

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 2104 OF 2017

State Bank of India,
APMC Branch, New Mondha,
Nanded

... Petitioner

Versus

M/s. Shiur Sakhar Karkhana Pvt. Ltd.,
Shiur, Taluka Hadgaon, District Nanded.

... Respondent

.....

Mr. Paithankar Prakash B. and Mr. A. P. Paithankar for the
Petitioner.

Mr. Vikram S. Kadam for the Respondent.

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CORAM : V. K. JADHAV, J.
RESERVED ON : 5th APRIL, 2018
PRONOUNCED ON : 3rd MAY, 2018

ORDER :-

1. Heard finally with consent at admission stage.
2. Being aggrieved by the orders dated 04.10.2016 and 27.01.2017 passed by the Station Consumer Commission, Aurangabad in Consumer Complaint No. 19 of 2016, the original respondent State Bank Of India (hereinafter referred to as “the Bank”) has preferred this Writ petition.

3. Brief facts giving rise to the present Writ Petition are as follows:

a) The respondent herein had filed a complaint bearing Consumer Complaint No. 19 of 2016 against the petitioner-Bank before the Consumer Disputes Redressal Commission, Aurangabad (hereinafter referred to as "State Commission") claiming refund of processing fees alongwith compensation. On 04.10.2016, the State Commission was pleased to pass an "ex-parte" order against the petitioner-Bank. Aggrieved by the same, the petitioner-Bank has filed Writ Petition No. 11423 of 2016 before this Court challenging the impugned ex-parte order dated 04.10.2016 passed by the State Commission as aforesaid. By order dated 06.01.2017, this Court has disposed of the Writ Petition by granting liberty to the present petitioner-Bank to prefer an application before the State Commission, Aurangabad for recalling the ex-parte order. Accordingly, the petitioner- Bank has filed an application on 07.01.2017 before the State Commission, Aurangabad for recalling of the ex-parte order dated 04.10.2016. The State Commission, by the impugned order dated 27.01.2017, has dismissed the said application with

the observation that there is no provision in the Consumer Protection Act, 1986 (for short, "Act of 1986") to set aside an ex-parte order passed by the Consumer Court. Hence this Writ Petition:

4. The learned counsel for the petitioner-Bank submits that in terms of the provisions of Sub-section (1) of Section 17 of the Act of 1986, the State Commission shall have jurisdiction to entertain (i) the complaints where value of the goods or services and compensation, if any, claimed exceeds rupees twenty lakhs but does not exceed rupees one crore and (ii) appeal against the orders of any District forum within the State. In terms of the provisions of Section 19 of the Act of 1986, any person aggrieved by an order made by the State Commission in exercise of its powers conferred by sub-clause (i) of clause (a) of Section 17, may prefer an appeal against such order to the National Commission. In terms of the provisions of Section 21 (b), the National Commission may exercise revisional jurisdiction with regard to any consumer dispute which is pending before or has been decided by the State Commission. The learned counsel submits that in absence of any other provision in the Act of 1986,

in terms of the aforesaid provisions, against the ex-parte order passed by the State Commission, no remedy is provided. Thus, the present Writ Petition under Article 226 read with Article 227 of the Constitution of India can be entertained by this Court.

5. The learned counsel for the petitioner-Bank submits that the State Commission was pleased to issue notice in the matter bearing Consumer Complaint No. 19 of 2016 which was served on the petitioner. Thereafter, the matter was adjourned to 16.09.2016 and 04.10.2016. However, on 04.10.2016, the State Commission has passed the ex-parte order as against the petitioner-Bank as none appeared for the petitioner-Bank. The learned counsel submits that the counsel engaged by the Bank could not attend the case since his wife was admitted in ICU of Seth Nandlal Dhoot Hospital from 09.08.2016 to 13.08.2016 and thereafter she was advised to take bed rest up to 31.08.2016. As a result, the counsel for the petitioner-Bank lost track of the case and the same remained unattended. This Court (Coram: Ravindra V. Ghuge, J.) has granted the petitioner-Bank a liberty to file an application before the State Commission for recalling its ex-parte order dated 04.10.2016 and accordingly, the

petitioner-Bank has filed an application before the State Commission. However, the State Commission has rejected the said application only on the ground that the State Commission has no jurisdiction to set aside or recall its own order.

6. The learned counsel for the petitioner, in order to substantiate his contentions, placed reliance on the following cases:

1. **Writ Petition No. 4979 of 2011 (Jyoti w/o Avinash Lavhale vs Usha Jain and ors.)** with connected Petitions decided by common Judgment dated 30.06.2016 by learned Single Judge of this Court at Nagpur.
2. **Writ Petition No. 3940 of 2015 (The Executive Engineer, Maharashtra State Electricity Distribution Company Limited & Anr. Vs Kisan Maruti Ajbe)** decided by this Court on 21.12.2017.
3. **Writ Petition No. 5371 of 2017 (M/s. Ankur Seeds P. Ltd. & Anr. Vs Arvind s/o Vithoba Sawai)** decided on 16.08.2017 by the learned Single Judge of this Court at Nagpur

7. The learned counsel for the respondent/original complainant submits that the Writ Petition under Article 226 read with Article 227 of the Constitution of India is not to be entertained since an alternate efficacious remedy of appeal before the National Commission is available. The petitioner-Bank has not made out any exceptional circumstance to entertain the Writ Petition despite availability of efficacious alternate remedy before the National Commission, which has been established under the provisions of the Act of 1986. The learned counsel submits that the Act of 1986 is a complete code itself. It has provided for establishment of consumer complaints adjudicating forum at District, State and National level. National Commission, in many such identical cases, entertained revision applications and set aside such order passed by the State Commission. The learned counsel submits that the revisional powers of the National Commission are derived from the provisions of Section 21(b) of the Act of 1986. Thus, this Writ Petition can not be entertained.

8. The learned counsel for the respondent, in order to substantiate his contentions, placed reliance on the following

cases:

1. **Jyotsana Arvindkumar Shah and Ors. vs. Bombay Hospital Trust**, reported in (1999) 4 SCC 325,
 2. **Rajeev Hitendra Pathak & Ors. vs. Achyut Kashinath Karekar & Anr.**, reported in (2011) 9 SCC 541,
 3. **Nivedita Sharma vs Cellular Operators Association of India and Ors.**, reported in (2011) 14 SCC 337 and
 4. Order dated 15.02.2012 passed by the Hon'ble Supreme Court in **Civil Appeal No. 2123 of 2012 (Arising out of SLP (C) No. 30811 of 2011) (Phalguni Das vs Tapas Dutta)**
9. In view of the above submissions, I deem it necessary to refer the provisions of Sections 17, 19 and 21 of the Act of 1986, which read as under:

Sec. 17. Jurisdiction of the State Commission -

(1) Subject to the other provisions of this Act, the State Commission shall have jurisdiction -

(a) to entertain -

(i) complaints where the value of the goods or services and compensation, if any, claimed exceeds rupees twenty lakhs but does not exceed rupees one crore; and

(ii) appeals against the orders of any District Forum within the State; and

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

(2) A complaint shall be instituted in a State Commission within the limits of whose jurisdiction, -

(a) the opposite party or each of the opposite parties, where there are more than one, at the time of the institution of the complaint, actually and voluntarily resides or carries on business or has a branch office or personally works for gain; or

(b) any of the opposite parties, where there are more than one, at the time of the institution of the complaint, actually and voluntarily resides, or carries on business

or has a branch office or personally works for gain, provided that in such case either the permission of the State Commission is given or the opposite parties who do not reside or carry on business or have a branch office or personally works for gain, as the case may be, acquiesce in such institution; or personally works for gain, as the case may be acquiesce in such institution; or

(c) The cause of action, wholly or in part, arises.

Sec.19. Appeals.-

Any person aggrieved by an order made by the State Commission in exercise of its powers conferred by sub-clause (i) of clause (a) of section 17 may prefer an appeal against such order to the National Commission within a period of thirty days from the date of the order in such form and manner as may be prescribed;

Provided that the National Commission may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that there was sufficient cause for not filing it within that period;

Provided further that no appeal by a person, who is required to pay any amount in terms of an order of the State Commission, shall be entertained by the

National Commission unless the appellant has deposited in the prescribed manner fifty per cent. of the amount of rupees thirty-five thousand, whichever is less.

Sec.21. Jurisdiction of the National Commission.-

Subject to the other provisions of this Act, the National Commission shall have jurisdiction-

(a) to entertain-

(i) complaints where the value of the goods or services and compensation, if any, claimed exceeds rupees one crore; and

(ii) appeals against the orders of any State Commission; and

(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.

10. In terms of the provisions of Section 17(1)(a), the State Commission shall have jurisdiction to entertain complaints as per

the value of the goods or services and compensation as detailed in Section 17(1)(a)(i) and in terms of the provisions of Section 19, when the State Commission has exercised its powers conferred by sub-clause (i) of clause (a) of Section 17, appeal has been provided against such order to the National Commission.

11. In terms of the provisions of Section 21, particularly clause (b), the National Commission shall have jurisdiction 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 (i) has exercised jurisdiction not vested in it by law or (ii) has failed to exercise jurisdiction so vested or (iii) has acted in exercise of jurisdiction illegally or (iv) with material irregularity.

12. In the instant case, the State Commission while exercising jurisdiction under Section 17 clause (a) sub-clause (i), has passed an ex-parte order against the petitioner-Bank and further rejected the application filed by the petitioner-Bank for setting

aside such an ex-parte order, with the observation that the State Commission has no power to recall its own order directing further the respondent/original complainant to lead evidence. The provisions of clause (b) of Section 21 of the Act of 1986 does not contemplate any remedy to the aggrieved party to approach the National Commission since the jurisdiction of the National Commission is limited to the extent as mentioned in para 11 above in (i) to (iv) of clause (b) of Section 21. The said clauses (i) to (iv) are not so mentioned in clause (b), but for the sake of convenience, mentioned in the said manner by this Court. There is no provision in the Act of 1986, and that is observed in catena of judgments by the Supreme Court that there is no power vested in the State Commission to recall its own order. Consequently, it cannot be said that the State Commission has exercised jurisdiction not vested in it by law or has failed to exercise jurisdiction so vested or has acted in the exercise of its jurisdiction illegally or with material irregularity. As a result thereof, even though the aggrieved party, if succeeded in showing the genuine cause for setting aside such an ex-parte order, would be rendered remediless.

13. In the case of **Jyotsana Arvindkumar Shah and Ors. vs. Bombay Hospital Trust** (supra), relied upon by the learned counsel for the respondent, the order passed by the State Commission setting aside the ex-parte order was questioned before the Supreme Court. In para 7 of the order, the Supreme Court has observed that if the law does not permit the respondent to move the application for setting aside the ex-parte order, which appears to be the position, the order of the State Commission setting aside the ex-parte order cannot be sustained. There is no dispute that there is no provision in the Act of 1986 enabling the State Commission to set aside an ex-parte order.

14. In the case of **Nivedita Sharma vs Cellular Operators Association of India and Ors** (supra), relied upon by the learned counsel for the respondent, the Supreme Court held that the High Court will not entertain a petition under Article 226 if an effective alternate remedy is available to the aggrieved person or the statute concerned consists a mechanism for redressal of the grievance. The Supreme Court has thus referred the provisions of Sections 11, 17 and 21 of the Act of 1986. In this case, after taking cognizance of the complaint, the State

Commission has passed an interim order and gave certain directions. Consequently, the said order came to be challenged before a Division Bench of the High Court. Further, during pendency of the Writ Petitions, the State Commission took up the complaint, considered various issues and again passed the orders in terms of para 38 to 40. The said directions contained in para 38 also came to be challenged before the Division Bench of the High Court. The Division Bench of the High Court disposed of all the petitions and set aside the directions contained in the order of the State Commission. Those orders came to be challenged before the Supreme Court with the contention that the Division Bench of the Delhi High Court committed serious error by entertaining the Writ Petition ignoring that the Act of 1986 is a code unto itself and the remedy of appeal available against an order passed by the State Commission is an equally efficacious alternative remedy. Thus, the Supreme Court had dealt with the issue as to whether the Division Bench of the High Court committed an error by entertaining the Writ Petition filed by the respondents. The Supreme Court has also observed that after having noticed that some of the petitioners were inclined to avail the remedy of appeal against the particular portion of the

order passed by the State Commission, the High Court should not have entertained the Writ Petition filed under Article 226 of the Constitution and the miscellaneous petitions filed under Article 227 of the Constitution and directed the party to avail the remedy of appeal under Section 19 of the Act of 1986.

15. In the Case of **Phalguni Das vs Tapas Dutta** (supra) relied upon by the learned counsel for the respondent, the Supreme Court has set aside the order passed by the High Court on the ground that the effective alternate remedy was available to the respondent under Section 21(b) of the Act of 1986 for challenging the order passed by the State Commission whereby it declined to set aside the order dated 04.02.2011 vide which the ex-parte order dated 29.11.2010 passed in favour of the respondent was recalled.

16. In view of the above discussion and the observations made by the Supreme Court in the aforesaid cases, it is clear that no alternate efficacious remedy is provided under the Act of 1986 to entertain an appeal or revision against the order passed by the State Commission in the like nature which is under challenge in

the instant Writ Petition. In the instant case, the State Commission has directed the respondent/original complainant to lead further evidence, refusing to set aside the ex-parte order on the ground that the State Commission has no jurisdiction to review its own order. The State Commission, in terms of the provisions of the Act of 1986, has no powers to review its own order. Consequently, even though the aggrieved party explained the cause to the satisfaction of the State Commission as to failure in causing appearance, the same cannot be considered for setting aside the ex-parte order for want of provision in the Act of 1986. In my considered opinion, the petitioner-Bank has given satisfactory reasons for non appearance in the complaint bearing Consumer Complaint No. 19 of 2016 and as such, this Writ Petition can be entertained and appropriate orders can be passed in the interest of justice. Further, considering the issue involved in the matter, I deem it appropriate to set aside the impugned order passed by the State Commission, subject to payment of costs. Hence the following order:

ORDER

- I. The Writ Petition is hereby allowed.
- II. The order dated 04.10.2016 in Consumer Complaint No. 19 of 2016 and the order dated 27.01.2017 in the application dated 07.01.2017 filed by the petitioner-Bank (Exhibit “E” to the Petition), passed by the State Consumer Dispute Redressal Commission, Aurangabad, are hereby quashed and set aside.
- III. The application dated 07.01.2017 (Exhibit “E” to the Petition) filed by the petitioner-Bank for setting aside the ex-parte order dated 04.10.2016 passed by the State Commission is hereby allowed in terms of its prayer clause, subject to costs of Rs.10,000/- (Rupees ten thousand) to be paid by the petitioner-Bank to the respondent within four weeks from the date of this order.
- IV. The Writ Petition is accordingly disposed of.

(V. K. JADHAV, J.)