

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

**Writ Petition No. 02106 of 2015**

District : Aurangabad

Dwarkadas Mantri Nagri Sahakari  
Bank Ltd.,  
Through Chief Executive Officer,  
Mr. Radheshyam s/o. Vithaldas Soni,  
Age : 43 years, .. Petitioner  
Occupation : Service, (Original  
R/o. head office, Jalna road, Beed. appellant)

**versus**

Haridas s/o. Vithalrao Karde,  
Age : Major,  
Occupation : Agriculture,  
R/o. At Po.: Aapegaon, .. Respondent  
Taluka Ambajogai, (Original  
District Beed. respondent)

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*Mr. P.K. Lakhotiya, Advocate, for the petitioner.*

*Mr. S.S. Manale, Advocate, for the respondent.*

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**CORAM : SMT. VIBHA KANKANWADI, J.**

**DATE : 29TH NOVEMBER 2017**

**ORAL JUDGMENT :**

01. Rule. Rule made returnable forthwith.  
Heard finally with the consent of parties.

02. The petitioner - Bank is registered under  
the Maharashtra Co-operative Societies Act, 1960.

Present respondent, who was complainant before District Consumer Forum at Beed, filed a complaint seeking compensation in respect of fixed deposits. The said complaint was bearing C.C.No.31 of 2013. It came to be allowed on 21.10.2013. It was directed that the petitioner should pay amount of Rs. 20,000/- together with interest at the rate of 12 % per annum.

03. Aggrieved by the said order, the petitioner had approached the State Consumer Dispute Redressal Commission, Mumbai, Circuit Bench at Aurangabad, by filing First Appeal No. 28 of 2014. The said first appeal was listed for many times and after hearing both sides, interim stay was granted. However, thereafter when the matter was called for hearing, due to inadvertence of the Advocate for the petitioner, the petitioner as well as Advocate remained absent. On the next date also, they remained absent because the earlier date was not taken by the Advocate. Taking into considering the absence of the petitioner as well as Advocate on 28.11.2014, the State Consumer Dispute Redressal Commission dismissed the appeal in default. Now, the petitioner has invoked the writ jurisdiction of this Court under Articles 226 and 227 of the Constitution of India, for setting aside the said order of the State Consumer Dispute Redressal Commission, Mumbai, Circuit Bench at Aurangabad, and restoration of the appeal to the original stage.

04. The respondent has raised an objection

stating that in view of Section 21(b) of the Consumer Protection Act, 1986, the National Commission will have jurisdiction and, therefore, the petitioner should approach the National Commission. In the alternate, it was submitted that if at all the petition is to be allowed, then heavy costs be imposed upon the petitioner taking into consideration the fact that the matter came to be dismissed due to the negligence on the part of the petitioner to remain present on the date of hearing of the appeal.

05. Learned Counsel appearing for the petitioner has relied on the decision of this Court in the case of **Arun s/o. Sudamrao Modale Vs. Sangmeshwar Tractor, Authorized Dealer, Ahmedpur, and another [2014(4) Mh.L.J. 757]**, wherein it has been held on the basis of the decision of the Apex Court in the case of **Rajeev Hitendra Pathak and others Vs. Achyut Kashinath Karekar & another [2012(2) Mh.L.J. (S.C.) 1]**, that when the appeal filed before the State Commission has been dismissed in default, then the State Commission cannot recall the order. Further in that case, the application for setting aside *ex parte* dismissal in default not entertained by Registry of the Commission, this Court set aside the said order to meet the ends of justice and restored the appeal to the State Commission. Further reliance has been placed on judgment of this Court at Nagpur Bench delivered in Writ Petition No. 02697 of 2012 (**Kamlakar Ramsa Chawre Vs. State Consumer Disputes Redressal Commission, Maharashtra, Circuit Bench at Nagpur & others**) on 22nd February 2013, wherein

also, the State Consumer Disputes Redressal Commission has dismissed the appeal in default. It was stated that the writ petition is maintainable. It was specifically pointed out that Section 21(b) of the Consumer Protection Act would give the jurisdiction to the National Commission when the dispute was pending or decided by the State Commission. But after dismissal in default, the National Commission will not have jurisdiction.

06. In order to appreciate the point raised, I would like to reproduce Section 21(b) of the Consumer Protection Act, which reads as under :-

**" Jurisdiction of the National Commission. – Subject to the other provisions of this Act, the National Commission shall have jurisdiction –**

(a) .....

(b) to call for the records and pass appropriate orders in any consumer dispute which is pending before or has been decided by any State Commission where it appears to the National Commission that such State Commission has exercised a jurisdiction not vested in it by law, or has failed to exercise a jurisdiction so vested, or has acted in the exercise of its jurisdiction illegally or with material irregularity. "

The said provision gives jurisdiction to the National Commission to call for the records and pass appropriate orders in any consumer dispute which is pending before or has been decided by any State

Commission. Further it states that where the State Commission has failed to exercise jurisdiction so vested or had acted in exercise of its jurisdiction illegally or with material irregularity, then also there will be the jurisdiction.

07. The facts of the case in **Arun s/o. Sudamrao Modale** (*supra*) were different. The State Commission had dismissed the appeal in default. However, application for setting aside dismissal in default order was filed. The matter, therefore, was taken up before this Court and the provision of Section 22A of the Consumer Protection Act was invoked. Even in the case of **Rajeev Hitendra Pathak and others** (*supra*), similar facts were there. However, in Writ Petition No. 02697 of 2012, the facts are similar to the present case. No doubt, objection regarding maintainability of the writ was not raised, yet it can be seen that Section 21 of the Consumer Protection Act would give the limited jurisdiction, as enumerated in clause 'b', to the National Commission.

08. In this case, the petitioner has come with a case that due to the inadvertence of the Advocate, he had not taken next date of the matter and, therefore, on subsequent date also, he remained absent. It appears that the concerned Advocate had not informed the date to the petitioner and, therefore, the petitioner was also absent on the two consecutive dates. The petitioner shall not be put to loss due to the inadvertent mistake of the Advocate and,

therefore, the said order of dismissal of the appeal in default deserves to be set aside and the matter deserves to be restored.

09. In the result, the writ petition is allowed.

(a) The order passed by the Maharashtra State Consumer Dispute Redressal Commission, Mumbai, Circuit Bench at Aurangabad, dismissing First Appeal No. 28 of 2014, in default, on 28th November 2014, is hereby set aside and the matter is restored to the file of the State Commission for its decision on its own merits.

(b) Rule made absolute in the above terms. There shall be no order as to costs.

**( Smt. Vibha Kankanwadi )**  
**JUDGE**

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