

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

**APPEAL (L) NO.456 OF 2018
IN
COMPANY APPLICATION NO.388 OF 2018
IN
COMPANY PETITION NO.423 OF 2010**

Thane Bharat Sahakari Bank Limited ... Appellant /
Org. Applicant
Versus

Official Liquidator for Phoenix Alchemy
Private Limited, Bombay High Court & Anr. ... Respondents

**ALONG WITH
NOTICE OF MOTION (STAMP) NO.1060 OF 2018
IN
APPEAL (L) NO.456 OF 2018**

Thane Bharat Sahakari Bank Limited ... Applicant /
Org. Appellant
Versus

Official Liquidator for Phoenix Alchemy
Private Limited, Bombay High Court & Anr. ... Respondents

.....

- Dr. Birendra Saraf a/w Mr. Ashish Kamat, Mr. Yogesh Chawak & Mr.Chirag Dave i/b Legasis Partners for Appellant/Applicant.
- Mr. L. T. Satelkar for Official Liquidator.
- Mr. Pola Raghunath, Dy. Official Liquidator, present.

**CORAM : SHANTANU S. KEMKAR &
SARANG V. KOTWAL, JJ.
DATE : 12th OCTOBER, 2018.**

P.C. :

This Appeal is directed against the order dated 26/07/2018 passed by the learned Company Judge in Company Application No.388/18 filed in Company Petition No.423/10.

2. By the impugned order the learned Company Judge has rejected the prayer made on behalf of the Counsel for the Appellant/Applicant to adjourn the matter for engaging another Counsel for arguing the matter.
3. It is the case of Counsel for the Appellant/Applicant that on the very same day of hearing, the Counsel who had appeared before the learned Company Judge, was instructed to engage another Counsel to argue the matter in the circumstances he had to make the said request but it was declined and the Application has been rejected.
4. We have heard the learned Counsel for the Appellant/Original Applicant as also learned Counsel for Official Liquidator.

5. The learned Counsel for the Official Liquidator has fairly stated that he has no objection if the Appeal is allowed and the matter is remanded back to the learned Company Judge for deciding Company Application on merits.
6. Taking into consideration the aforesaid and keeping in view the unconditional apology tendered during the course of hearing by learned Counsel for the Appellant/Applicant for seeking adjournment and causing inconvenience to the learned Company Judge, we are of the considered view that the Appellant deserves to be granted an opportunity to be heard on merits of the said Application. And for that purpose matter deserves to be remitted back to learned Company Judge by setting aside the impugned order.
7. Accordingly, the impugned order is set aside with request to learned Company Judge to give opportunity of hearing to the Appellant/Applicant and all concerned and to decide the Company Application No.388/18 on its own merits.
8. With the aforesaid, the Appeal is disposed of. As a result, the Notice of Motion (L) No.1060/18 also stands disposed of.

(SARANG V. KOTWAL, J.)

(SHANTANU S. KEMKAR, J.)