

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

WRIT PETITION NO. 6782 OF 2016

(Pravin Premratan Damani..vs.. Executive Engineer, MSEDCL, Bhandara & anr)

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

Court's or Judge's orders.

Shri S.V. Bhutada, Advocate for petitioner.
Shri A.M. Quazi, Advocate for respondent Nos.1&2.

CORAM: RAVINDRA V. GHUGE, J.

DATE: 3rd JANUARY, 2020.

1. By the first order passed on 2.12.2016, this Court noted that the petitioner has deposited an amount of Rs. 93,000/- out of the total bill of Rs. 1,55,312/- which the respondent – Company desires to recover from the petitioner. Keeping this in mind, this Court granted *ad-interim* relief to the petitioner in terms of prayer clause (C).

2. I have heard the learned Advocate for the petitioner and the respondents. With their assistance, I have gone through the petition.

3. I find from impugned order passed by the State Consumer Disputes Redressal Commission (SCDRC) at Nagpur, said to be dated 1.7.2015 that the Commission disclosed its mind in the order observing that the appeal deserves to be dismissed in default, as the appellant is consistently not appearing before the forum. In addition thereto, it is stated that there appears to be an allegation of

theft of electricity and complaint before the District Forum against such assessment with regard to the theft of electricity, may not be maintainable.

4. I find that the Commission had not heard the parties on the merits of the matter and as such, no conclusion on the merits could be arrived at, without proper hearing. The order reveals that the Commission was inclined to dismiss the appeal in default, due to the consistent absence of the appellant, and therefore, the appeal was dismissed.

5. This Court, at the Aurangabad Bench, had an occasion to deal with a matter of an appeal being dismissed in default, in Writ Petition No. 3985 of 2012 (Aurangabad Bench) in the matter of Miss. Radhika d/o. Rajesh Mandhani vs. Dr. Dilip Pathwardhan & another. By judgment dated 22.3.2016, it was recorded in paragraph Nos. 5 to 9 which read as under:

“5] This petition was earlier dismissed by an order dated 8.4.2013 passed by this Court (Coram: S.S. Shinde, J.) and it was held that an alternative remedy before the National Commission was available. However, the Review Application No.72/2013 filed by the petitioner herein was decided by this Court (Coram: S.S. Shinde,J.) by its judgment dated 22.7.2014 and placing reliance on the judgment of this Court in the case of R.B. Upadhyay v. State Commission for Consumer Disputes, Mumbai (AIR 2010 Bombay 139) , it was concluded that the petition challenging the order of dismissal in default by the State Commission could be entertained by this Court.

6] This Court earlier had an occasion to deal with a similar matter in between Branch Manager, H.D.F.C.

Ltd. v. Pravin Devidas Pawar & others (Writ Petition NO.6384/2012 decided on 5.10.2012). This Court (Coram: S.V. Gangapurwala, J.) by its order dated 5.10.2012 has concluded that this Court could deal with the issue of a First Appeal being dismissed in default by the State Commission. Paragraph nos.6 & 7 of the said order reads as under:-

“ 6] It is true that when the matter was dismissed in default, the advocate for petitioner was absent. But, on that day, the representative of petitioner was present and he had made a request to keep back the matter. The Commission could have considered for keeping back the matter. It also appears that immediately an application was given on the same day for recalling the order of dismissal. The said application was rejected on the ground that the Commission has no power.

7] Considering the above, I am inclined to offer one more opportunity to the petitioner. Hence, the impugned order is quashed and set aside. Appeal is restored to its original position, on condition that the petitioner deposits the cost which were levied by the State Consumer Dispute Redressal Commission, by 22nd October, 2012. Parties shall appear before the State Consumer Dispute Redressal Commission on 22nd October, 2012. If cost as directed by the Commission is deposited by the petitioner, the Commission shall hear the Appeal on its own merits as per its convenience. Taking into account the fact that the matter is remanded, the Commission shall endeavour to dispose of the matter expeditiously.

“7] This Court had also dealt with a similar case in the matter of United India Insurance Company Ltd. v. Yogesh Gorakhlal Jaiswal dated 20.3.2013. Paragraph nos.5 & 6 of the said order read as under:-

“5. Once the Appeal is filed, it is

normally advocate who appears in the matter. Due to personal difficulty, advocate of the petitioner could not appear. Moreover, it does not appear that notice was issued to the parties notifying the date. I deem it appropriate to give one opportunity to the petitioner to contest the Appeal on merits, at the same time the petitioner also deserves to be mulct with some cost.

6. In the result, I pass the following order:

(i) Impugned order dated 19.01.2012 is hereby quashed and set aside. The First Appeal bearing No. 320 of 2011 is restored to its original position on condition that the petitioner pays cost of Rs.5000/- to the respondent within a period of four weeks from today.

(ii) The cost may be directly paid to the petitioner or be deposited in the office of Maharashtra State Consumer Dispute Redressal Commission Mumbai, Circuit Bench at Aurangabad. In case it is deposited in the office of Commission, as directed above, respondent is entitled to withdraw the same.

(iii) The parties shall appear before the State Commission on 17.04.2013."

8] In yet another case in the matter of Arun Sudamrao Modale v. Sangameshwar Tractor Authorized Dealer Ahmedpur (2014 (4) Mh.L.J., 757), this Court held that the question as to whether the District Consumer Disputes Redressal Forum or the State Commission had the power to set aside their own exparte orders or in other words have the power to recall or review their own orders. Placing reliance upon the judgment delivered by the Hon'ble Supreme Court in the matter of Rajeev Hitendra Pathak & others v. Achyut Kashinath Karekar & another (2011 (9) SCC 541), it was held that in a case of DID order passed by the State Commission,

such an order cannot be recalled by moving an application before the said Court. This Court, however, concluded that an order dismissing the First Appeal in default by the State Commission can be set aside by this Court by entertaining a writ petition.

9] Learned Advocates for respondent nos.1 & 2 have strenuously submitted that though the First Appeal was filed on 20.2.2009, it was circulated for the first time on 25.11.2010, which is after a span of about 20 months. For about eight dates from 25.11.2010 onwards, none appeared for the petitioner. Finally, it was dismissed in default on 24.1.2012. In these circumstances, the respondents pray for costs.

6. Considering the above, this petition is partly allowed on the condition that the petitioner shall deposit cost of Rs. 10,000/-. First Appeal No. 06/1931 stands restored.

7. The learned Advocate for the respondent, when called upon, graciously submits that an amount of Rs. 5,000/- from the cost amount can be deposited by the petitioner with the High Court Bar Library, Nagpur High Court, Nagpur on or before 20.1.2020 and an amount of Rs. 5,000/-, by bankers cheque or demand draft, can be paid directly to respondent 1 – Executive Engineer, MSEDCL, Bhandara, Tah. Dist. Bhandara, on or before the same date. The petitioner is agreeable and his statement is recorded.

8. The litigating side shall appear before the State Consumer Disputes Redressal Commission at Nagpur on 10.2.2020 at 11.00 a.m., and shall abide by the dates of

hearing on which First Appeal 06/1931, is posted. Needless to state, any further laxity on the part of the petitioner would result in the dismissal of appeal in default and no further grievance from the petitioner, would be entertained.

9. All the contentions of the litigating side are kept open including the objections as regards maintainability raised by the respondents and the Commission is expected to decide the said appeal considering the pleadings and contentions of the parties.

(RAVINDRA V. GHUGE, J.)