

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.343 OF 2014
AND
CIVIL APPLICATION NO.4015 OF 2012
WITH
FIRST APPEAL NO.344 OF 2014
AND
CIVIL APPLICATION NO.327 OF 2013
WITH
FIRST APPEAL NO.345 OF 2014
AND
CIVIL APPLICATION NO.342 OF 2013

Dr. Koshy George & Ors. ... Appellants

V/s.

The CKP Coop. Bank Ltd. & Ors. ... Respondents

Mr. S. S. Kulkarni i/b. Lakshved R. Odhekar for the Appellants
Mr. Sandesh Deshpande for Respondent No.1.
Mr. Sachin Gite for Respondent Nos.6 to 8 in First Appeal No.343 of 2014
Mr. Tejesh Dande with Bharat Gadhavi i/b. Tejas Dande & Associates for Respondent No.8 in First Appeal No.345 of 2014
Mr. Bhupesh V. Samant for Respondent No.4 in First Appeal No.343 of 2014 and 344 of 2015.

**CORAM: K.K. TATED &
B. P. COLABAWALLA, JJ.**

DATED : JUNE 28, 2018

P.C. :

1 In all these three Appeals, a common judgment and order dated 07.04.2012 has been assailed that has been passed by the

Trial Court. By the impugned order, the three suits filed by the Appellant before us have been dismissed under the provisions of Order VII Rule 11 (d) of the Code of Civil Procedure, 1908 on the ground that it has no jurisdiction. The Trial Court dismissed the suits filed by the Appellant in view of the bar as contemplated under section 34 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (SARFAESI Act).

2 After these matters were argued for some time on the last occasion, Mr. Kulkarni, the learned advocate appearing for the Appellant sought time to take instructions from the Appellant. It was accordingly adjourned from time to time and the matters have finally come up before us today.

3 Today, Mr. Kulkarni informs us that he has received written instructions from his client that the Appellant seeks to withdraw these Appeals and approach the Debts Recovery Tribunal by filing securitization Applications for challenging the action taken by the first Respondent Bank under the provisions of section 13(4) of the SARFAESI Act. He has also given the same in writing to this court which is on record and marked "X"

for identification. In view of this statement, all the three Appeals are dismissed as withdrawn with liberty as prayed.

4 At this stage, Mr. Tejas Dande, the learned advocate for Respondent No.8 in the First Appeal No.345 of 2014 (auction purchaser) submits that even if one wants to exclude the time taken for prosecuting the suit as well as the present Appeals, there is a delay of about two months in approaching the Debts Recovery Tribunal u/s.17 of the SARFAESI Act.

5 Considering that the Appellant has been *bona fide* prosecuting the three suits as well as these Appeals in a Forum that had no jurisdiction, the time taken for prosecuting the suits and the Appeals ought to be excluded as per the provisions of section 14 of the Limitation Act, 1963. This leaves us only with a delay of 2 months. This delay is condoned, provided, the Appellant before us files his Applications u/s.17 of the SARFAESI Act before the Debts Recovery Tribunal within a period of 8 weeks from today.

6 Mr. Kulkarni pointed out to us that the original documents relating to these matters had been filed before the Trial Court.

7 We grant liberty to the Appellant to make an Application to the Trial Court for return of all the original documents, if any, and hand them over to the respective parties. We must clarify that we have not opined on the merits of the matter and the Debts Recovery Tribunal shall decide the securitization Applications to be filed by the Appellant on its own merits and in accordance with law. We further make it clear that all contentions of all the parties are expressly kept open to be agitated by the respective parties before the Debts Recovery Tribunal.

8 Considering that this matter has lingered on for quite some time, we request the Debts Recovery Tribunal to decide the securitization Applications to be filed by the Appellant as early as possible.

9 In view of what we have stated earlier, all the three Appeals are disposed of as withdrawn with liberty as prayed.

10 In the facts and circumstances of the case, there would be no order as to costs.

11 In view of withdrawal of all the Appeals, nothing survives in the pending Civil Applications and same are disposed of accordingly.

12 It is clarified that the Appellants shall be at liberty to file interim Application, if any, and if so advised and which shall be decided by the Debts Recovery Tribunal, strictly on merits and in accordance with law without being influenced by any earlier orders, either passed by this court or any other Authority.

(B. P. COLABAWALLA, J.)

(K.K. TATED, J.)