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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.5491/2017

ICICI Bank Ltd.,
ICICI Bank Tower,
Bandra-Kurla Complex and
branch office at Raguvveer Complex,
Opp.District Court, Jalna Road,
Aurangabad, through its
authorized officer.

...Petitioner..

Versus

R L Steel & Energy Limited
(Formerly R.L. Steel),
a company incorporated under the
Companies Act, 1956, having
registered address at Gut No.78-81,
Pangra Shivar, Chitegaon,
Paithan Road, Aurangabad,
through its Principal Officer.

...Respondent...

.....

Shri M.D. Narwadkar, Advocate for petitioner.

Shri A.D. Kasliwal, Advocate for respondent.

.....

CORAM: M.S. SANKLECHA, J.

DATE: 27.04.2017

ORDER :

1] At the request of learned counsel for the parties,
the petition is being disposed of finally at the stage of
admission.

2] This petition challenges the order dated 29.3.2017

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passed by the learned District Judge, Aurangabad. By the impugned order, the petitioner's application seeking extension of time to pay / deposit cost of Rs.1,000/- as a condition precedent for condonation of delay in filing an appeal from the order dated 13.2.2015 of the learned Joint Civil Judge, Senior Division, passed on 9.1.2017, was rejected. The order dated 9.1.2017 directed the petitioner to pay / deposit the cost on or before 23.1.2017.

3] The petitioner failed to deposit the cost of Rs.1,000/- on or before 23.1.2017. On account of failure of the petitioner to pay / deposit the cost, the respondent applied for withdrawal of the amount of Rs.43,03,657/- which had been deposited by the petitioner consequent to the order dated 13.2.2015 passed by the Joint Civil Judge, Senior Division, adverse to it. It is only at that point of time, the Advocate for the petitioner realized that the cost of Rs.1,000/- had not been paid / deposited in the Court consequent to the order dated 9.1.2017. Therefore, the application was filed before the appellate Court seeking extension of time to deposit the cost. The reason for non-deposit of

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the cost within the prescribed time as provided in the order dated 9.1.2017 was that a junior Advocate in the office of the Advocate handling the petitioner's case, who was entrusted with the appeal proceedings, had failed to deposit the cost. In fact, the junior Advocate had left the profession to look for job outside Aurangabad. The impugned order does not accept the explanation offered by the petitioner's Advocate and rejects the petitioner's application for extension of time to pay / deposit cost of Rs.1,000/-. Consequently, the appeal itself also came to be dismissed.

4] It is clear from the record that the cost of Rs.1,000/- as a condition precedent for condonation of delay in filing the appeal before the District Judge from the order dated 13.2.2015 of the Joint Civil Judge, Senior Division, was not deposited because of the negligence of junior Advocate working in the office of the Advocate handling the appeal.

4] It is a settled position of law that a litigant should not suffer on account of Advocate's mistake / negligence. The Advocate has offered an unconditional apology to the Court and owned up the mistake on his part

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not to pay / deposit the cost within time. In the above view, the Court should have taken a sympathetic view and allowed the petitioner's application extending time to deposit the cost of Rs.1,000/-.

5] In the above view, I set aside the impugned order dated 29.3.2017 and direct that cost of Rs.1,000/- shall be paid by the petitioner within one week from today. On payment of the condition precedent cost of Rs.1,000/- and evidence being produced before the appellate Court, the appeal itself would be allotted its regular number by the District Court and shall be taken up for consideration in due course.

6] Mr.Kasliwal, learned counsel for the respondent, very fairly states that the amount of Rs.43,03,657/-, which has been allowed to be withdrawn by the Executing Court, would be subject to the result of the appeal filed by the petitioner – bank.

7] The writ petition is disposed of in the above terms. No order as to costs.

(M.S. SANKLECHA, J.)