

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

WRIT PETITION NO. 7762 OF 2013
WITH
CIVIL APPLICATION NO.14812 OF 2015
IN
WRIT PETITION NO.7762 OF 2013

THE REGIONAL OFFICER, PUNJAB NATIONAL BANK AND ANOTHER
VERSUS
NAGESH K. GUPTA

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Advocate for the Petitioners : Shri Adwant S.V.
Advocate for the Respondent : Shri Lavekar Shivkumar N..

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 05th June, 2018

Per Court:

1 By this petition, the Petitioner Bank has put forth the following prayers in clauses (b), (c), (d) and (e) :-

- "(b) *The record and proceeding of Appeal No.663/2011 be called for from the Maharashtra State Consumer Dispute Redressal Commission, Mumbai, circuit Bench at Aurangabad.*
- (c) *By issuing a writ of certiorari or any other appropriate writ, the impugned order dated 21.06.2013 passed by the Maharashtra State Consumer Dispute Redressal Commission, Mumbai, circuit bench at Aurangabad in Appeal No.663/2013, thereby dismissing the appeal in default be quashed and set aside.*
- (d) *By issuing a writ of certiorari or any other appropriate writ, the Maharashtra State Consumer*

Dispute Redressal Commission, Mumbai, circuit bench at Aurangabad, be directed to decide Appeal No.663/2013 on merits.

- (e) *By issuing a writ of certiorari or any other appropriate writ or order, the order passed in M.A.No. __/2013 on 16.09.2013, refusing to recall the order passed by the Maharashtra State Consumer Dispute Redressal Commission, Mumbai, circuit bench at Aurangabad in Appeal No.663/2013, passed on 21.06.2013, be quashed and set aside and the appeal be restored to its original shape."*

2 I have considered the submissions of the learned Advocates for the respective sides at length. However, taking into account the instructions given by the Respondent to the learned Advocate, which are recorded hereunder, I am not required to advert to his entire submissions. Suffice it to say that the State Consumer Dispute Redressal Commission, Mumbai, circuit Bench at Aurangabad has dismissed First Appeal No.663/2011 filed by the Petitioner Bank, in default on 21.06.2013. So also, the State Commission has refused to recall the said order by it's further order dated 16.09.2013 for the reason that the State Commission does not have jurisdiction to recall it's own orders.

3 This Court has consistently passed several orders with regard to the orders of the State Commission dismissing the First Appeals in default. Reliance is placed upon the judgment dated 18.03.2013 delivered by this Court in Writ Petition No.2011/2013 (*Kishore Laxminarayan Mantri and others vs. Sau.Prabhawati Vijay Kulkarni*) and the order dated

10.07.2013 in Writ Petition No.9987/2012 (*HDFC Ltd. vs. Sau.Prabhavati Vijaykumar Kulkarni*), by which, this Court has imposed costs of Rs.5000/- and Rs.15,000/-, respectively, in the said two matters while setting aside the orders of dismissal in default passed by the State Commission and has restored the First Appeals for rehearing.

4 The learned Advocate for the Respondent submits, on instructions, as under :-

- (a) Costs of Rs.15,000/- be imposed on the Petitioner Bank in this petition, to be paid to the Respondent, as a condition for restoring the First Appeal.
- (b) The First Appeal should be decided within a particular time frame by the State Commission, circuit bench at Aurangabad.
- (c) The contentions of the Respondent/ original Complainant before the District Consumer Redressal Forum, Jalgaon seeking heavy interest and costs on the amount liable to be paid to him, be kept open to be considered by the State Commission.

5 In the light of the above, this Writ Petition is allowed as under:-

- (a) The impugned order dated 21.06.2013 and consequential order dated 16.09.2013 are quashed and set aside.

- (b) First Appeal No.663/2011 shall stand restored with the Maharashtra State Consumer Dispute Redressal Commission, circuit bench at Aurangabad.
- (c) Both the litigating sides agree to appear before the State Commission at Aurangabad on 29.06.2018.
- (d) Both the litigating sides would produce the printout of this order, taken from the official website of the Bombay High Court, before the State Commission on 29.06.2018.
- (e) Formal notices need not be issued by the State Commission to either of the sides.
- (f) The litigating sides shall canvass their oral submissions and are at liberty to tender their written notes of submissions before the State Commission on or before 27.07.2018, following which the State Commission would be at liberty to close the First Appeal for judgment or may dictate the judgment in open court as it may desire.
- (g) Costs of Rs.15,000/- (Rupees Fifteen Thousand) shall be deposited by the Petitioner Bank before the State Commission on or before 29.06.2018 and the Respondent herein is at liberty to withdraw the said amount without conditions as costs. This amount will not be set off against any amount claimed by the Respondent.

- (h) All contentions of the litigating sides are kept open, including the contention of the Respondent that he is entitled for 9% interest and the litigation costs, which the State Commission would consider on their own merits.
- (i) The amounts deposited by the Petitioner Bank in the State Commission shall not be withdrawn till the decision in the First Appeal.
- (j) The warrant of attachment would lose its efficacy as the entire amount has been deposited.

6 The pending Civil Application No.14812/2015 does not survive and stands disposed of.

kps

(RAVINDRA V. GHUGE, J.)