



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

WRIT PETITION No. 3553 OF 2023

PETITIONERS: : 1. Mohan Jhawar and Company
(Chartered Accountants), through its
proprietor Mohan Devkisan Jhawar,
Age 55 years, Occ. Chartered
Accountant, Add. KCL Business Park,
46-47, PU 4 Commercial, Behind C21
Mall, A.B. Road, Indore - 452010

2. Mohan Devkisan Jhawar,
Age 55 years, Occ. Chartered
Accountant, Add. Shrivari, 121/2
Shanti Niketan, Behind Bombay
Hospital, Indore 452010

Vs.

RESPONDENT : Priyanka Dilipkumar Sananda,
Age 35 years, Occ. Business,
Res. Balaji Plots, Khamgao,
Tah. Khamgao, Dist. Buldhana

Mr. Chintan Deopujari, Advocate for petitioners
Mr. U.J. Deshpande,, Advocate or respondent

CORAM: AVINASH G. GHAROTE, J.

DATED : 4th OCTOBER, 2023

ORAL JUDGMENT :

Rule. Rule is made returnable forthwith. Heard
finally with the consent of learned counsel appearing for rival
parties.

2. The petition questions the final order of the Consumer Dispute Redressal Commission, Buldhana, dated 14/12/2022, passed in Consumer Complaint No. 77/2022, whereby the petitioner, who is the opponent therein has been directed to make payment of the amount along with interest and damages and costs.

3. It is contended by Mr. Deopujari, learned counsel for the petitioners, that considering the fact that as a loan was taken, the District Consumer Commission, could have any jurisdiction to entertain and decide the complaint filed by the respondent and the impugned order, therefore, would be without jurisdiction, as no service was being rendered in terms of the definition under Section 2(42) of the Consumer Protection Act, 2019. He further submits, that the petitioners have been unable to raise these pleas before the learned District Consumer Commission, as the counsel for petitioners, did not communicate the further steps to be taken, which has also caused prejudice to the petitioners. He therefore submits, that since there is jurisdictional error in the District Commission in assuming jurisdiction, the impugned order is liable to be quashed and set aside.

4. Mr. U.J. Deshpande, learned counsel the respondent sole supports the impugned order of the Commission and contends, that there is no jurisdictional error in view of the fact that the petitioner was a company and therefore, under the provisions of the Companies Act was not entitled to accept the loan from a third party, which in view of Section 2(31) of the Companies Act has to be treated as deposit and therefore, no fault can be found with the impugned order of the learned Consumer Commission.

5. It is not in dispute that in pursuance of an interim order, by this Court, an amount of Rs.5,00,000/- has been deposited. The questions raised, are one which can be canvassed by the petitioners before the Commission, who would be competent to decide upon the same.

6. In that view of the matter, the impugned order dated 14/12/2022 is hereby quashed and set aside and the matter is remanded back to the District Commission, Buldhana in order to afford an opportunity to the petitioners to put-forth their stand before the District Commission subject to the condition that the respondent shall be permitted to withdraw the amount of Rs.5,00,000/-

deposited by the petitioners in this Court along with accrued interest if any, which amount shall be adjusted against any future recoveries if directed to be made against the petitioners. The petition is accordingly allowed in the above terms. No costs.

Rule is made absolute in above terms. No costs.

(AVINASH G. GHAROTE, J.)

MP Deshpande