

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.5421 OF 2015
(P.H.I.Seeds Pvt.Ltd., Vs. Shivaji Gangadhar Kadam and another)
WITH WRIT PETITION NO.5422 OF 2015
(P.H.I.Seeds Pvt.Ltd., Vs.Rajendra @ Rajaram Kashinath Kale and another)
WITH WRIT PETITION NO.5423 OF 2015
(P.H.I.Seeds Pvt.Ltd., Vs.Ashok Venunath Shinde and another)
WITH WRIT PETITION NO.5424 OF 2015
(P.H.I.Seeds Pvt.Ltd., Vs.Bharat Nanasaheb Turkane and another)
WITH WRIT PETITION NO.5425 OF 2015
(P.H.I.Seeds Pvt.Ltd., Vs.Prashant Shivaji Kalwaghe and another)
WITH WRIT PETITION NO.5428 OF 2015
(P.H.I.Seeds Pvt.Ltd., Vs.Ramesh Narayan Tambe and another)
WITH WRIT PETITION NO.5432 OF 2015
(P.H.I.Seeds Pvt.Ltd., Vs.Sanjay Dattatraya Joshi and another)
WITH WRIT PETITION NO.5433 OF 2015
(P.H.I.Seeds Pvt.Ltd., Vs.Sanjay Bhimashankar Lasure and another)
WITH WRIT PETITION NO.5440 OF 2015
(P.H.I.Seeds Pvt.Ltd., Vs.Ravindra Chandrabhan Salpure and another)
WITH WRIT PETITION NO.5441 OF 2015
(P.H.I.Seeds Pvt.Ltd., Vs.Appasaheb Suryabhan Salpure and another)
WITH WRIT PETITION NO.5442 OF 2015
(P.H.I.Seeds Pvt.Ltd., Vs.Kansraj Genuji Turkane and another)

Mr.B.N.Gadegaonkar h/f Mr.M.V.Ghatge, Advocate for the petitioner.
Mr.A.S.Gandhi, Advocate for respondent No.1.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 06/07/2018

PER COURT :

1. Mr.Gandhi, learned Advocate has appeared for respondent No.1, the contesting respondent, in all these matters.

2. By consent of the parties, these matters are taken up for hearing.

3. Learned Advocate for the petitioner submits that respondent No.2 is a non contesting party and the petitioner desires to delete the same in these proceedings. Deletion is permitted at the risk of the petitioner. Deletion be carried out forthwith in view of the request made.

4. Learned Advocate for respondent No.1 submits that in WP No.5441/2015 and 5442/2015, respondent No.1 is the LR of deceased respondent No.2.

5. In all these petitions, the petitioner is aggrieved by the order of the Maharashtra State Consumer Disputes Redressal Commission, Mumbai, Circuit Bench at Aurangabad, by which the appeals preferred by this identical petitioner against the original complainants has been dismissed in default. My attention is drawn to the grounds set out in the memo of the petition explaining the reasons due to which the first appeals went unrepresented and the State Commission dismissed the appeals in default. It is pointed out that in series of orders passed by this Court in identical matters, the

'DID orders' of the State Commission are set aside by imposing costs. It is further stated that 50% of the compensation awarded by the District Forum or Rs.25,000/-, has been deposited before the State Commission while preferring the first appeals.

6. Learned Advocate for respondent No.1 strenuously opposes this petition. Contention is that the petitioner has been negligent. First appeals are filed in 2012 and DID order is passed on 29/10/2014. The respondents are poor agriculturists who have suffered on account of defective seeds sold by the petitioner. They have suffered a serious damage in the form of a loss of an agricultural season, which cannot be compensated even by the quantum of compensation awarded by the District Forum.

7. I have noticed that this Court has passed series of orders in such DID cases by imposing costs of Rs.5,000/- and has put the petitioners to terms and have set aside the DID orders. In the matter of Anita Chandrakant Patil Vs. The Circle Officer, LIC of India [2017 SCC Online Bom.7459 = MANU/MH/3911/2017], this Court has relied upon such orders in paragraph No.5 while setting aside the DID orders. Paragraph No.5 reads as under :-

“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)."

8. Learned Advocate for the petitioner submits that the first

appeals were dismissed in default due to the fault of the learned Advocate. His father was critically ill and hence he was not available on the said date due to circumstances beyond his control. He will have to bear the brunt of the DID orders and hence lesser costs may be awarded. It is in these peculiar circumstances that I am awarding costs of Rs.3,000/-.

9. Considering the above, these petitions are allowed. The impugned orders passed by the State Consumer Commission are quashed and set aside. All the first appeals stand restored to the file of the State Commission at its Bench at Aurangabad.

10. The litigating sides would appear before the State Commission on 30/07/2018. Costs of Rs.3,000/- in each petition shall be deposited on or before 30/07/2018. The petitioner agrees to deposit the costs in the State Commission and by consent of the parties, learned Advocate for respondent No.1 would withdraw the costs. The litigating sides would be precluded from seeking any adjournments. Failure to deposit costs would result in the recalling of this order and then the impugned order dated 29/10/2014 shall stand restored.

(Ravindra V.Ghuge, J.)