

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

WRIT PETITION NO. 7481 OF 2016

THE ASSISTANT ENGINEER, MSEDCL BEED AND ANOTHER
VERSUS
MAYUR RAMESH BAHETI AND ANOTHER

...
Advocate for Petitioners : Shri Shelke Avishkar S.
Advocate for Respondents : Shri Ambhore M.M..
...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 13th January, 2017

Per Court:

1 The Petitioners are aggrieved by the order dated 18.03.2016 by which their First Appeal No.292/2015 filed on 30.04.2015 has been dismissed in default.

2 I have heard the learned Advocates for the respective sides.

3 Shri Ambhore, learned Advocate for the Respondents, strenuously opposed this petition on the ground that as none appeared for the Petitioners, the appeal was dismissed in default. He, however, concedes that the record reflects that even the Respondents and their Advocate were absent on 18.03.2016.

4 This Court (Coram : S.S.Shinde, J.), by it's order dated 22.07.2014 in **Review Application No.72/2013** (*Radhika Rajesh Mandhani vs. Dr.Dilip Pathwardhan*), placed reliance upon the case of *R.V.Upadhyay vs. State Commission for Consumer Disputes*, **AIR 2010 Bombay 139** and concluded that the order dismissing the appeal in default can be assailed before this Court. Similarly, this Court (Coram : S.V.Gangapurwala, J.), by it's order dated 05.10.2012 in the matter of *Branch Manager, HDFC Limited vs. Pravin Devidas Pawar* in **Writ Petition No.6384/2012**, has held that if the State Commission dismisses the first appeal in default, this Court can entertain such a writ petition.

5 However, it cannot be ignored that the Respondents have suffered hardships on account of the impugned order. Shri Ambhore submits that if the same is to be set aside, this Court may impose costs upon the Petitioners.

6 In the light of the above and upon considering the reasons/ grounds set out in the appeal, this Writ Petition is allowed. The impugned order dated 18.03.2016 stands quashed and set aside and First Appeal No.292/2015 stands restored to the file of the State Commission.

7 The litigating sides shall appear before the State Commission on 10.02.2017. Formal notice need not be issued. The Petitioners shall deposit an amount of Rs.2000/- (Rupees Two Thousand) before the State Commission as costs on 10.02.2017. Both the Respondents shall withdraw the said costs without conditions in equal proportion. Both sides shall ensure that they would diligently pursue the first appeal and render cooperation to the State Commission.

kps

(RAVINDRA V. GHUGE, J.)