

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Amk

WRIT PETITION (L) NO. 26790 OF 2019

NKGSB Co-op. Bank Ltd.

.. Petitioner

Vs.

Union of India & Ors.

.. Respondents

Mr. Ismail Nasikwala i/b Dimple Tejani for the Petitioner.

Mr. M. M. Chunawala for Respondent No.1-UOI.

Mr. Durgaprasad Halwai a/w. Dhrumil Shah i/b Singhi & Co. for Respondent No.2.

Mr. R. S. Apte, Senior Advocate i/b Mr. M. V. Thorat for Respondent No.3.

Mr. R. B. Singhvi i/b Lex Services for Respondent No.5.

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

DATE : 27th JANUARY, 2020.

P. C. :

1. The Petitioner is aggrieved by the order dated 19.08.2019 passed by the Debt Recovery Appellate Tribunal refusing to condone 938 days delay in filing M. A. No. 247 of 2018 praying that the order dated 20.02.2015 passed in Misc. Appeal No. 193 of 2006 be condoned.

2. The dispute has a checkered history which has been succinctly noted by this Bench in its order dated 13.11.2019 passed in Writ Petition (L) No. 2570 of 2019 Patel Profile Pvt. Ltd. Vs. State of Maharashtra & Ors. The said order reads as under:

"1. Property bearing Plot No. B-11, Waghale

Industrial Estate, Road No. 5, Thane was owned by Bhoruka Drums & Allied Industries Limited (Respondent No.3 and hereinafter referred to as Bhoruka). Availing credit facility from Bank of Maharashtra (Respondent No.2), Bhoruka mortgaged the property to Bank of Maharashtra and there being a default the property came to be sold by private sale for ₹ 75/- lakhs to S.S. Engineering, a sole proprietor concern of Shrikrishna Vinayak Gokhale (Respondent No.4).

2. *Challenge to the sale by Bhoruka failed before the learned Debt Recovery Tribunal when the Tribunal passed an order on 16th May 2006. Bhoruka succeeded before the Debt Recovery Appellate Tribunal when the order dated 20th February, 2015 was passed.*

3. *During the pendency of proceedings initiated by Bhoruka challenging the sale of its property in the meager sum of ₹ 75/- lakhs, and that too by a private negotiation, even Respondent No.4 defaulted in the loan which it had obtained from Respondent No.5 and said Respondent proceeded to enforce its claim and the property came to be purchased by the Petitioner for a sum of ₹ 8.19 Crores. Sale of the subject property to the Petitioner for realizing the dues payable to Respondent No.5 by Respondent No.4 was challenged by the Workmen Union of S.S. Engineering by*

way of Writ Petition No. 123 of 2012 which was dismissed by the learned Single Judge of this Court on 14th February, 2012.

4. *Since Bhoruka's appeal challenging sale of the property to S.S. Engineering was allowed by DRAT on 20th February, 2015, the Petitioner was aggrieved by the judgment dated 20th February, 2015 for the reason it was the subsequent purchaser of the same property when dues were enforced by Respondent No.5 against Respondent No.4. It filed Writ Petition No. 7509 of 2017 challenging the order dated 20th February, 2015. The said Writ Petition was dismissed on 10th July, 2017 noting that the plea of the Petitioner was suppression of facts by Shrikrishna Vinayak Gokhale. It was observed that if said facts were proved, the Petitioner could claim damages from Shrikrishna Vinayak Gokhale.*

5. *Challenge to the decision dated 10th July, 2017 before the Supreme Court by way of SLP (C) No. 23973 of 2017 failed when the same was dismissed as withdrawn as per order dated 22nd September, 2017. The order records that the Petitioner wants to file an appropriate application before the Debts Recovery Appellate Tribunal (DRAT).*

6. *The Petitioner filed Misc. Application No. 246*

of 2018 and along therewith filed Misc. Application No. 207 of 2018 seeking delay of 938 days to be condoned in filing the former Misc. Application. Prayer made in Misc. Application No. 246 of 2018 is to recall the order dated 20th February, 2015. The impugned order dated 6th August, 2019 has dismissed Misc. Application No.207 of 2018 and refused to condone the delay.

7. *After hearing learned Counsel for the parties and in view of afore-noted facts, we find that no application could be filed before the DRAT seeking recall of its order in view of the fact that the order recall whereof was sought i.e. order dated 20th February, 2015 was upheld by the Division Bench of this Court. A perusal of the Application seeking recall shows that review of the order dated 20th February, 2015 was prayed for, though the prayer made may be to recall the order dated 20th February, 2015.*

8. *Reliance upon the order dated 22nd September, 2017 passed by the Supreme Court is misplaced. The order simply records that the SLP was dismissed as withdrawn because the Petitioner wanted to file an appropriate application before the DRAT. The Supreme Court merely recorded the statement of the Counsel for the Petitioner. The Supreme Court never granted any leave to file any application before the DRAT. Assuming that the order*

passed by the Supreme Court has to be read as granting liberty to the Petitioner to file an application before the DRAT, the same had to be an appropriate application and had to be an application which was maintainable.

9. *Writ Petition is accordingly dismissed.”*

3. Suffice it to state the order noted above reveals that the issue concerning the order dated 20.02.2015 passed by DRAT in Misc. Appeal No. 193 of 2006 attained finality when Writ Petition No. 7509 of 2017 filed by Respondent No.5 in the present Petition came to be dismissed on 10.07.2017 against which SLP (C) No. 23973 of 2017 was dismissed as withdrawn before the Supreme Court on 22.09.2017 noting that the Petitioner thereof wanted to file an appropriate application before the Debt Recovery Appellate Tribunal. The said entity filed a Misc. Application along with other Misc. Application seeking 938 days delay to be condoned in filing the Misc. Application. Prayer made was to recall the order dated 20.02.2015. The same was declined by the learned DRAT on 06.08.2019.

4. The view taken by this Bench was that an appropriate application contemplated by the order passed by the Supreme Court on 22.09.2017 meant a substantive and appropriate proceeding.

5. Qua the instant Petition it has to be held that the Judgment dated 20.02.2015 has attained finality as regards this Court especially keeping

in view that when the order dated 13.11.2019 was passed Counsel was present on behalf of the instant Writ Petitioner.

6. Hence, the Petition is dismissed.

[SMT. BHARATI DANGRE, J.]

[CHIEF JUSTICE]

Arjun
M.
Kadam

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by Arjun M.
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