

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**CIVIL APPELLATE JURISDICTION**

WRIT PETITION (L) NO.1999 OF 2019

...

Esco Audio Visual (India)

Pvt.Ltd. And Anr.

...Petitioners

v/s.

Indian Overseas Bank & Ors.

...Respondents

...

Mr.Ashish Kamath with Mr.Subir Kumar and Mr.Sagar Sheth for the  
 Petitioners.

Mr.Rakesh Singh with Mr.Mobin Sayed I/b M.V.Kini & Co. for the  
 Respondent-Bank.

...

**CORAM : A.A. SAYED &**

**RIYAZ IQBAL CHAGLA, JJ.**

**DATED : 25 JANUARY 2019**

**P.C.:**

The order dated 15-01-2019 passed by DRT disposing of the  
 Transfer Securitization Application (TSA No.392 of 2016) is impugned in  
 this Petition.

2. The learned Counsel for the Petitioners submits that on 04-01-2019  
 when the TSA was listed, the Advocate for the Petitioners was present in  
 the courtroom from 11 a.m. to 5 p.m. and the Board was discharged and the  
 next date of the TSA was given as 05-02-2019. According to the Petitioners,  
 the Advocate for the Respondent-Bank mentioned the matter before the  
 DRT for early date behind the back of their Advocate and the matter was  
 kept on the next date i.e. 05-01-2019. It is submitted that since the

Advocate for the Petitioners had taken the date as 05-02-2019 from the Board which is usually kept with the Board Clerk, the Advocate for the Petitioners did not remain present on 07-01-2019 and on 15-01-2019 when the impugned order was passed.

3. Perusal of the roznamna, however, indicates that the matter was called out on 04-01-2019 and the Reply was filed by the Respondent-Bank. In the Affidavit-in-Reply filed on behalf of the Respondent-Bank it is pointed out that the TSA was as a matter of fact called out at 5.25 p.m. However, in the Affidavit-in-Reply, it is admitted that the Advocate for the Petitioners was present in Court on that day, but was absent when the matter was called out at 5.25 p.m.

4. Be that as it may, since the matter was called out after Court hours on 04-01-2019 in absence of the Advocate for the Petitioners, it may have been more appropriate for the DRT to have directed the learned Counsel for the Respondent-Bank to inform the other side of the next date. On 05-01-2019, since the Advocate for the Petitioners were not present, the matter was adjourned to 07-01-2019 and thereafter to 15-01-2019, when the TSA was disposed of. It is in these circumstances, the impugned order disposing of the TSA came to be passed without hearing the Advocate for

the Petitioners. In our view, for the negligence, if any, on the part of the Advocate for the Petitioners, the Petitioners cannot be penalized. Hence, in the interest of justice, we pass the following order.

**ORDER**

(i) The impugned order dated 15-01-2019 is set aside. The matter is remitted back to the DRT, Mumbai to decide the TSA No.392 of 2016 afresh.

(ii) The amount of Rs.20 lakh deposited by the Petitioners with DRT in pursuance of the order dated 27-02-2018 passed in the earlier Writ Petition(st) No.5284 of 2018 is permitted to be withdrawn by the Respondent-Bank.

(iii) The parties are at liberty to mention the matter before the DRT for fixing the date of hearing of the TSA.

3. The Petition is disposed of in the aforesaid terms.

**(RIYAZ IQBAL CHAGLA,J.)**

**(A.A.SAYED, J.)**