

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

WRIT PETITION NO.7167 OF 2018

UCO Bank

.. Petitioner

V/s.

M/s.Gammon India Ltd.

.. Respondents

Mr.O.A. Das for the petitioner

Ms.Etika Srivastava i/b M/s.ABH Law LLP for the respondents

**CORAM: K.K. TATED &
N. J. JAMADAR, JJ.**

DATED : OCTOBER 17, 2018

P.C. :

1 Heard the learned counsel for the parties.

2 By this petition under Article 226 of the Constitution of India the Petitioner challenges the order dated 23.02.2017 passed by Debts Recovery Appellate Tribunal at Mumbai in M.A.No.953 of 2014 in Appeal No.156 of 2005 by which the Petitioner's Application for restoration of Appeal stands dismissed.

3 The learned counsel for the Petitioner submits that Appeal No.156 of 2005 was dismissed by the Tribunal on 24.11.2014. Hence, they preferred restoration of M.A.No.953 of 2014.

4 The main contention of the Petitioner is that because of mistake on the part of their Advocate, client should not suffer. He submits that in the present proceedings, Advocate looking after Appeal No.156 of 2005 shifted to Delhi. Thereafter, they appointed other Advocate but it remained on their part to take proper care.

5 The learned counsel for the Petitioner submits that because of their mistake, they are ready and willing to pay cost of Rs.2,00,000/-. To that effect, they filed affidavit dated 17.10.2018 duly affirmed by Vivek Kumar, Assistant Manager of Petitioner bank. The said affidavit is taken on record.

6 On the other hand, the learned counsel for the Respondent submits that the Petitioner failed and neglected to show sufficient cause to restore the Appeal which stands dismissed on 24.11.2014. He submits that though officer's of Petitioner had knowledge about the pendency of the Appeal, they failed and neglected to take appropriate steps. Hence, there is no question of allowing the present Writ Petition.

7 We have heard both the sides at length.

8 It is to be noted that Appeal filed by the Petitioner bank being Appeal No.156 of 2005 stands dismissed on 24.11.2014 as no one appeared on behalf of them. This is nothing but negligence on the part of their advocate. It is to be noted that because of mistake on the part of advocate, litigant should not suffer.

9 Considering these facts and as Petitioner bank is ready and willing to pay cost of Rs.2,00,000/-, we are satisfied that Petitioner's Appeal be heard on its own merits. Hence, Writ Petition stands allowed as under:

- a) Order dated 23.02.2017 passed by Debts Recovery Appellate Tribunal at Mumbai in M.A.No.953 of 2014 is set aside.
- b) M.A.No.953 of 2014 preferred by Petitioner for restoration of Appeal No.156 of 2005 is allowed.
- c) Debts Recovery Appellate Tribunal at Mumbai to decide Appeal No.156 of 2005 on its own merits after hearing both the sides.
- d) Petitioner to pay cost of Rs.2,00,000/- within two weeks from today. Out of Rs.2,00,000/-, Rs.1,00,000/- to be paid to the Respondent or their advocate. Remaining Rs.1,00,000/- to be paid to the Kirtikar Law Library, High Court, Bombay and place on record receipt to that effect before Debts Recovery Appellate Tribunal.
- e) Writ Petition stands disposed of accordingly.

(N. J. JAMADAR, J)

(K.K. TATED, J.)