

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.1611 OF 2019

IN

WRIT PETITION NO.743 OF 2011

Syndicate Bank

Applicant

In the matter between :

Syndicate Bank

Petitioner

versus

Rajeev Ratanlal Banka and others

Respondents

Mr.Aseem Naphade with MobinSayyed, Kavita Anchan, Heena Shaikh, Arsh Misra and Lakshmi Bussa I/by M.V.Kini for applicant.

Mr.Prateek Seksaria with Mr.Viraj Maniar, Sneha Patil and Yamini Maheshwari I/byViraj Manihar Associates for respondent nos.1 to 4.

CORAM : A.A.SAYED AND
PRAKASH D. NAIK, JJ.

DATE : 19th July 2019

PC :

1. The Civil Application taken out by the Applicant-Bank/Original Petitioner seeks following reliefs :

“(a) That this Hon’ble Court may be pleased to recall and/or set aside the Order of this Hon’ble Court dated 22.03.2018 and to take on record the Writ Petition No.743 of 2011 and the same may be heard on merit at the convenience of this Hon’ble Court;

(b) This Hon’ble Court may be pleased to condone the delay of 454 days, in filing the present Civil Application.”

2. The Petition filed by the Applicant-Bank was admitted on 20th August 2011. It was dismissed for default on 22nd March 2016 as none had appeared for the Applicant/Petitioner/Bank. The explanation for delay is found in paragraphs 10 and 11, which reads as follows :

“10. Applicants respectfully say and submit that the Applicants were under the bona fide belief that matter is pending before this Hon’ble Court and the Advocate on record shall intimate them as and when the said matter is taken up for final hearing. The Applicants state that inadvertently when the said matter was taken up for hearing, neither the Advocate for the Applicants nor the Advocate for the Respondents were present and due to none appeared for the Petitioners, the Petition was dismissed for default. Applicants respectfully say and submit that inadvertently, the Advocate for the Applicants did not notice the listing of the matter before this Hon’ble Court for final hearing in the Cause List nor their Court Clerk informed them about the listing of the said Petition, as such, due to human error, the Applicant’s advocate could not attend this Hon’ble Court at the hearing of the said matter. The Applicants state that the Applicant’s advocate otherwise regularly attending all the other matters in this Hon’ble Court and no matters are left unattended of the Applicants. But, however, in the present matter, the Applicant’s advocate did not notice the listing of the matter, hence, did not attend this Hon’ble Court and missed the matter. Applicants respectfully say and submit that had the Applicants been aware of the listing of this matter before this Hon’ble Court, the Applicant would have remained present but, however, since the advocate themselves have not noticed the listing of the aforesaid matter, nor their Court Clerk informed about the same, hence the Applicants were not aware of the same, therefore, could not attend the Hon’ble Court.

11. Applicants respectfully say and submit that Applicant's advocate is very particular in attending this Hon'ble Court in all Bank matters and their track record is exceptionally well and hardly any matter was missed by the Applicant's advocate in respect of attending the Applicant's matters. Even in the present case also, Applicant's advocate was very diligent and in the year 2014, the Applicant's advocate had also taken up a Civil Application No.8875 of 2014 for fixing peremptory date of hearing. Applicants state that as their Court Clerk had not informed about the listing of the matter and/or hearing of the matter on 22.03.2018 by this Hon'ble Court, the advocate could not attend this Hon'ble Court. The Applicants state that the Applicant's Court Clerk, Mr.Tushar who was working as a Court Clerk in the Appellant's advocate's office doing the work of collecting/taking print out of daily Cause List as well as final hearing cause list and to inform the advocates of the Court matters. Applicants state that the said Court Clerk left the Applicant's Advocate firm in the month of May, 2018. The Applicant's respectfully say and submit that for the mistake of the Court Clerk, the party should not be punished. Moreover, the Applicant's advocate is all along pursuing the recovery proceedings and a huge amount of over Rs.100 crores is due and recoverable from the mortgaged asset which being the amount due to the public exchequer. Applicants state that this Hon'ble Court may be pleased to restore the aforesaid Writ Petition No.743 of 2011 into the file of this Hon'ble Court and the said Writ Petition may be heard on merit."

3. There is no Affidavit-in-reply filed by the Respondent nos.1 to 4 controverting the statements made in the Civil Application. Learned counsel for Respondent nos.1 to 4 has relied upon the Roznama of DRT wherein it has been recorded from time to time that the Applicant-Bank would produce copies of orders of the High Court. According to the learned counsel for Respondent nos.1 to 4 a false statement has been made in the Civil Application in paragraph no.8 about the knowledge of the Writ Petition being dismissed on

18th June 2019 when it is stated that upon ascertaining the status of the matter on 18th June 2019, the Applicant-Bank has got to know about the dismissal of the Writ Petition. In our view, merely because it has been recorded in the Roznama that copy of orders of High Court would be produced by the Applicant-Bank, would not necessarily mean that the Applicant-Bank was aware of the dismissal of Writ Petition. We are inclined to accept the explanation given by Applicant-Bank and allow the Civil Application by condoning the delay, subject, however, to costs. In our view, it would only advance the cause of justice, if the Petition is decided on merits.

4. In the circumstances, we pass following order :

ORDER

The Civil Application is allowed in terms of prayer clauses (a) and (b), subject to payment of costs of Rs.25,000/- to be paid by the Applicant-Bank to the Respondent nos.1 to 4 within three weeks.

(PRAKASH D. NAIK, J.)

(A.A.SAYED, J.)

MST