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Court : Mumbai Aurangabad

Decided On : Apr-02-2014

Judge : Ravindra V. Ghuge

Appeal No. : Writ Petition No. 10144 of 2013

Appellant : Arun

Respondent : Sangmeshwar Tractor Authorized Dealer Ahmedpur Through Its Proprietor, Dhanraj Vainath Chaware and Another

Judgement :

Oral Judgment:

1. Heard the learned Advocates for the respective sides at length.
2. Rule. Rule made returnable forthwith and the petition is heard finally by the consent of the parties.
3. The issue raised by the petitioner in this petition is with reference to an order of the Maharashtra State Consumer Dispute Redressal Commission, Mumbai, Circuit Bench at Aurangabad (hereinafter referred to as the 'State Commission' for brevity).

4. The petitioner had filed a First Appeal No. 481/2009, before the State Commission. On 21-11-2013, the State Commission dismissed the appeal in view of the appellant as well his Counsel remaining absent. The said appeal was, therefore, dismissed in default (DID).

5. The petitioner further contends that he attempted to file an application on the same date before the State Commission for filing of his Vakil Patra and recalling of the order of dismissal in default (DID) passed by the State Commission. However, according to the petitioner, the said application was not accepted by the office of the State Commission. He, therefore, submitted that an application on the same day was made seeking a certified copy of the order of DID, dated 21-11-2013.

6. The petitioner has stated that since an application for setting aside the DID order was attempted to be filed, and was not registered, the petitioner then preferred an application for obtaining the certified copy of the said order. By this petition he, therefore, prayed that the said DID order may be quashed and set aside and the First Appeal be restored to the file of the State Commission.

7. Shri Gunale, learned Advocate on behalf of respondent No. 1 has vehemently opposed this petition. His contention is that the petitioner was negligent and careless in attending the proceedings before the State Commission. He deserves no sympathy. Due to laxity on his part, his appeal has been dismissed in default. He, therefore, submits that the law should not assist a sleeping litigant.

8. Shri Manale, learned Advocate for respondent No. 2, supports the contention of the respondent No. 1. However, he has very fairly conveyed to the Court that an order of dismissing the appeal in default cannot be recalled and the order of DID, cannot be set aside by the State Commission, since it has no powers to do so. He has relied upon the judgment in the case of Rajeew Hitendra Pathak and Ors. Vs. Achyut Kashinath Karekar and Anr., reported at 2011 (9) SCC 541. He has drawn my attention to the contents of paragraph Nos. 2, 6, 11, 35, 36, and 37 of the said judgment which read as under:-

"2. The main question which arises for consideration is whether the District Consumer Forums and the State Commission have the power to set aside their

own ex parte orders or in other words have the powers to recall or review their own orders.?

6. The complainants issued a legal issued legal notice on 24-07-1999. Reply to the legal notice was sent on 07-08-1999. The complainants filed complaint alleging deficiency in service and claimed compensation of Rs. 15,00,000/-. The complainants did not take necessary steps to remove objection and to complete procedure under the Consumer Protection Act, 1986. The State Commission, Maharashtra issued notice to the opposite parties/appellants herein on 10-2-2004. On 09-09-2004, the State Commission dismissed the complaint for want of prosecution. On 04-11-2004, the complainants filed an application for recalling 9-9-2004 order and consequently the State Commission recalled the order dated 9-9-2004 and restored the complaint.

11. We have been called upon to decide whether the State Commission has the power to recall an ex parte order.

œ35. We have carefully scrutinized the provisions of the Consumer Protection Act, 1986. We have also carefully analyzed the submissions and the cases cited by the learned counsel for the parties.

36. On careful analysis of the provisions of the Act, it is abundantly clear that the Tribunals are creatures of the Statute and derive their power from the express provisions of the Statute. The District forums and the State Commissions have not been given any power to set aside ex parte orders and power of review and the powers which have not been expressly given by the Statute cannot be exercised.

37. The legislature chose to give the National Commission power to review its ex parte orders. Before amendment, against dismissal of any case by the Commission, the consumer had to rush to this Court. The amendment in Section 22 and introduction of section 22-A were done for the convenience of the consumers. We have carefully ascertained the legislative intention and interpreted the law accordingly.?

9. In the case of Rajeev Hitendra Pathak and Ors. (Supra), the appeal filed by State Commission was dismissed in default. The aggrieved party filed an application on 04-11-2004 seeking recalling of the DID order dated 09-09-2004 and consequently the State Commission had recalled the order dated 09-09-2004 and restored the complaint. In para No. 11 of the judgment, the Hon'ble Supreme Court has observed that the issue that was being decided was, whether the State Commission has the power to recall an exparte order. In conclusion, it is held that the State Commission would not be empowered to set aside an ex-parte order, as powers of review and powers of setting aside of an ex-parte order have not been expressly vested by the statute in the State Commission. As such, the State Commission cannot exercise powers which are not vested in it by law.

10. In this situation, it is clear that the DID order passed by the State Commission cannot be recalled by moving an application before the said Court. The petitioner herein had moved the State Commission on the same day i.e. 21-11-2013 for seeking certified copy of the DID order. It is unknown as to why was the application for restoration not accepted by the office of the State Commission.

11. Nevertheless, in view of the ratio laid down in the case of Rajeev Hitendra Pathak and Ors. (supra), I am not required to go into that aspect. The fact remains that since an application for obtaining a certified copy of the DID order was made on the same day and the office of the State Commission had acknowledged the receipt of the said application on the same day, it indicates that the petitioner had approached the said Commission on 21-11-2013.

12. By the dismissal of the appeal, the petitioner is deprived of an opportunity to point out the perversity in the impugned order passed by the District Consumer Forum. Ends of Justice would be met by setting aside the DID order dated 21-11-2013 and by restoring First Appeal No. 481/2009 to the file of the State Commission.

13. This Court, dealing with a similar situation, has set aside the DID order passed by the State Commission. In the case of HemlalatKantilal Thole Vs. United India Insurance Co. Ltd., Writ Petition No. 8401/2013 decided on 16-01-2014 and in the case of KapurchandKotecha Urban Co-operative Credit society Ltd., and another

Vs. Mangilal Bhikchand Jain, Writ Petition No. 531/2014 decided on 20-02-2014, this Court (S.V. Gangapurwala, J.) has set aside the DID order passed by the State Commission and has restored the appeal to the file of the said authority.

14. In the result, this petition is allowed. The impugned order dated 21-11-2013 passed by the State Commission is quashed and set aside. First Appeal No. 481/2009, is restored to the file of the State Commission.

15. The petitioner submits that a date for appearance may be granted, so that separate notices need not once again be issued to the litigating parties. By consent, the parties, shall appear before the State Commission on 05-05-2014 and will abide by the further dates that would be granted by the State Commission for hearing of the Appeal. Separate notices need not, therefore, be issued by the office of the State Commission to the litigating parties.

16. With these directions, the petition is allowed. No order as to costs.

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