

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 521 OF 2019**

Goldie Sud,
Aged 52 years,
Occ: Business,
R/o 191, S.B.S. Colony,
Mumbai -400 059 .. Petitioner

Vs.

1. Punjab National Bank,
having its circle office at
Maker Tower, 7th Floor,
Jamnalal Bajaj Marg,
Nariman Point,
Mumbai-400 021
2. Mrs. Kamallesh Saigal
Indian Inhabitant, residing at
318, Pali Hill, Union Park,
Khar (West), Mumbai-
400052
3. Smt. Shilpa Sud
Indian Inhabitant, Residing
at 191, S.B.S. Colony,
Andheri (East), Mumbai-
400 059 .. Respondents
- 4a. Adarsh Saigal
Through C.A. Gajanan
Tervankar
133, Hill Road, Bandra (W),
Mumbai-400050
- 4b. Ms. Tina Daroowalla,

Nee Saigal Through C.A.
Gajanan Tervankar
133, Hill Road, Bandra (W)
Mumbai-400 050

4c. M/s. H.K. Saigal & Sons
Through C.A. Gajanan
Tervankar, 133, Hill Road,
Bandra (W),
Mumbai-400050

.. Proposed Respondents

....

Goldie Sud Petitioner in person present
Ms. Jinal Gogri i/b Negandhi Shah & Himaytullah for
Respondent No.1

....

**CORAM : PRADEEP NANDRAJOG, C.J. &
SMT. BHARATI DANGRE, J.**

DATED : NOVEMBER 04, 2019

ORDER: [PER PRADEEP NANDRAJOG, C.J.]:

1. Heard the petitioner who appears in person and learned counsel for the respondent. Misc. Appeal No. 104/2010 filed by the petitioner before the Debt Recovery Appellate Tribunal Mumbai was dismissed for non-appearance on 31st January 2017. Challenge in the appeal was to a sale conducted by the Bank pursuant to a Sale Notice dated 9th April

2010. The petitioner filed an application seeking restoration of the appeal which was dismissed vide impugned order dated 16th May 2018.

2. The reason why the learned DRAT did not recall the order dated 31st January 2017 and as a consequence restore the appeal, is that on 24th September 2015 the petitioner was granted time to amend the appeal and implead the auction purchaser as a party. The petitioner did not do so resulting in the appeal being adjourned from time to time. On 25th November 2016 the Appellate Tribunal granted one last opportunity to the petitioner to amend the appeal and implead the auction purchaser as a party. The petitioner did not do so. The view taken by the Appellate Tribunal is that it would be useless to restore the appeal for the reason inspite of repeated opportunity granted the petitioner did not implead the auction purchaser as a party.

3. Sufficient cause shown by the petitioner for non-appearance on 31st January 2017 has not been gone into by the Appellate Tribunal.

4. We agree with the view taken by the Appellate

Tribunal. It would be useless to first restore the appeal and then dismiss it on account of non-impleadment of a necessary party. Suffice it to record that way back on 24th September 2015 the Appellate Tribunal adjourned the appeal requiring the petitioner to implead the auction purchaser and till 31st January 2017 the petitioner took no steps to implead the auction purchaser. In fact, on 31st January 2017 the appeal was liable to be dismissed for non-impleadment of a necessary party.

5. The writ petition is dismissed.

SMT. BHARATI DANGRE, J.

CHIEF JUSTICE

Jayant D.
Kandarkar

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Jayant D.
Kandarkar
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