IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.12269 OF 2015

1. Vasant Govind Kalokhe,
   Age: 45 years, Occ: Business

2. Mrs. Meera Vasant Kalokhe,
   Age: 42 years, Occ: Housewife

Both residing at Salemax Bunglow,
22B, Pay Wood, Lonavala,
Pune – 410 401. .... Petitioners

- Versus -

1. Authorized Officer,
   State Bank of India,
   having its branch office at
   Lonavala Branch, Lokmanya
   Tilak Marg, Lonavala,
   District: Pune - 410 401.

2. Sachin Rajaram Kalokhe,
   residing at Sudawadi, Tal. Maval,
   Dist: Pune, Pin 410 507. .... Respondents

Ms Sonali Jain for the Petitioners.

Mr. P.D. Patil for Respondent No.1.

Mr. U.B. Nighot for Respondent No.2.

CORAM: S.C. DHARMADHIKARI &
SMT. SADHANA S. JADHAV, JJ.

**DATE : **APRIL 21, 2017

ORAL JUDGMENT (Per Shri S.C. DHARMADHIKARI, J.)**:**

1. Heard both sides. Rule. The respondents waive service. By consent, the petition is disposed of finally by this order.

2. At the outset and for the reasons which we have found to be *bona fide* and genuine, we extend the time to deposit the amount under the order passed on 7-3-2017 by this Court. The amount had to be deposited within a period of one week from 7-3-2017, but it is stated that the Demand Draft of the same is ready and would be deposited with the Bank within one week, that is on or before 28-4-2017. We accept this statement and accordingly extend the time to deposit the amount from 7-3-2017 to 28-4-2017.

3. Under challenge in this appeal is an order passed by

the learned Chairperson of the Debts Recovery Appellate Tribunal (DRAT) at Mumbai, dated 30-12-2015, in Miscellaneous Application No.892 of 2015 in Appeal No.309 of 2015.

4. The application for condonation of delay filed by the petitioners/appellants before us has been dismissed by this order.

5. The appeal was filed challenging an order dated 13-8-2015 of the Debts Recovery Tribunal (DRT), Pune.

6. In the miscellaneous application seeking condonation of delay, the petitioners/appellants pointed out that they had filed the appeal not within the prescribed period, but there is a delay. The Advocate appearing for them came to know about the order passed by the DRT dated 13-8-2015 only on 27-8-2015. That is after an enquiry was made in the office of the DRT. The Clerk who was to prepare the certified copy was on leave. That is why the application for certified copy was

made on 8-9-2015. On account of even some administrative difficulties in the DRT, the certified copy was ready on 7-10-2015 and was delivered on 7-10-2015 itself. This resulted in a delay of 21 days, but in the afore-mentioned circumstances.

7. Naturally, the main proceedings are post a sale of the secured assets. The sale having been concluded, the Bank and the auction purchaser opposed this application. The learned Chairperson, contrary to the settled principles which enable condoning delay in filing of proceedings, in para 6, held that the details such as when the application for certified copy was filed and what is its filing number have not been mentioned. Therefore, the petitioners/appellants were accused of not acting *bona fide*. The explanation was termed as not genuine. Further, the understanding of the learned Chairperson is that each and every day's delay has to be explained satisfactorily. The explanation is vague.

8. Though the learned Advocate appearing for the Bank, and Mr. Nighot, appearing for the auction purchaser

would support the said reasonings of the learned Chairperson, we are unable to agree with them.

9. First of all, after several Judgments of the Hon'ble Supreme Court and taking a view initially that every day's delay has to be explained, that requirement is somewhat diluted. Now, liberal principles enable condonation of delay so long as a litigant does not act *bona fide* or is utterly negligent or shows callousness, the discretion should be exercised in favour of condoning the delay, for one would loose a valuable right to contest or to prosecute the proceedings on merits. In the instant case, a right of appeal is conferred by the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 itself. It is conditioned by a stipulation set out in sub-section (2) of Section 18 thereof. Further, the explanation in the present case was that the Advocate did not make enquiries for a quite number of days and did not inform the petitioners about the adverse order. He then states that it is the petitioners' duty also to follow it up but it is not as if they were not vigilant. They contacted the Advocate who later on apprised

them of the position by addressing a letter dated 7-10-2015. The mistake, if any, is owned up by this Advocate. If it is of the Advocate, then, we surely feel that the litigant should not suffer. Further, in para 3 of this miscellaneous application all the requisite details are provided. In the circumstances, a hyper-technical view depriving the petitioners of a valuable right of an appeal cannot be sustained.

10. We proceed to allow the petition; quash and set aside the impugned order. Since the amount, as directed by this Court is now to be made over to the Bank, for being retained and invested till the disposal of the appeal before the DRAT, we do not impose costs. The DRAT to now register the appeal of the petitioners and decide it on merits and in accordance with law.

11. Rule is made absolute in the above terms. There will be no order as to costs.

12. There is an interim protection granted by this Court on 15-1-2016 against dispossession of the petitioners from the

subject-premises. That shall continue to operate during the pendency of the appeal before the DRAT on the condition that no third party shall be inducted nor the premises transferred in any manner.

(SMT. SADHANA S. JADHAV, J.) (S.C. DHARMADHIKARI, J.)