



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 5158 OF 2017

M/s Vaishnavi Construction And Borewells
Through Its Owner R N Kaile

.....Petitioner

VERSUS

The Manager Chicago Newmatic Construction
Equipment Pune And Another

.....Respondents

.....
Mr. T.M. Venjane, Advocate for the Petitioner
Mrs. A.S. Mantri, AGP for State

.....

CORAM : MANJUSHA DESHPANDE, J.

DATE : 24th JANUARY, 2025

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith. Heard finally with the consent of parties.

2. The petitioner is challenging the order dated 05.12.2016 passed by Presiding Member, Maharashtra State Consumer Disputes Redressal Commission, Mumbai, Circuit Bench at Aurangabad in Complaint Case No. 15/2016, thereby complaint filed by petitioner has been dismissed for want of prosecution.

3. It is the contention of petitioner that though certain

dates have been recorded by Presiding Member observing that petitioner who is original complainant was not present on that dates, however, from the document annexed to the writ petition it can be seen that on most of the dates he was very much present before the Presiding Member and erroneous order has been passed by the Presiding Member. According to the impugned order, complainant was absent on 28.07.2016, 16.08.2016, 21.09.2016, 28.09.2016, 25.10.2016, 18.11.2016 and 05.12.2016. So far as dates mentioned in the impugned order are concerned, learned advocate for the petitioner has placed on record extracts of orders of some dates. While passing the order dated 02.09.2016 initially it has been observed that complainant as well as its counsel is absent. However, in the later part of the order, presence of learned advocate for complainant has been recorded and cost of Rs. 1,000/- has been imposed.

4. On the next date i.e. 28.09.2016 also, learned advocate for complainant has caused appearance and he has placed reliance on the later part of the order wherein his appearance is recorded. So far as order dated 25.10.2016 is concerned, though it is observed by Presiding Member that

learned advocate for complainant is absent, it is also recorded that the office file is misplaced and registry was directed to trace out the file. Therefore, according to learned advocate for the petitioner though he was absent, his absence was inconsequential.

5. On 18.11.2016 order came to be passed observing that on 25.10.2016 nobody was present for the parties, therefore, matter was directed to be listed on 05.12.2016. It was further observed that the matter will be dismissed in default if nobody appears for the complainant. Accordingly, the matter was listed on 05.12.2016 and impugned order has been passed.

6. Learned advocate for the petitioner submits that on 05.12.2016 he was late in causing his appearance before Presiding Member, and by that time impugned order was already passed. However, he filed an application stating that he reached Commission at 11.10 am, but matter was already called out and same is dismissed in default. However, on the said application order came to be passed observing that complaint is dismissed in default and Presiding Member does not have power to set aside the order. The copy of the application filed on record supports his claim.

7. From the documents placed on record it is evident that though there is observation made in the order by Presiding Member, that petitioner was absent on the dates mentioned in the order, record indicates otherwise. Hence, the order passed by Presiding Member being erroneous and contrary to the record deserves to be quashed and set aside.

8. In view of documents placed on record as well as submissions of learned advocate for petitioner and considering that the presence of learned advocate for petitioner/original complainant has been demonstrated by the petitioner, the impugned order becomes unsustainable and is required to be set aside.

9. In that view of the matter, writ petition is allowed.

10. Order dated 05.12.2016 passed by Presiding Member, Maharashtra State Consumer Disputes Redressal Commission, Mumbai, Circuit Bench at Aurangabad in Complaint Case No. 15/2016 is quashed and set aside.

11. Rule is made absolute in aforesaid terms. Writ petition stands disposed of.

(MANJUSHA DESHPANDE, J.)

Bhagyawant Punde