

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR.

Writ Petition No.2123 of 2018

(Ashwin s/o Karunashankar Chaurasia .vs. Amrut S. Dhanwatey)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders or directions Court's or Judge's orders.
and Registrar's orders

Mr. S.V. Bhutada, Advocate for Petitioner.
Mr. M.P. Rajkondawar, Advocate for Respondent.

CORAM : Manish Pitale, J.
DATED : March 15, 2019.

By this writ petition, the petitioner has challenged order dated 12.02.2016 passed by the State Consumer Disputes Redressal Commission Maharashtra, Circuit Bench, Nagpur (State Commission), whereby appeal filed by the petitioner was dismissed in default. It was observed in the impugned by the State commission that despite repeated opportunities given to the petitioner to supply the correct address of the respondent, no steps were taken in that regard, thereby demonstrating that the petitioner did not have interest in prosecuting the appeal and, therefore, the appeal stood dismissed in default.

2. The respondent (original complainant) had filed a complaint before the District Consumer Redressal Forum against the petitioner. The said complaint was partly allowed and the petitioner was directed to pay amount of Rs.60,000/- with 12% interest to the respondent along with certain amounts towards litigation costs etc.

3. Aggrieved by the said order of the District Consumer Forum, the petitioner filed the aforesaid appeal before the State Commission. It is an admitted position on record that the appeal was filed at Mumbai before the State Commission in the year 2003 and thereafter in the year 2014, the appeal stood transferred to the Circuit Bench of the State Commission at Nagpur.

4. It was after the appeal stood transferred to the Circuit Bench of the State Commission at Nagpur that on 09.04.2014, the State Commission issued notices to the petitioner as well as the respondent, recording that the appeal had been received on transfer from Mumbai. Thereafter, the counsel for the petitioner appeared before the Circuit Bench of the State Commission at Nagpur and an order was passed asking the petitioner to furnish correct address of the respondent as notice issued by the State Commission was not served. Thereafter on consecutive dates, the petitioner failed to furnish correct address of the respondent and on 30.06.2015, it was recorded by the State Commission that none was present on behalf of the petitioner. Thereafter counsel for the petitioner did appear before the State Commission on 16.09.2015, when one last chance was given to the petitioner to supply the correct address of the respondent and the appeal was adjourned to 28.10.2015.

5. On 28.10.2015 none appeared for the

petitioner and since no steps were taken on behalf of the petitioner to serve the respondent or to furnish correct address, it was recorded that the appeal deserved to be dismissed for want of prosecution and it was directed to be placed for appropriate orders on 09.12.2015. Thereafter the appeal was listed on 12.02.2016 when the impugned order was passed by the State Commission. It was recorded that none appeared for the petitioner and that the default in furnishing correct address on the part of the petitioner had continued and despite number of adjournments granted, no steps were taken on behalf of the petitioner. On this basis, the appeal was dismissed in default.

6. Mr. S.V. Bhutada, learned counsel for the petitioner, submitted that the transfer of the appeal from Mumbai to Circuit Bench of the State Commission at Nagpur, was one of the reasons why the petitioner was unable to prosecute the appeal in right earnest and that after transfer of the appeal from Mumbai, the respondent had also not cared to either engage a counsel and remain present before the Circuit Bench of the State Commission or to at least place the correct address on record. Although the onus was certainly on the petitioner to find the correct address of the respondent, it was contended that transfer of the appeal from Mumbai to the Circuit Bench of the State Commission at Nagpur had resulted in procedural aspects dominating the course of the proceedings rather than hearing on merits. It was submitted that the counsel for the petitioner had indeed appeared on

certain occasions before the Circuit Bench of the State Commission at Nagpur and despite efforts made on the part of the counsel, correct address of the respondent could not be furnished, due to which the appeal stood dismissed in default. It was submitted that since the petitioner had a good case on merits, hearing was required to be undertaken before the State Commission for a decision of the same on merits. It was submitted that in view of the aforesaid circumstances, this Court could condone the default on the part of the petitioner and restore the appeal before the State Commission so that the matter could be decided on merits.

7. On the other hand, Mr. M.P. Rajkondawar, learned counsel appearing for the respondent submitted that the writ petition was not maintainable because an alternative remedy in the form of revision petition under Section 21(b) of the Consumer Protection Act, 1986 was available. It was submitted that in the face of the said alternative remedy, the present writ petition ought not to be entertained. It was also pointed out that the repeated defaults committed by the petitioner were not only condoned by the State Commission but when no steps were taken on behalf of the petitioner, the appeal was correctly dismissed in default by the State Commission. It was submitted that the petitioner did not deserve any sympathy in the facts and circumstances of the present case and that the writ petition deserved to be dismissed.

8. Heard counsel for the parties and perused the

record.

9. Insofar as the question of availability of alternative remedy and maintainability of the present writ petition is concerned, in a recent judgment passed by this Court in **Wasan Automotive Pvt. Ltd. .vs. Subhash Rajaram Vande in Writ Petition No. 2406 of 2018**, this Court has held that revision petition under Section 21(b) of the aforesaid Act is certainly an alternative remedy available to the petitioner to challenge the impugned order passed by the State Commission dismissing an appeal in default. But, in the said judgment, it has been further held that despite availability of alternative remedy, a writ can still be entertained because not entertaining a writ petition when an alternative remedy is available, is a rule of self imposed limitation, being more a rule of prudence and policy, rather than being a rule of law. It has been held that in peculiar facts and circumstances, a writ petition can very well be maintained despite existence of an alternative remedy.

10. Therefore, it would be necessary to examine whether in the facts of the present case such circumstances exist that this Court could entertain the present writ petition and pass an order in favour of the petitioner. A perusal of the order passed by the Circuit Bench of the State Commission at Nagpur, after the appeal was transferred from Mumbai, shows that not only were notices issued to both the parties, but that the petitioner did appear before the State Commission

through counsel. It appears that the respondent could not be served with notice because the same had returned unserved as the respondent had changed his address. Due to want of correct address, the appeal was repeatedly listed for consideration before the State Commission and it was adjourned to facilitate the petitioner and his counsel to furnish the correct address for service of notice on the respondent. Due to failure on the part of the petitioner to do so, the appeal stood dismissed in default by the impugned order.

11. It appears that the situation leading to dismissal of the appeal in default arose because of transfer of the appeal from Mumbai to the Circuit Bench of the State Commission at Nagpur. The appeal pertains to the year 2003 and it was pending before the State Commission at Mumbai when in the year 2014 it stood transferred to Circuit Bench of the State Commission at Nagpur. It appears that the respondent also was partly to blame for not being aware of transfer of the appeal from Mumbai to Circuit Bench of the State Commission at Nagpur. This is because if he had indeed changed his address, he could have been informed by the State Commission at Mumbai about such development, particularly when he was represented by counsel before the State Commission at Mumbai. In this situation, the petitioner and his counsel were called upon to ensure that the notice was served to the respondent after transfer of the appeal from Mumbai to the Circuit Bench of the State Commission at Nagpur.

12. Taking an over all view and particularly in the peculiar facts and circumstances of the present case, it appears that the dismissal of the appeal in default was an order that could be said to be harsh and that the State Commission could have perhaps insisted upon the petitioner to serve the respondent by other modes of service, including by publication in daily newspaper. The need to serve the respondent again would not have arisen if the appeal would not have been transferred from Mumbai to Nagpur. Considering these facts, it becomes clear that the petitioner has made out a case warranting interference in the impugned order of the State Commission by this Court exercising writ jurisdiction.

13. It can also not be ignored that the respondent has been put to inconvenience because of the fact that the impugned order was passed and the petitioner approached this Court, leading to another round of litigation between the parties. The said inconvenience can be compensated by way of costs. The restoration of the appeal before the Circuit Bench of the State Commission at Nagpur can also be directed subject to imposing conditions.

14. In view of the above, the writ petition is allowed. The impugned order is quashed and set aside and the appeal is restored before the Circuit Bench of the State Commission at Nagpur, subject to the petitioner depositing the principal amount as directed by the District Consumer Redressal Forum i.e.

Rs.60,000/- before the State Commission within a period of two weeks from today and further upon payment of costs of Rs.10,000/- to the respondent within the aforesaid period of time.

15. Upon such conditions being satisfied, First Appeal No. A/03/746 shall stand restored before the Circuit Bench of the State Commission. The parties shall appear before the Circuit Bench of the State Commission at Nagpur on 01.04.2019.

16. The State Commission shall dispose of the appeal expeditiously and in any case by 30.06.2019.

JUDGE

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