

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 4991 OF 2012**

Vasandada Shetkari Sahakari Bank Ltd.)
having its registered office at)
Industrial Estate N. M. Joshi Marg)
Mumbai 400 001 through its Liquidator) ..Petitioner

Vs.

1 Mr. Sandeep Modi)
Adult Indian Inhabitant)
resident of B/804, Mercury)
Vasant Galaxy, Off Link Road,)
Goregaon (West) Mumbai 400 104)

2 UCO Bank)
having its one of the branches at)
“Shilpansali” Opp Kamath Club)
S. V. Road, Goregaon (West))
Mumbai 400 062)

3 Mr. Dinesh Maruti Kadakane)
Proprietor of M/s Shree Gajanan)
Industries having office at 304)
Shankala Industrial Estate,)
Off Aarey Road, Gogate Wadi,)
Goregaon (East) Mumbai 400 063)

4 Shankala Industrial Premises)
Co-operative Society Ltd., having its)
registered office at Shankala)
Industrial Estate, Off Aarey Road,)
Goregaon (West) Mumbai 400 063) ..Respondents

**WITH
WRIT PETITION NO.4989 OF 2012**

Vasandada Shetkari Sahakari Bank Ltd.)
having its registered office at)
Industrial Estate N. M. Joshi Marg)
Mumbai 400 001 through its Liquidator) ..Petitioner

Vs.

**1 Mr. Kiran D. Jagtiani)
Adult Indian Inhabitant)
resident of A-303, Twin Tower,)
Lokhandwala Complex,)
Second Cross Lane, Andheri (E))
Mumbai 400 092)**

**2 UCO Bank)
having its one of the branches at)
“Shilpansali” Opp Kamath Club)
S. V. Road, Goregaon (West))
Mumbai 400 062)**

**3 Mr. Dinesh Maruti Kadakane)
Proprietor of M/s Shree Gajanan)
Industries having office at 304)
Shankala Industrial Estate,)
Off Aarey Road, Gogate Wadi,)
Goregaon (East) Mumbai 400 063)**

**4 Shankala Industrial Premises)
Co-operative Society Ltd., having its)
registered office at Shankala)
Industrial Estate, Off Aarey Road,)
Goregaon (West) Mumbai 400 063)**

..Respondents

**Mr. Shivajirao Masal for the Petitioner
Mr. L. S. Gaikwad for the Respondents**

**CORAM : R. M. SAVANT, J.
DATE : 6th JANUARY, 2017**

P.C.

1 The above Writ Petition No.4989 of 2012 though not on board, is taken up for hearing by the consent of the Learned Counsel for the parties.

2 Rule in both the Writ Petitions. Having regard to the challenge raised made returnable forthwith and heard.

3 The Writ Jurisdiction of this court is invoked against the orders both dated 15-2-2012 passed by the Learned Presiding officer of the Debt Recovery Tribunal -3, Mumbai by which order, the application filed by the Petitioner for condonation of delay in filing the Chamber Appeals in question came to be dismissed. In an identical fact situation in three other Writ Petitions being Writ Petition No.4988 of 2012, Writ Petition No.4990 of 2012 and Writ Petition No.4992 of 2012, a Learned Single Judge of this court has allowed the said Writ Petitions and thereby set aside the identical orders dated 15-2-2012 subject to the Petitioner's paying to the Respondent Nos.1 and 2 costs of Rs.10,000/- each within a period of 4 weeks from date of the said order.

4 Whilst allowing the said Writ Petition, the Learned Judge has considered the reasons mentioned by the Petitioner for non removal of the office objections and thereafter has concluded that it cannot be said that no sufficient cause at all has been shown by the Petitioner in seeking condonation of delay. The Learned Judge has further observed that in such matters, there is bound to be some lapse on the part of defaulting party. However, that by itself is not sufficient to shut out parties from availing adjudication on merits.

The Learned Judge further observed that a liberal approach is required to be taken unless it is shown that there are malafides or some strategy is adopted to delay the proceedings.

5 This court is in complete agreement with the view taken by the Learned Single Judge whilst allowing the said Petitions by the said order dated 25-2-2015. The above Petitions are therefore accordingly allowed. The impugned orders dated 15-2-2012 are set aside subject to the Petitioner paying Rs. 10,000/- to the Respondent No.2 who is the legal heir of the Respondent No.1. The same to be done within a period of 4 weeks from date. In case such costs are paid or deposited before the DRT within the said period of 4 weeks, the applications for condonation of delay would stand granted. The Petitioner's Appeals would then be decided on merits by the Learned Presiding Officer of the DRT which Appeals are in respect of the orders passed by the Registrar of DRT declining the registration. In the event the costs are not paid or deposited by the Petitioner as directed by the instant order, then the benefit of the instant order would not enure to the Petitioner and the Petitions would then be deemed to have been dismissed with the result that the impugned orders would stand confirmed. If the costs are deposited then the Respondent No.2 in each of the above Petition would be entitled to withdraw the same unconditionally and the Learned Presiding Officer would then consider the Petitioner's Appeals on merits.

6 The Petitions are allowed to the aforesaid extent. Rule is accordingly made absolute with parties to bear their respective costs of the Petition.

7 Parties to act upon an ordinary copy of this order duly authenticated by the Court Shirestedar.

[R.M.SAVANT, J]