

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.7905 OF 2019

RANJIT SAMBAJIRAO JADHAV
VERSUS
THE MANAGER, STATE BANK OF INDIA

...
Advocate for Petitioner : Shri Jadhav Arvind G.
Advocate for Respondent 1 : Shri Patil Vaibhav R.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: July 11, 2019
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PER COURT :-

1. On 1.7.2019, I had passed the following order:-

“01. The petitioner is aggrieved by the Order dated 12.4.2019 passed by the Maharashtra State Consumer Dispute Redressal Commission at Aurangabad vide which his case No. CC/22/2018 was dismissed in default for want of prosecution. It is pointed out that this Court has entertained such matters and has passed Orders in the following cases :

(a) Rajeev Hitendra Pathak and Ors. V/s Achyut Kashinath Karekar and Anr., - 2012(2) Mh.L.J. (S.C.),

(b) Hemlata Kantilal Thole V/s United India Insurance Co. Ltd., (Writ Petition No. 8401/2013) decided on 16.1.2014,

(c) Kapurchand Kotecha Urban Cooperative Credit

Society Ltd., and Anr. V/s Mangilal Bhikchand Jain, Writ Petition No. 531/2014 decided on 20.2.2014,

(d) Arun Sudamrao Modale V/s Sangmeshwar Tractor, (2014(4) Mh.L.J. 757).

02. The learned Advocate appearing on behalf of sole respondent bank seeks time.

03. Stand over to 11.7.2019 for passing Orders.

04. In the meanwhile, the petitioner shall deposit an amount of Rs. 5,000/- in this Court on or before 10.7.2019.”

2. Learned Advocate for the sole respondent has relied upon the following judgments:-

- (i) Nivedita Sharma Vs. Cellular Operators Association - (2011) 14 SCC 337,
- (ii) Cicily Kallarackal Vs. Vehicle Factory - (2012) 8 SCC 524,
- (iii) Aneja Industries Ltd. Vs. Jagdish C. Shah - 2011 (5) Mh.L.J. 904,
- (iv) Bajirao Dagduji Sirsat Vs. Sanjay Prakashchand Kothari - 2015 (1) Mh.L.J. 278,
- (v) Dhanaji Zumbar Thorat Vs. Dr. Smt. Shilpa Rajiv

Suryawanshi - Writ Petition No.2995 of 2014,
decided on 6.9.2017.

(vi) State Bank of India Vs. M/s Shiur Sakhar Karkhana Ltd.-
Writ Petition No.2104 of 2017, decided on 3.5.2018 and

(vii) M/s Shiur Sakhar Karkhana Pvt. Ltd. Vs. State Bank of India-
Petition for Special Leave to Appeal (C) No.18658/2018
Dated 6.8.2018.

3. In Nivedita Sharma (supra), the Honourable Apex Court concluded that when the State Commission has decided the appeal on its merits, the High Court should not entertain a Writ Petition. Same is the view in Cicily Kallarackal (supra).

4. The same is the view is taken by the learned Division Bench of this Court in Aneja Industries Ltd. (supra) and in similar facts, followed the law settled by the Honourable Apex Court in the case of Bajirao Dagduji Sirsat (supra).

5. In State Bank of India (supra), the issue was as regards, whether the State Commission could recall its own order, which is not the subject matter in this case. It is held that it cannot re-call its order.

6. In so far as the view taken by this Court (Coram : Nitin W.

Sambre, J.) in Dhanaji Zumbar Thorat (supra), is concerned, I find that the view taken by the Courts in Rajeev Hitendra Pathak and others Vs. Achyut Kashinath Karekar and another [(2011) 9 SCC 541], Hemlata Kantilal Thole Vs. United India Insurance Co. Ltd. - Writ petition No.8401 of 2013, decided on 16.1.2014, and Kapurchand Kotecha Urban Cooperative Credit Society Ltd. Vs. Mangilal Bhikchand Jain - Writ Petition No.531 of 2014, decided on 20.2.2014, were not cited. My learned Brother relied upon Nivedita Sharma (supra) and Cicily Kallarackal (supra) and held that the statutory remedy is available against the order of the State Commission.

7. I find that the law is now settled that if the State Commission delivers a verdict on the merits of the appeal or on an original application, be it so even an ex-parte judgment, the statutory remedy would be an appeal to the National Commission and a Writ Petition will not be the remedy available. It is further consistently held that if an order of 'dismissed in default' is passed by the State Commission, a Writ Petition can be entertained for a limited purpose as the State Commission does not have the powers to recall its own orders.

8. In view of the above, this petition is allowed. The impugned order of 'dismissed in default', passed by the State Commissioner

dated 12.4.2019, is quashed and set aside. The litigating parties shall appear before the State Commission at Aurangabad on 1.8.2019. Formal notices need not be issued by the State Commission. If the petitioner remains absent before the State Commission, hereafter, the Commission shall proceed to pass orders as it deems fit and proper.

9. The amount of costs of Rs.5,000/- deposited by the petitioner in this Court can be withdrawn by the respondents without any conditions. At this juncture, the learned Advocate for the respondent / Bank graciously submits that the amount be donated for the treatment of poor patients as the Bank would not withdraw the said amount. Registry is directed to transmit the amount, along with accrued interest to the Government Medical College and Hospital, Aurangabad, **through Medical Officer, High Court Dispensary, Aurangabad**, either in cash or by Demand Draft (Demand Draft be drawn in the name of **“Dean, Government Medical College and Hospital Dengi Samiti, Aurangabad”**).

(RAVINDRA V. GHUGE, J.)

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