

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

WRIT PETITION NO. 6375 OF 2016

BRANCH MANAGER STATE BANK OF HYDERABAD JALNA
VERSUS
KRISHNA SANJAY WAGHMARE AND ANOTHER.

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Advocate for the Petitioner : Shri Patil Raturaj C..
Advocate for Respondent 1 : Shri S.N.Gaikwad.
Advocate for Respondent 2 : Shri M.P. Ganekar and Shri P.S.Mehta.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 06th October, 2018

Per Court:

1 The Petitioner/ Branch Manager, State Bank of Hyderabad, is aggrieved by the order dated 18.04.2016 passed by the Maharashtra State Consumer Dispute Redressal Commissioner, Mumbai, Circuit Bench at Aurangabad (for short "the State Consumer Commission"), by which First Appeal No.718/2005 has been dismissed in default for the reason that nobody appeared for the Petitioner Bank.

2 In identical matters, this Court has consistently passed orders setting aside the "Dismissed in Default" orders of the State Consumer Commission and by imposing costs in between Rs.3000/- to Rs.25,000/-, this Court has restored the First Appeals before the State Consumer Commission. Some of the orders passed by this Court are as under :-

- (a) The Superintendent of Post Offices, Nanded vs. Ramakant s/o Raghuni Gupta, Writ Petition No.6604/2013 decided on 24.10.2013.
- (b) Hemlata Kantilal Thole vs. United India Insurance Co. Ltd., Writ Petition No.8401/2013 decided on 16.01.2014.
- (c) Kapurchand Kotecha Urban Cooperative Credit Society Ltd. vs. Mangilal Bhikchand Jain, Writ Petition No.531/2014 decided on 20.02.2014.
- (d) Arun Sudamrao Modale vs. Sangmeshwar Tractor Authorized Dealer, 2014 (4) Mh.L.J. 757.
- (e) Shivaji Rangnath Khilari vs. The Manager, Wasan Automobiles, Writ Petition No.9793/2014 decided on 27.07.2015.
- (f) The Branch Manager, State Bank of India vs. Dharmaraj Chindha Patil, Writ Petition No.2811/2015 decided on 03.02.2016.
- (g) Miss.Radhika Rajesh Mandhani vs. Dr.Dilip Patwardhan, Writ Petition No.3985/2012 decided on 22.03.2016.
- (h) Anita Chandrakant Patil vs. The Circle Officer, LIC of India, Writ Petition No.7718/2015 decided on 09.08.2017.

find the following peculiar facts emerging from the record :-

- (a) The issue before the District Consumer Redressal Forum raised by Respondent No.1/ Complainant was with regard to the banking transaction in which, an amount of Rs.3000/- was shown to have been debited from his account held with the Petitioner Bank after he operated the ATM machine of the ICICI Bank, for withdrawal of money.
- (b) Though Rs.3000/- were debited from the account of Respondent No.1, who is a student, and entry was accordingly carried out in his account held with the Petitioner Bank, he claims that the said amount never emerged from the ATM machine and therefore, he did not receive the amount.
- (c) The District Consumer Redressal Forum granted Rs.6000/- towards basic amount, interest and harassment suffered by Respondent No.1.
- (d) Rs.3000/- have already been deposited by the Petitioner Bank in the First Appeal before the State Consumer Commission.

4 It was, therefore, put to the learned Advocate for Respondent No.1/ student that if he is paid an amount of Rs.3000/- deposited in the State Consumer Commission and Rs.5000/-, which this Court may grant as costs in this matter, would he withdraw his complaint and put the

litigation to an end.

5 The learned Advocate submits that as Respondent No.1 is not in contact with him and does not respond to his communication, he has served the notice on Respondent No.1 dated 29.08.2018 by speed post A.D.. The copy of the communication along with the copy of the printout of the tracking report taken from the website of the Department of Posts, Ministry of Communication, Government of India, indicates that this communication is served upon Respondent No.1/ student on 01.09.2018 at 08:36:07 hours. Yet, Respondent No.1 has not responded. The copy of the communication along with the tracking report (total 03 pages) is taken on record and marked as "X" for identification.

6 It was, therefore, put to the learned Advocate for the Petitioner/ Bank that if the amount deposited in the State Consumer Commission and the costs in this petition are paid to Respondent No.1, can this litigation be concluded so as to save the valuable time of the State Consumer Commission and further possibility of the litigation. Shri Patil submits that he cannot make a statement.

7 In view of the above, I am following the usual course adopted consistently by this Court in the orders referred to above. As such, this Writ Petition is allowed. The impugned order dated 18.03.2016 is set aside and First Appeal No.718/2015 is restored to the file of the State Consumer Commission by imposing costs of Rs.5000/- (Rupees Five

Thousand) on the Petitioner Bank, to be deposited before the State Consumer Commission on or before 26.11.2018. Respondent No.1 would be at liberty to withdraw the said amount of Rs.5000/- without conditions.

8 Shri Patil, learned Advocate for the Petitioner/ Bank, who also appears in the State Consumer Commission, submits that under a medical advise, he would be proceeding on leave and he would report for work only on 26.11.2018.

9 As such, by consent of the parties, all these litigating sides or their advocates would appear before the State Consumer Commission on 26.11.2018. The litigating sides would canvass their final submissions in First Appeal No.718/2015 in between 26.11.2018 to 21.12.2018 and thereafter, the State Consumer Commission would proceed to deliver it's order in the first appeal on it's own merits. The option of settling the dispute amongst the parties in view of the amount of Rs.5000/- being granted to the original Complainant and Rs.3000/- that is already deposited before the District Consumer Forum, is kept open.