

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

WRIT PETITION NO. 14530 OF 2017

**M/S V K MANUFACTURING AND MACHINERY SUPPLIERS
VERSUS
DEVANAND BABURAO LAMTURE AND ANOTHER**

...
Advocate for the Petitioner : Shri P. S.Salvi
Advocate for Respondent No.1 : Shri H.V. Patil

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CORAM : RAVINDRA V. GHUGE, J.
DATED : 20th JUNE, 2018.

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PER COURT :

1. The petitioner, who is the appellant in First Appeal No. 814/2017 before the Maharashtra State Consumer Disputes Redressal Commission at Aurangabad, is aggrieved by the order dated 09/10/2017, by which, First Appeal No. 814/2017 has been dismissed since the objection of depositing the statutory amount under Section 15 of the Consumer Protection Act, 1986 (in short 'the Act') has not been complied with.

2. I have heard the submissions of the learned advocates for the respective sides.

3. This Court has taken a view in several matters which

were dismissed in default, in (1) *Mahadev s/o Shankarrappa Here Vs. The New India Assurance Company Ltd. in Writ Petition No. 2190/2013, decided on 25/04/2013*, (2) *Arun s/o Sudamrao Modale versus Sangmeshwar Tractor authorized Dealer (2014(4) Mh.L.J. 757)*, (3) *The Assistant General Manager State Bank of Hyderabad Aurangabad Godavari Marathwada Irrigation Development Corporation Through its Chief Accountant in Writ Petition No. 9352/2015. decided on 10/02/2016* and in the matter of (4) *Dwarkadas Mantri Nagri Sahakari Bank Limited vs Haridas Vithalrao Karde, Writ Petition No. 02106 of 2015, decided on 29/11/2017.*

04. In the last judgment of this Court dated 29/11/2017 in *Dwarkadas Mantri* (supra), this Court has observed in paragraph Nos. 5 and 6 as under :-

"05. Learned Counsel appearing for the petitioner has relied on the decision of this Court in the case of *Arun s/o. Sudamrao Modale Vs. Sangmeshwar Tractor, Authorized Dealer, Ahmedpur*, and another [2014(4) Mh.L.J. 757], wherein it has been held on the basis of the decision of the Apex Court in the case of *Rajeev*

Hitendra Pathak and others Vs. Achyut Kashinath Karekar & another [2012(2) Mh.L.J. (S.C.) 1], that when the appeal filed before the State Commission has been dismissed in default, then the State Commission cannot recall the order. Further in that case, the application for setting aside ex parte dismissal in default not entertained by Registry of the Commission, this Court set aside the said order to meet the ends of justice and restored the appeal to the State Commission. Further reliance has been placed on judgment of this Court at Nagpur Bench delivered in Writ Petition No. 02697 of 2012 (Kamlakar Ramsa Chawre Vs. State Consumer Disputes Redressal Commission, Maharashtra, Circuit Bench at Nagpur & others) on 22nd February 2013, wherein (Judgment) (4) W.P. No. 02106 of 2015 also, the State Consumer Disputes Redressal Commission has dismissed the appeal in default. It was stated that the writ petition is maintainable. It was specifically pointed out that Section 21(b) of the Consumer Protection Act would give the jurisdiction to the National Commission when the dispute was pending or decided by the State Commission. But after dismissal in default, the National Commission will not have jurisdiction.

06. In order to appreciate the point raised, I would like to reproduce Section 21(b) of the Consumer Protection Act, which reads as under :-

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

*(a)
.....*

(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. "

The said provision gives jurisdiction to the National Commission to call for the records and pass appropriate orders in any consumer dispute which is pending before or has been decided by any State (Judgment) (5) W.P. No. 02106 of 2015 Commission. Further it states that where the State Commission has failed to exercise jurisdiction so vested or had acted in exercise of its jurisdiction illegally or with material irregularity, then also there will be the jurisdiction."

05. It is apparent that the petitioner had failed to deposit the statutory amount and hence the said default led to the rejection of the First Appeal for non compliance of the statutory requirement under Section 15 of the Act. The appeal, therefore, can be said to have been dismissed in default on the part of the appellant. Subsequently, an amount of Rs. 10,000/- as a statutory deposit, has been paid before the District Consumer Forum, Parbhani and a receipt dated 15/11/2017 is produced in this petition paper book.

06. Learned advocate for respondent No.1- original claimant strenuously submits that he has unnecessarily suffered rigours of litigation. Hydraulic Press Processor machine for manufacturing products was not supplied by this petitioner. Respondent No.1 had taken a loan for the said machine and is repaying the loan and interest, though the said machine has not been supplied. He is in great financial difficulties because of the conduct of the petitioner. He, therefore, prays for costs and submits that half of the costs can be donated to a humane cause like the Ghati Hospital at Aurangabad.

07. Considering the above, this petition is allowed. The impugned order dated 09/10/2017, dismissing the First Appeal in default, is set aside.

08. First Appeal No. 814/2017 stands restored on the following conditions :

(a) The petitioner shall deposit an amount of Rs. 5,000/- before the State Consumer Forum at Aurangabad on or before 13/07/2018.

(b) The petitioner shall deposit an amount of Rs. 5,000/- with the Ghati Hospital (Government Medical College and Hospital, Aurangabad) as donation on or before 13/07/2018 and shall produce a receipt thereof before the State Consumer Forum.

(c) The litigating sides would appear before the State Consumer Forum on 17/07/2018 and shall abide by the dates of hearing as may be posted by the said Forum.

(d) The petitioner will be restrained from seeking adjournments and would co-operate in the expeditious disposal of First Appeal No. 814/2017.

(e) The State Commission shall decide the said Appeal as

expeditiously as possible and on or before 31/10/2018.

(f) After the costs of Rs. 5,000/-, as directed in clause (a) above, is deposited in the State Commission, the original claimant will be at liberty to withdraw the said amount, without conditions.

(RAVINDRA V. GHUGE, J.)

shp/-