

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.855 OF 2016

Bhimrao S/o Narhari Narwade

Petitioner

Versus

Gurukrupa Maternity & Nurshing Home
through Dr Smt. Ujjwala Shrikant Zambre & others

Respondents

Mr. S.K. Chavan h/f Mr. A. R. Vyawahare advocate for the petitioner
Mr. S.S. Chapalgaonkar advocate for respondent No.1
Mr. S.S. Rathi advocate for respondent No.2

CORAM : **RAVINDRA V. GHUGE, J**

(Date : 2nd August, 2017.)

PER COURT :-

1 The petitioner is aggrieved by the order dated 4.6.2015, passed by the learned State Consumer Disputes Redressal Commission, Mumbai, circuit bench at Aurangabad, dismissing the First Appeal No.357 of 2015 due to absence of the petitioner. The petitioner is also aggrieved by the order dated 23.9.2015, by which a Miscellaneous Application bearing No.355, seeking recalling of the DID order, has been rejected, on the ground that the State Commission does not have the jurisdiction to recall its own order.

2 I have considered the strenuous submissions of the learned Advocates for the respective sides.

3 The petitioner has cited the following orders of this Court, whereby similar DID orders of the State Commission have been set aside:-

(a) 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)/

(b) 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)

(c) 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)

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

(e) 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)

(f) 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).

4 The learned counsel 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).

5 There is no dispute that the impugned order has led to the dismissal of the First appeal in default.

6 In the Judgments/orders cited by the petitioners, this Court has concluded that, an order of dismissing the appeal in the default, can be considered by this Court in its writ jurisdiction, as the appeal has been dismissed on account of the absence of the parties and there is no verdict on the merits of the case. This Court (Coram: S.S. Shinde, J) in Review application No.72/2013 considered the Judgment of this Court in the matter of **R.B. Upadhyay versus State Commission for Consumer Disputes, Mumbai** (AIR 2010 Bombay 139) and concluded that the order of dismissing an appeal in default can be entertained by this Court.

7 In the Judgment of **Bajirao s/o Dagduji Sirsat** (supra) cited by the Insurance Company, the First Appeal was disposed of by order dated 13.5.1999. From the Judgment it is not visible as to whether that order was on the merits of the first appeal or

not. So also, the learned Advocate for the respondent, who has cited this Judgment, is unable to make statement as to whether it was a DID order.

8 The learned Division Bench concluded that the parties should approach the National Consumer Redressal Forum which has periodical sittings at Nagpur and the parties in the matter hail from Nagpur.

9 Considering the above and the consistent view taken by this Court in the Judgments cited by the petitioner, I do not find that this petition can be dismissed to relegate the petitioner to the remedy of approaching the National Consumers Disputes Redressal Commission against a DID order, considering the manifest inconvenience that would be caused to both the litigating sides.

10 As such, this petition is allowed. The impugned order dated 4.6.2015 is set aside by imposing costs of Rs.5,000/- on the petitioner, which he shall deposit before the State Commission within a period of three weeks from today. The Insurance Company would be at liberty to withdraw the said amount without conditions.

11 Since it is informed that the stage before the State

Commission in the First appeal was for the litigating sides to tender their written notes of submissions, it is made clear that these litigating sides, shall file their written notes of submissions within four weeks from today, if not already filed and shall not seek an adjournment in the matter.

12 At this juncture, the learned Advocates for litigating sides request, on instructions, that they are agreeable to appear before the State Dispute Redressal Commission on 31.8.2017 at 11 a.m.. The said request is accepted. It goes without saying that formal notices need not be issued by the State Commission.

(RAVINDRA V. GHUGE , J)