

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**O.O.C.J.**

WRIT PETITION (L) NO.214 OF 2019

...
Amar C.Motwani ...Petitioner
v/s.
The State of Maharashtra & Anr. ...Respondents
...
Mr.Anand Mishra a/w Mr.A.M.Sarogi for the Petitioner.
Mr.Vivek S. Sawant for Respondent No.2
Mr.Sukanta Karmakar, AGP for the State.

...
CORAM : A.A. SAYED &
RIYAZ IQBAL CHAGLA, JJ.

DATED : 22 FEBRUARY 2019**P.C.:**

The challenge in this Petition is to the order of the DRAT dated 21-01-2019 in M.A.No.31 of 2019 in Appeal (L) No.22 of 2019. By the said order the Application filed under section 5 of the Limitation Act to condone the delay of 19 days in filing the Appeal (against the order of the DRT dated 19-11-2018 dismissing SA No.121 of 2018) came to be dismissed. Consequently, the Appeal before the DRAT also stands dismissed.

2. The DRAT has dismissed the Application for condonation of delay essentially on the ground that the reason stated in the Application that due to absence of the Advocate from Mumbai, the Appeal could not be filed in time, was not tenable. The DRAT rejected the contention of the Petitioner that the Advocate of the Petitioner was out of Mumbai at the relevant time.

3. Before us two Affidavits have been filed, one by Advocate Mr.Ashok M.Sarogi and another by Advocate Mr.Anand Mishra who was handling the matter and who is an associate of Advocate Ashok M. Sarogi. In the Affidavit of Mr.Sarogi, it is stated that at the relevant time he was out of Mumbai. The Affidavit of Mr.Anand Mishra states that at the relevant time he was out of Mumbai and then on leave. Inasmuch as, it was the contention of the Petitioner that at the relevant time the papers were lying with the Advocates and he did not have access to the same, we are inclined to accept the case of the Petitioner that delay was on account of absence of the Advocates as they were not attending office. The Petitioner in our view cannot be entirely faulted. We have also taken note of the order dated 10-12-2018 passed by the Division Bench of this Court in Writ Petition (L) No.3913 of 2018 filed by the Petitioner, wherein the Petitioner was granted limited protection subject to his depositing Rs.50 lakh with the Respondent-Bank. We are informed that the said amount has been deposited by the Petitioner with the Respondent-Bank.

4. In the circumstances, in the interest of justice, we pass the following order:

ORDER

(i) The impugned order dated 21-01-2019 is set aside. The

M.A.No.31 of 2019 shall stand allowed and the delay of 19 days in filing the Appeal shall stand condoned.

(ii) The Appeal before the DRAT shall stand restored to file.

(iii) The Petitioner shall pay costs of Rs.25,000/- to the Respondent-Bank within a period of two weeks from today. The payment of costs shall be condition precedent.

5. The Petition is disposed of in the aforesaid terms. Before taking possession of the secured asset, the borrower shall be given atleast two week's prior notice by the Respondent-Bank.

Parties to act on authenticated copy of this order.

(RIYAZ IQBAL CHAGLA,J.)

(A.A.SAYED, J.)