

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 10179 OF 2017

M/s. Ambarwadikar & Co.,
Through its GPA,
Vitthalrao Ranganath Ambarwadikar .. **Petitioner**

Versus

The Nashik Merchant Co-operative Bank Ltd.
and others .. **Respondents**

Shri Balaji S. Shinde, Advocate for the Petitioner.
Shri S. V. Adwant, Advocate for Respondent No. 1.

WITH

WRIT PETITION NO. 10187 OF 2017

M/s. Ambarwadikar Industries Pvt. Ltd;
Through its Chairman & Managing Director .. **Petitioner**

Versus

The Nashik Merchant Co-operative Bank Ltd.
and others .. **Respondents**

Shri Balaji S. Shinde, Advocate for the Petitioner.
Shri S. V. Adwant, Advocate for Respondent No. 1.

**CORAM : S. V. GANGAPURWALA &
MANGESH S. PATIL, JJ.**

DATE : 21st September, 2017

PER COURT :

1. The present writ petitions are filed against the orders passed by the Debt Recovery Appellate Tribunal, allowing the applications filed by the respondent – Bank for condonation of delay of 35 day's in filing Securitization Appeal.

2. The present respondent – Bank had initiated action against the present petitioner under the provisions of the Securitization and Reconstruction of Financial Assets & Enforcement of Security Interest Act, 2002 (*hereinafter referred to as “SARFAESI” for the sake of brevity*). The present petitioner assailed the action taken by the Bank U/Sec. 13 (4) of the SARFAESI Act before the Debt Recovery Tribunal, Aurangabad by filing Securitization Applications. After hearing the parties the Presiding Officer, Debt Recovery Tribunal, Aurangabad allowed the Securitization Applications. Delay of 35 days is caused in filing the appeals, the Appellate Tribunal has condoned the delay of 35 days.

3. Mr. Shinde, learned counsel for the petitioner strenuously contends that the appeals did not contain any grounds which would be termed as a sufficient cause so as to exercise jurisdiction and condone the delay. The learned counsel submits that, additional affidavits were filed by the respondent herein supplementing the grounds for condonation of delay. The reply to the said affidavit was filed by the petitioner and on the same day the orders were passed by the tribunal condoning the delay.

The orders passed by the Tribunal is without considering the replies filed by the present petitioner. The impugned orders states that the petitioner has not filed any reply whereas on the date the orders were passed the reply of the petitioner is on record. The learned counsel further submits that, even, the additional grounds raised by way of affidavits by the present respondent taken as it is even if considered in entirety would not be sufficient to condone the delay. Only because the petitioner had approached the Bank to show its bonafides would not be sufficient to stop the legal process of filing the appeals by the Bank, the same would not come within the ambit and purview of sufficient cause.

4. The learned counsel for the respondent supports the order.
5. The tribunal has exercised its discretion in condoning the delay of 35 days in filing the appeals.
6. The grounds stated by the present respondent / appellant before the Appellate Tribunal seeking condonation of delay is that after the judgments were delivered by the Debt Recovery Tribunal, Aurangabad in the Securitization Applications the present petitioner had approached the Bank and some negotiations had taken place and thereafter the petitioner had also deposited a cheque of Rs.4.25 Crores with the Bank. The Bank was under the impression that petitioner would be

depositing the amount, as such, was prevented from filing the appeals within the stipulated period of limitation.

7. The fact that the present petitioner had approached the Bank for negotiations is in fact admitted by the present petitioner in his reply filed before the Appellate Tribunal. This would show that the delay so caused by the Bank is not deliberate or willful but, however, bonafidely the bank was under the impression that the matter would be resolved.

8. The delay is not willful or intentional, the same can be consider for condonation of delay. Even otherwise, the Bank was not to gain by delay.

9. It is trite that, when technical consideration and cause for substantial justice are pitted against each other the cause for substantial justice has to be subserved.

10. The discretion has been exercised by the Appellate Tribunal in a plausible manner. We are not inclined to interfere with the said discretion in writ jurisdiction under Article 226 and 227 of the Constitution of India.

11. The writ petitions are dismissed. No costs.

[MANGESH S. PATIL, J.]

[S. V. GANGAPURWALA, J.]

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