

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION (L) NO.3251 OF 2018

High Tech Engg. Ceramic Display Pvt. Ltd.
(Borrower) and Ors.

.. Petitioner

V/s.

Punjab National Bank

.. Respondents

Mr.Sanjeev A. Sawant I/b Ms.Saloni M. Ghule for the petitioner

Mr.Pankaj Vijayan for the respondent no.1

**CORAM: K.K. TATED &
SANDEEP K. SHINDE, JJ.**

DATED : OCTOBER 11, 2018

P.C. :

1 Heard.

2 By this petition under Article 226 and 227 of the Constitution of India, the Petitioner challenges the order dated 21.09.2018 passed by Debts Recovery Appellate Tribunal in Appeal No.48 of 2018 directing Petitioner to deposit 50% of the O.A. amount which comes to Rs.16,43,144/- on or before 12.10.2018 and failure to deposit the said amount, Appeal shall stand dismissed without referring back to the court.

3 The learned counsel for the Petitioner submits that in the present proceedings, Respondent bank filed O.A.No.27 of 2016 before the DRT-III for recovery of sum of Rs.32,86,289.38. In that O.A.there was delay on the part of the Petitioner to file their written statement.

4 The learned counsel for the Petitioner submits that office of the DRT-III was vacant from 16.12.2016 till 05.12.2017. He submits that when the matter appeared before DRT-III on 05.04.2018 they orally made a request to accept their written statement which was duly affirmed on 04.04.2018. On that date, Debts Recovery Tribunal passed following order:

“Advocate for the Applicant Bank present and filed Claim Affidavit along with Original Document and Written Argument. Advocate for all the defendants present and filed Vakalatnama and he wants to file Written Statement. However, as per the provisions under section 19 of the RDDB Act time limit is over. However, Defendant can file Written Argument after serving on the Applicant Bank. Post it to 19.06.2018 for filing Written Argument by Defendants.”

5 The learned counsel for the Petitioner submits that present Advocate filed his Vakalatnama before DRT in the month of April 2018 only and requested to allow the Petitioner to file their written statement. He submits that thereafter, matter appeared before Debts Recovery Tribunal on 19.06.2018. On that date, Debts Recovery Tribunal accepted their written arguments along with Vakalatnama and posted the mater for clarification/argument to 06.09.2018. He submits that Debts

Recovery Tribunal without accepting the Petitioner's written statement posted the matter for hearing on its own merits. Hence, the Petitioner filed Application dated 19.06.2018 (on page 197 of the present Writ Petition) before DRT-III for setting aside the no written statement order dated 05.04.2018. He submits that the said Application was not accepted by the Debts Recovery Tribunal.

6 The learned counsel for the Petitioner submits that for challenging the order passed by Debts Recovery Tribunal dated 05.04.2018, they preferred Appeal No.48 of 2018 and filed Application M.A.No.558 of 2018 for waiving deposit of the statutory amount as required under section 21 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993.

7 The learned counsel for the Petitioner submits that, they specifically pleaded before the Debts Recovery Appellate Tribunal that, by that appeal they were challenging the order passed by Debts Recovery Tribunal not allowing them to file the written statement. Therefore, there is no question of depositing 50% amount of O.A. as per section 21 of the the Recovery of Debts Due to Banks and Financial Institutions Act, 1993. He submits that Debts Recovery Appellate Tribunal failed to consider those facts.

8 The learned counsel for the petitioner submits that in the interest of Justice, this Hon'ble Court be pleased to set aside the order dated 21.09.2018 passed by Debts Recovery Appellate Tribunal in M.A.No.558 of 2018 in Appeal No.48 of 2018 and also allow the Appeal so that they can file written statement in

O.A.No.27 of 2016 on its own merits. He further submits that because of mistake on the part of Advocate, litigant should not suffer. He submits that in the present proceeding, it remained on the part of earlier advocate to take appropriate steps to file written statement within time. He submits that as soon as present Advocate filed his Vakalatnama before Debts Recovery Appellate Tribunal in the month of April, 2018, he immediately requested Debts Recovery Tribunal to accept written statement. He submits that if petitioner is not allowed to file written statement, irreparable loss will be caused to them. He submits that they have good chance of success before the DRT/DRAT.

9 On the other hand, the learned counsel for the Respondent bank vehemently opposed the present Writ Petition. He submits that admittedly in the present proceedings, Petitioner failed and neglected to file their written statement till 05.04.2018 when the matter was called out Debts Recovery Tribunal. He submits that last date for filing written statement was 24.10.2016. He submits that if delay is calculated, that comes to more than 1 ½ year on the part of Petitioner to file written statement. Therefore, there is no substance in the present Writ Petition and same be dismissed with costs.

10 We have heard both the sides at length. By consent of both the parties, matter is taken on board for hearing and final disposal at the stage of admission itself.

11 The issue involved in the present Writ Petition is whether

Petitioner can be permitted to file written statement dated 04.04.2018 in O.A.No.27 of 2016 by condoning more than 1 ½ year delay.

12 In the present proceedings, the main contention of the Petitioner is that because of mistake on the part of earlier Advocate, it remained to file their written statement. As soon as the present Advocate appeared and filed his Vakalatnama he tendered written statement on first date itself i.e. 05.04.2018. Not only that, the presiding officer in DRT-III was not available from 16.12.2016 till 05.12.2017.

13 It is to be noted that the Apex Court in the matter of **N.Balkrishnan Vs. M. Krishnamurthy (1998) 7 SCC 123** held that the object of fixing the time limit is not meant to destroy the rights. The law of limitation fixes a lifespan for such legal remedy for the general welfare. Paragraph Nos.11, 12 and 13 of the said judgment read thus :

“11. Rules of limitation are not meant to destroy the right of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. Law of limitation fixes a life-span for such legal remedy for the redress of the legal injury so suffered. Time is precious and the wasted time would never revisit. During efflux of time newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the courts. So a life span must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. Law of

limitation is thus founded on public policy. It is enshrined in the maxim Interest reipublicae up sit finis litium (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the right of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time.

12. A Court knows that refusal to condone delay would result in foreclosing a suitor from putting forth his cause. There is no presumption that delay in approaching the court is always deliberate. This Court has held that the words "sufficient cause" Under Section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice vide Shakuntala Devi Jain v. Kuntal Kumari, 1969 SC 575 and State of West Bengal v. The Administrator, Howrah Municipality, AIR 1972 SC 749.

13. It must be remembered that in every case of delay there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of mala fides or it is not put forth as part of a dilatory strategy the court must show utmost consideration to the suitor. But when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time then the court should lean against acceptance of the explanation. While condoning delay the Court should not forget the opposite party altogether. It must be borne in mind that he is a loser and he too would have incurred quite a large litigation expenses. It would be a salutary guideline that when courts condone the delay due to laches on the part of the applicant the court shall compensate the opposite party for his loss."

14 Considering the above mentioned facts and as advocate for Petitioner made a statement that Petitioner is ready and willing to pay cost of Rs.50,000/-, we are of the opinion that Petitioner may be permitted to file their written statement dated 04.04.2018 in O.A.No.27 of 2016 with copy to other side.

15 Hence, following order is passed:

- a) Order dated 21.09.2018 passed by Debts Recovery Appellate Tribunal at Mumbai in M.A.No.558 of 2018 in Appeal No.48 of 2018 is set aside.
- b) Appeal No.48 of 2018 filed by Petitioner against no written statement order is allowed.
- c) Petitioner is permitted to file their written statement dated 04.04.2018 in O.A.No.27 of 2016 on or before 31.10.2018 with copy to other side.
- d) DRT-III to decide O.A.No.27 of 2018 on its own merits after giving full opportunity to both the parties.
- e) Hearing of O.A.No.27 of 2016 is expedited.
- f) Petitioner to pay cost of Rs.50,000/-.
- g) Out of Rs.50,000/- cost, Petitioner to pay Rs.25,000/- to the Respondent bank on or before 19.10.2018 and place receipt to that effect in the Registry of this court.

h) Remaining Rs.25,000/- be paid in the office of Kirtikar Law Library on or before 19.10.2018 and placed on record receipt to that effect, failing which the Writ Petition shall stand dismissed without further reference to the court.

i) Writ Petition stands disposed of accordingly.

(SANDEEP K. SHINDE, J.)

(K.K. TATED, J.)