

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 7718 OF 2015

Anita Chandrakant Patil
Age 63 Years, Occ. Household
R/o Deshpande Galli, Taluka
and District Latur.

..Petitioner

Versus

1. The Circle Officer,
LIC of India,
Circle Office "Jeevan Prakash"
Adalat Road, Aurangabad.

2. The Branch Manager,
LIC of India, Branch 945,
Ambajogai Road, Latur.

..Respondents

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Advocate for Petitioner : Ku. Bhale Kavita S.
Advocate for Respondents : Shri Rane Girish S.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: August 09, 2017

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ORAL JUDGMENT :-

1. Heard learned Advocates for the respective parties.
2. Rule.
3. By consent, Rule is made returnable forthwith and the petition is taken up for final disposal.

4. The petitioner is aggrieved by the order dated 5.9.2014, passed by the State Commission by which the First Appeal No. 359 of 2014 has been dismissed in default. It is specifically stated by the petitioner that even before issuing notices to the respondents in the First Appeal, the same has been dismissed in default as none was present for the appellant on 16.7.2014, 12.8.2014 and 5.9.2014.

5. Learned counsel for the petitioner relies upon the following orders passed by the various Single Judge Benches of this Court:-

(a) The order dated 16.1.2014 (Coram: S.V. Gangapurwala, J) in the matter of **Hemlata w/o Kantilal Thole versus United India Insurance Co. Ltd** (Writ Petition No.8401/2013).

(b) The order dated 20.2.2014 (Coram: S.V.Gangapurwala, J) in the matter of **Kapurchand Kotecha Urban Co-op. Credit Society Ltd & another versus Mangilal s/o Bhikchand Jain** (Writ Petition No.531/2014).

(c) **Arun s/o Sudamrao Modale versus Sangmeshwar Tractor authorized Dealer** (2014(4) Mh.L.J. 757).

(d) The order dated 27.7.2015 (Coram: Sunil P. Deshmukh, J) in the matter of **Shivaji S/o Rangnath Khilari versus The Manager, Wasan Automobiles & another** (Writ Petition No.9793/2014).

(e) The order dated 3.2.2016 (Coram: V.K. Jadhav, J) in the matter of **The Branch Manager, State Bank of India versus Dharmaraj Chindha Patil** (Writ Petition No.2811 of 2015).

(f) The order dated 22.3.2016 passed by this Court in the matter of **Miss. Radhika D/o Rajesh Mandhani versus Dr. Dilip Patwardhan & another** (Writ Petition No.3985/2012).

6. The learned counsel Shri Rane for the Insurance Company has relied upon the Judgment of the Division Bench of this Court in the matter of Bajirao s/o Dagduji Sirsat versus Sanjay Prakashchand Kothari & others (2015 (1) Mh.L.J. 278).

7. Shri Rane has strenuously opposed this petition on two grounds. Firstly, the ordinary limitation period for filing a Revision Petition before the National Consumer Disputes Redressal Commission is 90 days. This petition is filed after 180 days. Secondly, the Honourable Apex Court in the matter of

Cicily Kallarackal v. Vehicle Factory [(2012) 8 SCC 524], has concluded that the High Court should not entertain a Writ Petition against the judgment of the State Commission. He also relies upon the judgment of the learned Division Bench of this Court in the matter of Bajirao (supra) to contend that a Writ Petition would not be maintainable.

8. It is obvious that the First Appeal filed by the petitioner has been dismissed in default at the pre-notice stage. The respondents herein had no reason to appear before the State Commission as the notices were yet to be issued.

9. It appears from the judgment in the case of Cicily (supra) that the judgment of the National Commission on merits, was challenged directly before the Kerala High Court, which was entertained. The Honourable Apex Court has concluded that this should not be permitted since Section 27A of the Consumer Protection Act will enable the litigant to file an appeal before the Apex Court for challenging the judgment of the National Commission.

10. In Bajirao (supra), the learned Division Bench relied upon the judgment in Cicily (supra). The case before the Division

Bench was not of an order of 'dismissed in default' under challenge.

11. This Court has been consistently entertaining Writ Petitions for setting aside the 'dismissed in default' order passed by the State Commission as is evident from the judgments / orders cited above.

12. In so far as sufficiency of reasons for setting aside the dismissed in default order is concerned, the delay caused cannot be said to be said to be deliberate or inordinate. The petitioner is a widow, whose husband has passed away and is litigating for certain benefits under the insurance policy held with the LIC. It would be cumbersome and would cause her grave hardships and manifest inconvenience to hold that even for setting aside a dismissed in default order, the petitioner widow should be compelled to approach the National Commission at New Delhi.

13. Considering the above aspects, this petition is allowed. The impugned order dated 5.9.2013 is set aside with the following directions:-

(A) The petitioner shall deposit an amount of

Rs.5,000/- before the State Commission, Aurangabad on 11.9.2017.

(B) The LIC of India will be at liberty to withdraw the said amount without conditions.

(C) Learned Advocates for the respective sides request for a date for appearance before the State Commission. The request is accepted and by the consent of the parties, they shall appear before the State Commission through their representatives on 11.9.2017. Formal notices need not be issued by the State Commission.

(D) It is expected that the petitioner would take care of avoiding adjournments in the matter.

14. Rule is made absolute in the above terms.

(RAVINDRA V. GHUGE, J.)

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