

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

WRIT PETITION NO. 6310 OF 2016

(Tikaram s/o. Kashinath Durge & anr..vs.. State, thr its Secretary, Min. of Corporation
Affairs, Mumbai and ors.)

*Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.*

Court's or Judge's orders.

Shri K.R. Prajapati, Advocate for petitioners.
Shri A.M. Madiwale, AGP for respondent Nos. 1 & 2.
Shri N. Bhisikar, Advocate for respondent No.3.

CORAM: RAVINDRA V. GHUGE, J.

DATE: 7th JANUARY, 2020.

1. The petitioner is aggrieved by the order dated 14.7.2015 by which First Appeal No. 13/222 has been dismissed in default and by order dated 15.7.2016 by which MCA No. MA/16/3 has been rejected by the State Consumer Disputes Redressal Commission, Maharashtra, Circuit Bench at Nagpur.

2. I have considered the submissions of the learned Advocates for the petitioners and respondent No. 3 and the learned AGP on behalf of respondent Nos. 1 & 2.

3. The learned Advocate for respondent No. 3 submits that this Court may not entertain this petition and relegate the petitioner to the alternate remedy before the National Commission at New Delhi.

4. It calls for no debate that the State Commission

has been held to be without jurisdiction to recall its own order. The State Commission has therefore, rightly passed the order dated 15.7.2016 declining to recall its order dated 14.7.2015 by which the First Appeal was dismissed in default. This Court has taken a view in the matter of ***Arun s/o. Sudamrao Modale vs. Sangmeshwar Tractor Authorized Dealer, Ahmedpur & anr, 2014(4)Mh.L.J. 757***, by which this Court has referred to the judgments cited and has concluded that an order of dismissal in default can be a subject matter of a Writ Petition before the High Court rather than relegating party to approach the National Commission, New Delhi. The rigours of litigation being suffered by the respondent can be reduced by imposition of cost.

5. The learned Advocate for the respondent No.3 herein submits that an amount of Rs. 55,000/- deposited in this Court, may be transferred to the State Consumer Disputes Redressal Commission and the amount which this Court may impose upon the petitioner as cost, may be granted to respondent No. 3 with liberty to withdraw.

6. In view of the above, this petition is allowed. The impugned orders dated 14.7.2015 and 15.7.2016 are quashed and set aside. First Appeal FA/13/222 shall stand restored to the file of the State Consumer Disputes Redressal Commission, Circuit Bench at Nagpur. The litigating parties shall appear before the State Commission

on 3.2.2020 at 11 a.m.. They shall abide by the dates of hearing as may be granted by the State Commission in the said matter. Non-appearance by the petitioners herein would result in the dismissal of the appeal and thereafter no grievance against such dismissal in default, would be entertained.

7. The amount of Rs. 55,000/- deposited in this Court along with accrued interest shall be transferred by the Registry of this Court to the State Commission in FA/13/222 and shall be subject matter of the result of the First Appeal. The petitioner shall deposit an amount of Rs. 10,000/- in this Court on or before 27.1.2020 and respondent No. 3 Vijay Rajeshwarrao Matte is permitted to withdraw the said amount as cost without any condition under proper identification by the learned Advocate. Needless to state, failure to deposit the amount shall result in the recalling of this order without further reference to the Court on 28.1.2020 and the First Appeal shall then stand dismissed in default.

(Ravindra V. Ghuge, J.)