

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4727 OF 2019

The State of Maharashtra

..Petitioner

Versus

Central Bank of India & Ors.

..Respondents

Mr. M. M. Pabale, AGP for the Petitioner - State.

Mr. T. N. Tripathi i/by T. N. Tripathi & Co., Advocate for the Respondent No.1.

Mr. Ravi V. Asabe i/by Ergo Juris, Advocate for Respondent No.3.

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

DATE : 23rd JANUARY, 2020

P.C.

1] The Petitioner is aggrieved by the order dated 21st September 2015 as also the subsequent order dated 30th March 2017 passed by the learned Debts Recovery Appellate Tribunal, Mumbai.

2] The former order dismissed Appeal No.95 of 2015 filed by the Petitioner on account of service not being effected upon Respondent Nos.2 and 3 in the Appeal. As a result of dismissal of the Appeal, M.A. No.207 of 2015 was also dismissed.

3] The Petitioner filed M.A. No.850 of 2015 praying for restoration of the Appeal which was dismissed vide order dated 30th March 2017 on the ground that the contention of counsel for the Petitioner that all the Respondents were served was incorrect.

4] The order dated 21st September 2015 shows that Respondent Nos.2 and 3 were not being served and counsel prayed for an adjournment to be granted before the Appellate Tribunal on the ground that either the Petitioner would seek substituted service or the Petitioner would obtain legal advice whether said Respondents could be deleted. The Appellate Tribunal noted that for six months the service had not been effected on all the Respondents.

5] This is not a ground to dismiss an Appeal. Unless it is recorded that the Appellant did not take steps as directed to serve the Respondents, the order dismissing the Appeal could not be passed.

6] Since we have found jurisdictional error in the order dated 21st September 2015, we need not comment about the order dated 30th March 2017.

7] The Petition is disposed of setting aside the order dated 21st September 2015 as also the order dated 30th March 2017.

8] Appeal No.95 of 2015 with M.A. No.207 of 2015 is restored before the learned Debts Recovery Appellate Tribunal, Mumbai for adjudication as per law.

SMT. BHARATI DANGRE, J

CHIEF JUSTICE

BGP.

2 of 2