

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.4988 OF 2012**

Vasantdada Shetkari Bank Ltd.	Petitioner.
Versus	
Mr. Dheeraj Garg & Ors.	...Respondents.

**WITH
WRIT PETITION NO.4990 OF 2012**

Vasantdada Shetkari Bank Ltd.	...Petitioner.
Versus	
Mr. Manoj Rathod & Ors.	...Respondents.

**WITH
WRIT PETITION NO.4992 OF 2012**

Vasantdada Shetkari Bank Ltd.	...Petitioner.
Versus	
Mr. Asim Kumar Datta & Ors.	...Respondents.

Mr. L.S.Deshmukh i/by Shivajirao Masal, advocates for the Petitioner.
Mr. L.S.Gaikwad, advocate for the respondent no.1.

CORAM : SHRI M.S.SONAK, J.

DATED : February 25, 2015.

P.C.:

Rule in each of these petitions. By consent of the learned counsel for the respondent no.1, rule is made returnable forthwith.

2 In each of these petitions, the petitioner lodged securitisation applications before the Debt Recovery Tribunal on or about 19.10.2010. The registry raised several objections with regard to the lodging of said securitisation applications. Since the same were not attended to, the registrar of the Debt Recovery Tribunal (DRT) declined registration by order dated 6.1.2011. As against the order dated 6.1.2011, the petitioner preferred appeals to the presiding officer of the DRT. The applications for condonation of delay were filed alongwith, since the appeals were preferred almost 7 months and 11 days beyond the prescribed period of limitation. By the orders dated 15.2.2012, which are identical, the presiding officer of the DRT has declined to condone the delay in preferring the appeals and consequently, not entertaining the appeals on merits. Hence, the present petitions.

3 The cause indicated by the petitioner in respect of the delay of 7 months and 11 days is that the clerk, who was assigned the duty to clear the objections, failed to do so and further failed to communicate petitioner's advocate about refusal of the registration by the registrar. It was also submitted that the advocate engaged by the petitioner, was not regular practitioner before the DRT, and this, as well as the circumstance that the said advocate's wife was bedridden for a period of almost a month contributed to the delay in lodging appeals before the presiding

officer (DRT). On these grounds, it was urged that the sufficient cause is made out for condonation of delay.

4 Heard the learned counsel for the parties and perused the record. Although, it appears that the petitioner was not sufficiently diligent in the matter of clearance of the office objections and thereafter institution of appeals before the presiding officer, it cannot be said that no sufficient cause at all has been shown by the petitioner in seeking condonation of delay. In most of such matters, there is bound to be some lapse on the part of defaulting party. However, by that itself, is not sufficient to shut out parties from availing adjudication on merits. Hence, if the cause shown is not malafide or is not some strategy to delay the proceedings unduly, the Court/Tribunal is expected to adopt liberal approach in such matters. There is neither any obligation to explain each day's delay, nor is there is any presumption that the delay is result of malafides or utter negligence. In condoning the delay, however, the Court or Tribunal cannot forget opposite parties altogether. This is because, on account of lack of diligence on the part of defaulting party, the opposite party is required to suffer prejudice by way of prolongment of the life of litigation. Such prejudice is, therefore, required to be compensated or mitigated by a direction for payment of costs.

5 In the facts and circumstances of the present case, the petitioner, as noted earlier, has stated that the clerk concerned neither cleared the objections nor intimated the fact that registration had been declined in the matters. The circumstance that advocate engaged by the petitioner is not regular practitioner before the DRT and he has to attend his bedridden wife are also not the circumstances, which are irrelevant in matters of condonation of delay. Upon cumulative consideration of such circumstances, therefore, the petitioner has made out a case for condonation of delay of 7 months and 11 days in instituting the appeals before the presiding officer of the DRT. The petitioner, however, shall have to pay the costs of Rs.10,000/- each to the respondent nos.1 and 2 in each of these petitions as a pre-condition for condonation of delay.

6 Accordingly, the impugned order dated 15.2.2012 in each of these petitions is set aside, subject to the petitioner's paying the respondent nos.1 and 2 in each of the petitions , costs of Rs.10,000/- each within a period of four weeks from today. In case, such costs are paid or deposited before the DRT within a period of four weeks from today, the applications for condonation of delay shall stand granted. The Presiding Officer (DRT) shall then hear and decide petitioner's appeals, in the matter of orders made by the registrar declining registration. In case, the amount of costs are not paid to the respondent nos.1 and 2 or

deposited within a period of four weeks from today, these petitions shall be deemed to have been dismissed and the orders impugned therein shall stand confirmed. If the amount of costs are deposited by the petitioner within a period of four weeks then, the respondent nos.1 and 2 shall be at liberty to withdraw the same unconditionally.

7 Rule is made absolute to the aforesaid extent. There shall be no order as to separate costs in these petitions.

All the parties to act on the basis of authenticated copy of this order.

(M.S.SONAK, J.)

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.4989 OF 2012**

Vasantdada Shetkari Bank Ltd.	Petitioner.
Versus	
Mr.Kiran D. Jagtiani & Ors.	...Respondents.

**WITH
WRIT PETITION NO.4991 OF 2012**

Vasantdada Shetkari Bank Ltd.	...Petitioner.
Versus	
Mr. Narottamal Modi & Ors.	...Respondents.

Mr. L.S.Deshmukh i/by Shivajirao Masal, advocates for the Petitioner.
Mr. L.S.Gaikwad, advocate for the respondent no.1 in WP No.4989/12
and for the respondent no.2 in WP No.4991/2012.

**CORAM : SHRI M.S.SONAK, J.
DATED : February 25, 2015.**

P.C.:

In Writ Petition No.4989 of 2012, the learned counsel for the respondent no.1 states that he shall furnish to the learned counsel for the petitioner the names of the legal heirs of the respondent no.2 within a period of one week from today.

2 The learned counsel for the petitioner, accordingly, seeks three weeks' time to take steps to bring the said legal heirs on record.

3 In Writ Petition No.4991 of 2012, the respondent no.1 has expired and the learned counsel, who earlier used to appear for him has stated that he shall furnish names of the legal heirs of the respondent no.1 within a period of one week. Accordingly, both these petitions are adjourned to 19.3.2015 High on Board.

4 Before the said date, the learned counsel for the petitioner states that he shall take necessary steps to bring on record legal heirs of the deceased respondents.

(M.S.SONAK, J.)