

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 6804 OF 2017

Anil Ramchandra Jagdale & Anr. ... Petitioners
V/s.
Vidya Sahakari Bank Ltd. Pune & Ors. ... Respondents

Mr. Vishwanath Patil a/w Yuwraj D. Patil for the Petitioners.
Mr. Shrivallabh Panchpor i/b SNP Legal for Respondent Nos.1 and 2.
Ms. Manjiri S. Parasnis for Respondent No.4.

**CORAM : A.A. SAYED AND
V.L. ACHLIYA, JJ.**

DATE : 28th FEBRUARY, 2018.

PC. :

1 The challenge in this Petition is to the order dated 08.05.2017 passed by the Presiding Officer, DRAT dismissing the Application of the Petitioner for condoning the delay of 35 days in preferring the Appeal. The Appeal was filed impugning order dated 02.02.2017 passed by DRT rejecting the Interlocutory Application No.177 of 2017 in S.A. No.136 of 2017.

2. In paragraphs 6(d) to (i) of the Application for condonation of delay it is averred as follows:

“d. The Applicants advocate have applied for the certified copy of the order on 06.03.2017 and the certified copy of the order was delivered to Applicants on 23.03.2017. Thus present Appeal is filed after the expiry of limitation period as prescribed in the Act.

e. The Applicant states that as prescribed under the Act, the Appeal was to be filed on or before 04.03.2017 i.e. within 30 days from the date of order 02.02.2017.

*f. The Applicants state that the Applicant No.2 was admitted in Desmukh Nursing Home, Pune and operated and under gone the abdominal hysterectomy with bilateral salpingo-oophorectomy surgery. The Applicant state that in the said surgery Applicant No.2 both fallopine tubes are removed, the doctor has advised complete bed rest for a period of three months. The Applicant states that since the date of operation the Applicant No.2 is under constraint medical surveillance and needs assistance to perform even the minor activity. Hereto annexed and marked as **Exhibit-A** is the copy of the Discharge Certificate issued by the Deshmukh Nursing Home, Pune.*

*g. The Applicants state that, their daughter appeared for SSC Pune Board Exams from 09.03.2017 to 30.03.2017 and their son appeared for B.Com. II year from 29.03.2017 to 05.04.2017, since their mother i.e. Applicant No.2 was bed ridden the entire responsibility fell on applicant No.1 to look after their daughter, son and Applicant No.2. Hereto annexed and marked as **Exhibit-B** is the copy of the Hall tickets of the Applicants children.*

h. The Applicants state that he contacted his advocate on 15.04.2017, enquiring about the status of the SA. It was informed that the Hon'ble Presiding Officer has

rejected the ad-interim relief and it was advised the appeal has to be preferred against said order and accordingly the papers and order were handed to prefer the Appeal.

i. The Applicants state that for the reasons stated herein above there is no intentional and deliberate delay in approaching to this Hon'ble Tribunal. In view of the facts as mentioned herein has a good case on merits."

3. In the Reply filed by the Respondent-Bank the Respondent-Bank has dealt with the merits and contended that the Petitioners are required to deposit 50% of the outstanding dues. There is no denial in the Reply to the averments made by the Petitioners in the Application for condonation of delay.

4 In the impugned order, DRAT has been observed thus:

"The appellants applied for certified copy on 06.03.2017 and Appellants have received the same on 23.03.2017 therefore contending that appellants came to know about order only on 15.04.2017 is exfacie incorrect therefore I am of the view that it is nothing but an invention to explain delay that occurred in preferring appeal."

5. Learned Counsel for the Petitioners has tendered a copy of the Application for issuance of certified copy which shows that the Application was not made by the Petitioners, but by the Advocate for the Petitioners. Merely because the Application was made by the Advocate would not ipso mean that the Petitioners were aware of the order dated 06.03.2017. In any

event, the delay of 35 days is not such which ought not to have been condoned. In our view, sufficient cause was made out to condone the delay. The Petitioners are not the borrowers or guarantors and therefore the question of deposit of 50% outstanding dues would not arise. The Petitioners claim to be bonafide purchasers of the secured asset which is a residential flat.

6. Having regard to the facts and circumstances of the case, we are inclined to take a liberal view and condone the delay of 35 days subject to costs. In the circumstances, in the interest of justice, we pass the following order :-

ORDER

The impugned order of DRAT is set aside. The delay of 35 days in filing the Appeal shall stand condoned subject to costs of Rs.7,500/- to be paid by the Petitioners to the High Court Legal Services Committee within a period of two weeks from today.

7. The Writ Petition is disposed of in the aforesaid terms.

(VL. ACHLIYA, J.)

(A.A. SAYED, J.)