

IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
BENCH AT AURANGABAD.

WRIT PETITION NO. 2168 OF 2008

Vinay G. Bathiya & Anr.

... Petitioners

Versus

State Bank of India & Anr.

...Respondents

.....
Mr Arvind S. Deshmukh, Advocate for the petitioners
Mr Sunil A. Kulkarni, Advocate for respondent No.1-Bank
.....

**CORAM : S. V. GANGAPURWALA &
A. M. DHAVAL, JJ.**
DATE : 21ST JANUARY, 2019

ORAL ORDER:

1. The respondent - Bank had filed Original Application before the Debts Recovery Tribunal, Aurangabad. The original application came to be allowed on 27.05.2007, directing issuance of recovery certificate. Pursuant thereto the recovery certificate is issued. The petitioner filed an application for setting aside the *ex parte* recovery certificate. The Registrar of Debts Recovery Tribunal, Aurangabad, did not accept the application and refused to register the same. The petitioner filed an appeal before the Presiding Officer, Debts Recovery Tribunal, Aurangabad. There was delay of 10 days in filing the appeal. The Presiding Officer did not condone the such delay and rejected the application. Aggrieved thereby, the writ petition is filed.

2. We have heard Mr Deshmukh, learned counsel for the petitioner, who submits that, the petitioner was under the impression that there is a vacation as there was vacation to other courts and the delay was caused.

3. Mr Kulkarni, learned counsel for the respondent-Bank submits that, the petitioner has a remedy before the Debts Recovery Appellate Tribunal, Aurangabad (hereinafter referred to as "DRAT"). The petitioner can avail the remedy before the DRAT. When the petitioner has remedy before the DRAT, this Court shall not exercise its jurisdiction under Article 226 of the Constitution of India. He further submits that, though there is a delay of 10 days, he has not explained the delay. The recovery certificate has been issued. The summons were served in the original application. The petitioner choose to remain absent.

4. We have considered the submissions.

5. We certainly would not exercise our jurisdiction under Article 226 of the Constitution of India in the wake of alternate remedy available to the petitioner. However, the writ petition is filed in the year 2008. It was contested on merits. The learned

Single Judge of this Court allowed the writ petition under order dt. 09.04.2009. The Bank filed Letters Patent Appeal before the Division Bench on the ground that the learned Single Judge does not have jurisdiction to deal with the matters under the Recovery of debt due to Bank and Financial Institutions Act. The Letters patent Appeal as such came to be allowed and the writ petition was directed to be placed before the Division Bench. Eleven years have elapsed. The parties have contested the petition on merit. After eleven years and that too after two rounds before this court, it would not be appropriate now to relegate the parties to the alternate remedy. The delay is only of 10 days in filing the appeal before the Presiding Officer, Debts Recovery Tribunal. The reasons are given. It is stated that, the advocate of the petitioner proceeded on vacation. It is trite that, when technical considerations and cause for substantial justice are pitted against each other, cause for substantial justice has to be sub-served.

6. In the present case, we are restricting ourselves to the order rejecting the application for condonation of delay. The contentions of the learned counsel for the Bank about the tenability of the application for setting aside the *ex parte* recovery certificate will be considered on its own merits by the authorities.

7. In the light of the above, the impugned order dt. 29.02.2008 passed in Misc. Application No. 46/2007 is quashed and set aside. The delay caused in filing the appeal before the Presiding Officer, Debts Recovery Tribunal, is condoned.

8. The writ petition is accordingly disposed of. No costs.

[A. M. DHAVALA]
JUDGE

[S. V. GANGAPURWALA]
JUDGE

Punde