

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.2646/2015

Siraj A. K. Mehtaji

... Petitioner

V/s.

Union Bank of India & Ors.

... Respondents

Mr. Poor a/w. Mr. Bharat Mehta i/b. R. R. Nair for the Petitioner
None for the Respondents

CORAM: K.K. TATED, J.
DATED : NOVEMBER 17, 2015

PC. :

1. Heard the learned counsel for the Petitioner. By this petition, the Petitioner challenges the order dated 09/10/2014 passed by the Debts Recovery Appellate Tribunal (for short DRAT) Mumbai in Misc. Application No.51/2013 by which the DRAT rejected the Petitioner's Application for condonation of 2004 days delay in filing the appeal.

2. In the present proceedings, the Respondent No.1 Union Bank of India filed proceedings for recovery of sum of Rs.22,93,319/- from the Petitioner as well as Respondent No.2 and same was transferred to the Debts Recovery Tribunal, Mumbai for hearing. That Application was numbered as Original Application (for short O.A.) No.2/2002 before the Debts Recovery Tribunal-I (for short DRT), Mumbai which was decided by judgment dated 14/11/2002 holding that the Petitioner and

Respondent No.2 jointly and severally to pay sum of Rs.22,93,319/- to Respondent No.1 with further interest @ 16% p.a. with quarterly rest from the date of filing of Application till realisation of the said amount.

3. Thereafter, the Petitioner made an Application below Exhibit 6 for condonation of delay in filing the Application for setting aside the exparte order passed by the DRT in O.A. No.2/2000. There was delay on the part of the Petitioner to make the said Application. The Tribunal, by order dated 24/01/2005 dismissed the Petitioner's Application for condonation of delay in filing the Application for setting aside the exparte order.

4. Thereafter the Petitioner preferred appeal (L) No.61/2005 under section 20 of the Recovery of Debts due to the Banks and Financial Institutions Act, 1993 before the DRAT on 01/02/2005. As the Petitioner failed to remove office objections in the said appeal, the appeal was rejected by the Registry of the DRAT by order dated 20/07/2005.

5. The Petitioner made Misc. Application No.98/2011 for restoration of the appeal (L) No.61/2005. There was delay in preferring the said appeal. Hence, the Petitioner made an Application dated 17/12/2012 for condonation of delay of 2004 days in making the Application. The said Application for condonation of delay in making the Misc. Application for restoration of the appeal was rejected by the DRAT on 09/10/2014. Hence, the Petitioner filed the present petition on 31/04/2015.

6. The learned counsel for the Petitioner submits that because of mistake on the part of their Advocate, the appeal filed by the Petitioner stood dismissed for non removal of office objections. He submits that the appeal appeared before the learned Registrar of DRAT on 06/04/2005 and thereafter on 25/05/2005 for removal of office objections. As none appeared on behalf of the Petitioner, the matter was adjourned to 20/07/2005, as a last chance. On 20/07/2005 also none appeared for the Petitioner. Hence, the Registrar, DRAT rejected registration of the appeal.

7. The learned counsel for the Petitioner submits that because of mistake on the part of the Advocate, a litigant should not suffer. He submits that the Petitioner furnished all papers in the matter to their Advocate along with his fees and in spite of that his Advocate failed and neglected to take appropriate steps to prosecute the appeal filed by him. He submits that the Apex Court in the matter of ***Secretary, Department of Horticulture, Chandigarh and Anr. Vs. Raghu Raj AIR 2009 SC 514*** held that because of mistake on the part of the Advocate, a litigant should not suffer. In support of his contention, he relies on paragraph 34 of the said judgment, which reads thus:

“34. From the case law referred to above, it is clear that this Court has always insisted advocates to appear and argue the case as and when it is called out for hearing. Failure to do so would be unfair to the client and discourteous to the Court and must be severely discountenanced. At the same time, the Court has also emphasized doing justice to the cause wherein it is appropriate that both the parties are present before the Court and they are heard. It has been noted by the Court that once a party engages a counsel, he

thinks that his advocate will appear when the case will be taken up for hearing and the Court calls upon the counsel to make submissions. It is keeping in view these principles that the Court does not proceed to hear the matter in absence of the counsel.”

8. On the basis of this submission, the learned counsel for the Petitioner submits that in the interest of justice, this Hon'ble Court be pleased to set aside the impugned order dated 09/10/2014 passed by the DRAT rejecting the Petitioner's Application for condonation of delay in restoration of the appeal. He submits that if delay is not condoned and petition is not allowed, irreparable loss will be caused to the Petitioner.

9. Heard the learned counsel for the Petitioner at length. In the present proceedings, the DRT passed judgment on 14/11/2002 in O.A. No.2/2002 holding that the Petitioner and Respondent No.2 jointly and severally liable to pay sum of Rs.22,93,319/- with future interest @ 16% p.a. Though the Petitioner was duly served in O.A. No.2/2002, none appeared for him. Hence, the matter proceeded ex parte before the DRAT.

10. The Petitioner filed Application for condonation of delay in filing the Application for setting aside the ex parte order which was rejected by the DRT on 21/01/2005. Thereafter the Petitioner preferred appeal. The registration of which was rejected by the Registrar for not taking appropriate steps to remove office objections on 20/07/2005.

11. After more than 6 years, the Petitioner filed Misc. Application No.98/2011 for restoration of Appeal (L) No.61/2005 and preferred

Application dated 17/12/2012 for condonation of 2004 days delay in filing the Misc. Application No.98/2011. The reasons given by the Petitioner in his Application for condonation of delay were vague. Bare reading of the said Application shows that the Petitioner failed and neglected to take appropriate steps to protect his interest. He averred in the Application for condonation of delay that the Petitioner had paid professional fees to his Advocate and was under *bona fide* belief that their Advocate will take proper care of the matter. Even the Advocate has assured the Petitioner that he will take proper care of the matter. It is further stated in the said Application that, immediately after the Petitioner learnt that the matter was dismissed, he approached another Advocate and filed an Application. The reasons disclosed by the Petitioner in his Application for condonation of delay read thus:

“2. The Appellants have thereafter filed an appeal being appeal (L) No.61/2005 before the Hon'ble DRAT. The Appellant says the said appeal was dismissed on 20.07.2005. The Appellant says that the Appellant has paid professional fees to their Advocate and was under a bona fide belief that Advocate will take proper care of the matter. Even the Advocate has assured the Appellant that they will take proper care of the matter. The Appellant says that it is a settled law that for the negligence of an Advocate, parties should not suffer.

3. The Appellants say that thereafter, he wrote a letter to his earlier Advocate and asked for the status of the matter but the Advocate has refused to accept the same and has not informed anything about the matter. Thereafter, the Appellant enquired with the department and at that point of time, the Appellant was informed by the department that the appeal got dismissed. The advocate was completely negligent in discharging his duties. The Appellant craves leave to refer to and rely upon the memo of present appeal at the time of filing of appeal.”

12. Bare reading of said paragraph 2 and 3 of the said Application show that the Petitioner has filed the Application in a casual manner without disclosing any cogent reason for delay of more than 2004 days in filing the appeal.

13. The decision relied on by the Petitioner in the matter of Secretary, Department of Horticulture (supra) is not applicable in the facts and circumstances of the present case. In that case, the Apex Court, in paragraph 36, specifically recorded the reasons disclosed by the Appellant for delay. Whereas, in the present matter, the Petitioner failed and neglected to disclose the reasons for delay of more than 2004 days in filing the Application.

14. It is to be noted that, the Apex Court, in the matter of ***Lanka Venkateshwarlu Vs. State of A.P. 2011(4) Mh.L.J. 104*** held that the Courts do not enjoy unlimited and unbridled discretionary powers in condonation of delay. Similarly, the Apex Court in the matter of ***Maniben Devraj Shah Vs. M.M.C. (2012) 5 SCC 157*** held that no premium can be given for total lethargy or utter negligence of the litigant in condonation of delay. In similar way, the Apex Court in the matter of ***B. Madhuri Goud Vs. B. Damodar Reddy (2012) 12 SCC 693*** held that if sufficient cause is not shown, delay should not be condoned. In that case, the Apex Court held that the delay of 1236 days in filing the appeal against an ex parte order cannot be condoned for want of sufficient cause.

15. Considering the reasons disclosed by the Petitioner in the Application for condonation of 2004 days delay, the law declared by the Apex Court as stated herein above and considering the impugned order passed by the DRAT, I am of the opinion that the Petitioner has not made out any case to entertain the present petition.

16. Hence, the Writ Petition stands dismissed.

(K.K. TATED, J.)