

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2631 OF 2018

Shri Shankar Kerappa AushikarPetitioner
V/S
Allahabad Bank & Ors.Respondents
...
Mr. Pravartak Pathak for the Petitioner.
...

**CORAM : A.A. SAYED &
V.L. ACHLIYA, JJ.**
DATE : 04 JUNE 2018.

ORDER:

1 The order impugned in the Petition is of the Debts Recovery Appellate Tribunal, Mumbai, dated 10 August 2017 in Miscellaneous Application seeking to set aside the order of the Registrar, DRAT dated 23 November 2016 declining to register the Appeal filed by the Petitioner on account of non-removal of office objections. The order of DRAT reads as follows:

“This application is filed to set aside order of Registrar dated 23.11.2016 wherein he declined to register Appeal on Lodging No.270/2016 for non-removal of office objections.

As seen from the record, from September 2016 as many as five adjournments are granted by Registrar to appellant for removal of office objections. Now, contention of appellant is that he is senior citizen and is permanent resident of Nashik district, so he was unable to come to

Mumbai frequently as he was sick and for these reasons office objections could not be removed.

Advocate for appellant submitted that the appellant has fallen sick in month of September 2016 and that was the reason for non-removal of office objections.

But, as seen from the record, no such averment is made in the application. It is very vaguely stated that as he was sick, he was unable to come to Mumbai frequently. Details as to on what date appellant had fallen sick and on what date he recovered are not stated in the application. Further no supporting medical certificates or documents are produced to support reason of ill-health.

As the averments in application are very vague, I am not inclined to consider request of the appellant. Accordingly, application is dismissed with no orders as to costs.”

2 The Registrar's order dated 23 November 2016 which was challenged before DRAT records that despite six opportunities granted to remove the office objections, the office objections were not removed.

3 We have heard the learned Counsel for the Petitioner and perused the record. We find that the Petitioner had been negligent and no case is made out by the Petitioner to interfere the impugned order of the DRAT. Even otherwise, admittedly, the Petitioner is not the borrower and claims to have come into possession of the premises in question-Row House No.2,

Survey No.89/9/A/3, Nandanvan Apartment, Chavan Mala, Jai Bhawani Road, Nashik Road, Nashik, on the basis of an Agreement of Sale which is admittedly not registered. Moreover, the learned Counsel for the Petitioner fairly concedes that prior to the Petitioner coming into the possession in the year 2008, the premises in question had already been mortgaged. The possession of the premises in question is already taken by the Respondent Bank on 21 August 2015.

4 For the reasons mentioned above, we are not inclined to entertain the Petition. The Petition is dismissed in limine. No costs.

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(V.L. ACHLIYA, J.)

(A.A. SAYED, J.)