



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

WRIT PETITION NO.5790/2024

M/s Ashtavinayak Developers through its Partner Girish Motilal Jaiswal
Vs.
Pushpa w/o Gajanan Kawade

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

Court's or Judge's orders

Shri Dayashankar Sonwane, Advocate for petitioner
Ms Apurva Kolhe, Advocate for respondent

CORAM : SMT. M.S. JAWALKAR, J.
DATED : 02/01/2025

Heard learned Counsel for petitioner and
learned Counsel for respondent.

2. It appears that there was appeal preferred by the petitioner before the learned State Consumer Disputes Redressal Commission, Nagpur. There was delay in filing the appeal before the State Commission in Misc Application No.23/2023. The State Commission vide order dated 17.03.2024 condoned the delay in filing appeal subject to the costs of Rs.3,000/- to be paid to the non-applicant within a period of four weeks.

3. It is the contention of the petitioner that he had tried to offer the amount to the Counsel for the respondent on 13.06.2024, however, learned Counsel for respondent refused to accept the same. Therefore, appellant drawn the Demand Draft bearing No.801281 dated 14.06.2024 and forwarded to the

respondent by Speed Post on 14.06.2024.

4. Learned Counsel for respondent denied this fact by way of pursis dated 23.08.2024. Another pursis was filed by the learned Counsel for respondent on the same day for disposing of the appeal on the ground that amount was not deposited within time specified by the Commissioner. By way of this pursis, the learned Counsel for respondent submitted that application for condonation of delay as well as appeal deserves to be dismissed. The said order passed by the State Commission on the basis of pursis and application for condonation of delay which was allowed earlier vide order dated 17.05.2024 stand cancelled and also held that appeal does not survive for consideration.

5. After going through the rival contentions of the parties, I am satisfied that the order passed by the State Commission is erroneous, as there is no affidavit filed by the either of the parties, in support of their contentions. Moreover, what is stated by the petitioner appears to be probable as he has applied for allowing him to deposit the amount with the State Commission, however, it appears that he was directed to pay the same to the respondent. He also tried to pay to the Counsel for respondent.

6. As there was no alternative, he prepared the Demand Draft on 14.06.2024 and forwarded to the respondent by Registered Speed Post. If the order was

passed on 17.05.2024, four weeks expired on 14.06.2024. As per say of the petitioner, he offered the amount on 13.06.2024. Even if, it is presumed that the Demand Draft was prepared on 14.06.2024, there is no any counter affidavit on behalf of learned Counsel for respondent that no amount of cost is offered on 13.06.2024. Only on the basis of pursis, the State Commission rejected the application as well as decided not to consider the appeal on merit. The order passed by the State Commission is patently erroneous and needs to be set aside. The State Commission is hereby directed to re-appreciate the facts and take a decision afresh. Passing of an order only on the basis of pursis, affects the right of petitioner and proper opportunity of hearing.

7. Parties to appear before the learned State Commission on 09.01.2025. After parties will appear before the learned State Commission, the State Commission to take a decision afresh within a period of 15 days from the passing of this order.

8. The Writ Petition stands disposed of.

JUDGE

R.S. Sahare