

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.29 OF 2018
(Abhay Narayan Raje Vs. Prakash Anant Mahajani and others)

Mr.T.R.Daware h/f Mr.A.G.Talhar, Advocate for the petitioner.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 04/03/2019

PER COURT :

1. This Court (Coram : Manish Pitale, J.) relied upon the judgment of the learned Division Bench of this Court in the matter of Maharashtra University of Health Sciences Vs. Sachin [2013(6) All M.R. 607] and concluded that despite availability of a remedy under the Consumer Protection Act, 1986, a writ petition against the order of the State Commission dismissing an appeal in default, is maintainable before this Court.

2. Heard the petitioner. None appear for the served respondents.

3. This Court has considered an identical situation of the State Consumer Commission dismissing the first appeal in default, in the

following matters :-

- (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).
- (g) The order dated 09/08/2017 (Coram : Ravindra V.Ghuge, J.) in the matter of **Anita Chandrakant Patil Vs. The Circle Officer and another** (Writ Petition No.7718/2015)

4. In view of the above, this petition is partly allowed. The impugned order dated 17/03/2017 in First Appeal No.810/2015 is quashed and set aside and the first appeal is restored to the file of the Consumer Disputes Redressal Commission, Maharashtra State, Mumbai, Circuit Bench at Nasik, with the following directions :-

[a] The petitioner shall appear before the State Commission on 27/03/2019.

[b] The State Commission shall issue notices to the litigating respondents for causing a hearing in the first appeal.

[c] The petitioner shall deposit an amount of Rs.5,000/- in this Court as donation for the treatment of poor patients, to be deposited with 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, Aurangabad Dengi Samiti**”) on or before 25/03/2019, failing which, the said amount shall be recovered from the petitioner as arrears of land revenue.

[d] The litigating sides shall refrain from seeking adjournments and shall co-operate with the Circuit Bench at Nasik for an expeditious disposal of the first appeal.

(Ravindra V.Ghuge, J.)