

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4235 OF 2018

Akaram Bapu Gawade

....Petitioner

V/s.

1. United Western Bank
Now Known as Industrial
Development Bank of India
(IDBI Bank) and Ors.

....Respondents

* * * * *

Mr. Kishor Patil I/by. Mr. S.D. Patil, Advocate for the
petitioner.

Mr. G.N. Pandit, Advocate for respondent no.1-IDBI
Bank.

Mr. I.A. Nasikwala, Advocate for respondents no.3 to 5.

Coram : K.K. Tated, &

Sandeep K. Shinde, JJ.

Order Resd. On : 11th October, 2018.

Order Pron. On : Friday, 19th October, 2018.

P.C. : (Per : Sandeep K. Shinde, J)

1. The Debt Recovery Appellate Tribunal

(DRAT), Mumbai vide order dated 12th March, 2013 held that Appeal No. 299 of 2005 abates as the legal representatives of deceased respondent no.5 were not brought on record within the time granted under Order 22 Rule 4 of the Civil Procedure Code. Vide Misc. Application No. 455 of 2014 filed in August 2014, the Petitioner sought restoration of Appeal. Misc. Application No. 456 of 2014 was also filed for condonation of 468 days delay caused in preferring application for restoration of Appeal. On 11th September, 2014 both the applications were dismissed for default, of which restoration is sought vide Misc. Application No. 665 of 2017. The Learned Chairperson of the DRAT refused restoration of Appeal vide order dated 20th November, 2017, against which this Writ Petition is preferred.

2. Before advertng to the contentions of both the sides, it is necessary to place on record few facts :

. On 16th January, 2003 the Presiding Officer of the Debt Recovery Tribunal (DRT) in R.P. No.181-P/2001 was pleased to issue a Recovery Certificate against the Petitioner/Old Judgment Debtor no.7 and Respondent no.2/Old Judgment Debtor no.1 allowed the Bank (decree holder) to sell hypothecated properties for recovery of dues. That on 21st December, 2004 auction was conducted and respondents no.3, 4 and 5 were declared as successful bidders. At the instance of the Petitioner, the auction was set aside by the Recovery Officer attached to DRT, Pune vide order below Exhibit-38 in R.P. No.181-P/2001 dated 5th January, 2005. The successful bidders thus challenged the order of the Recovery Officer vide Appeal No. 4 of 2005 before the DRT, Pune. The said Appeal was allowed by the Presiding Officer, DRT on 18th July, 2005. Against this order, the petitioner preferred an Appeal No. 299 of 2005 before the DRAT, Mumbai on 18th August, 2005.

3. It is the petitioner's contention that the Appellate Tribunal fell in error by holding that the entire Appeal abates when admittedly only respondent no.5 died. On this premise, it is contended that the order dated 12th March, 2013 may kindly be quashed and set aside. There cannot be any quarrel that Appellate Tribunal ought to have held that the Appeal abated qua respondent no.5 only.

4. We cannot overlook the fact that the Petitioner herein did not take steps promptly to set aside the order dated 12th March, 2013 and chose to file an application in July, 2014 i.e almost after 468 days. Be that as it may, the fact remains, the Petitioner was not vigilant to pursue the available remedy and the proceedings promptly. This fact is further fortified as the application for condonation of delay i.e. Misc. Application No. 456 of 2014 and application for restoration of Appeal vide Misc. Application No. 455 of 2014 were dismissed for default on 11th September,

2014. The Petitioner thereupon vide Misc. Application No. 665 of 2017 requested the Tribunal to set aside the order dated 11th September, 2014.

5. It may be stated that, even this Application (Misc. Application No. 665 of 2017) was preferred after almost three years without justifying as to how the Petitioner was prevented from preferring an application soon after the dismissal of the aforesaid two Miscellaneous Applications.

6. Thus, after going through the proceedings and the various order passed in the subject Appeal No. 299 of 2005, we are of the opinion that, no sufficient cause has been shown by the Petitioner justifying the delay of 468 days caused in preferring an application for setting aside the order dated 12th March, 2013. Likewise, no sufficient cause has been shown for delay caused in preferring the Misc. Application No. 665 of 2017 for setting aside the order, then passed on 11th September,

2014.

7. We therefore hold that the petition deserves no consideration. There is inordinate delay on the part of the petitioner.

8. Writ Petition is dismissed with no order as to costs.

(SANDEEP K. SHINDE, J)

(K.K. TATED, J)