

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 2796 OF 2015**

ASREC India Ltd.

.. Petitioner.

vs.

Cross Sea Leasing & Investment
Co. Pvt. Ltd. & ors.

.. Respondents.

Mr. Ismail Nasikwala i/b Ms. N. I. Bakali for the petitioner.
Ms Hema Desai i/b Singhi & Co. for respondent no.2.

**CORAM: D.H. WAGHELA, C.J. AND
M.S.SONAK, J.**

DATE : 18 MARCH 2016.

P.C.:

1] Learned counsel for the petitioner has filed an affidavit of service confirming that all the respondents have been duly served in this matter.

2] We have heard Mr. Nasikwala, learned counsel for the petitioner and Ms Hema Desai, learned counsel for respondent no.2.

3] By the order impugned in this petition, the Debt Recovery Appellate Tribunal, Mumbai (DRAT) has dismissed the petitioner's Miscellaneous Application No. 353 of 2013 seeking condonation of delay in lodging in Appeal No. 175 of 2013.

4] We have perused the miscellaneous application seeking condonation of delay. The petitioner has explained that

the petitioner is an assignee in pursuance of Deed of Assignment dated 22 October 2010 and in terms of such Deed of Assignment has become entitled to recover the debt due from the respondents as also continue to pursue and enforce all applications, appeals and legal proceedings whatsoever nature for and on behalf of the original assignors. The petitioner has stated that even after execution of Deed of Assignment, they were busy in completion of various formalities in connection with such assignment, for which, some time was spent. On receipt of case papers in pending and disposed of litigation, it was realising that there is necessity of preferring an appeal in this case.

5] The petitioner had also stated that there were some difficulties on account of change of office personnel, since, the new officer engaged by them were not aware of all pending and disposed of matters. Some time was also spent by the advocates to prepare necessary case-papers for purposes of filing an appeal.

6] We were not shown any reply filed by any of the respondents before the DRAT to seriously dispute the cause shown by the petitioner. In any case, we are satisfied that sufficient cause was shown by the petitioner for not preferring the appeal within the prescribed period of limitation.

7] In matters of condonation of delay, as observed by the Hon'ble Supreme Court in case of *N.Balakrishnan Vs. M.*

*Krishnamurthy*¹, there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of mala fides or it is not put forth as part of a dilatory strategy, the Court must show utmost consideration to the suitor. Further length of delay is no matter, acceptability of the explanation is the only criterion. While condoning delay the Court should not forget the opposite party altogether. It must be borne in mind that he is a loser and he too would have incurred quite large litigation expenses. It would be a salutary guideline that when Courts condone the delay due to lapse on the part of the applicant, the Court shall compensate the opposite party for his loss.

8] Applying the aforesaid principles, in the facts and circumstances, we are of the opinion that the delay in institution of appeal should have been condoned, subject of course, to the payment of costs by the petitioner. Accordingly, we set aside the impugned order by condoning the delay in institution of appeal and restored the appeal to the DRAT for adjudication on merits and in accordance with law. All this shall be subject to the petitioner's paying respondent no.2, who is represented by a counsel, with costs assessed at Rs.50,000/- (Rupees Fifty Thousand only). Such costs to be paid within a period of four weeks from today.

¹ (1998) 7 SCC 123

9] The parties to appear before the DRAT on 25 April 2016 and file authenticated copy of this order alongwith proof with regard to payment of costs.

10] The DRAT, if necessary, may issue notices to the respondents, in case, all of them do not appear on the appointed date.

11] Accordingly, petition is allowed in the aforesaid terms.

12] All concerned to act on the basis of authenticated copy of this order.

(CHIEF JUSTICE)

(M.S.SONAK, J.)