expressly given by the Statute cannot be exercised.

37. The legislature chose to give the National Commission power to review its ex parte orders. Before amendment, against dismissal of any case by the Commission, the consumer had to rush to this Court. The amendment in Section 22 and introduction of Section 22-A were done for the convenience of the consumers. We have carefully ascertained the legislative intention and interpreted the law accordingly.”

7. Even otherwise, since the application for recalling “Proceed ex-parte” order was filed on the same date, I do not find any impediment in allowing this petition.

8. Considering the above, this petition is allowed. The direction set out in the impugned order dated 1.12.2016 to the extent of “Proceed ex-parte against respondent No.2” is set aside. The

petitioner may file a reply / say / written statement, if it so chooses, in the said first appeal and the same shall be done within three weeks from today or on the approaching date of hearing, whichever is later.

(RAVINDRA V. GHUGE, J.)

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