

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.8422 OF 2020

YATIN DILIP BAGAD
VERSUS
BANK OF MAHARASHTRA AND OTHERS

...
Advocate for Petitioner : Mr. A.R. Borulkar
Advocate for Respondent No.1 : Mr. Aditya Sikchi h/f. Mr. Vaibhav Patil
...

CORAM : MANGESH S. PATIL AND
Y. G. KHOBRAGADE, JJ.

DATE : 22.12.2022

PER COURT :

The petitioner is challenging the order passed by the Debt Recovery Tribunal in O.A. No.176/2014 dated 04.02.2020 on the ground that there was no proper service and the order was passed *ex-parte*.

2. Learned advocate Mr. Borulkar submits that due to ill-advise, instead of preferring an appeal to the DRAT, the petition was filed. Drastic action is being taken by the respondent Bank. Today is the date given by the DRT, Aurangabad for attachment.

3. We have heard the learned advocate for the respondent Bank also.

4. Admittedly, a statutory remedy in the form of an appeal is available to challenge the impugned order. Without resorting to such a remedy the petitioner is seeking to invoke powers of this Court under Article 226 of the Constitution of India. It is trite that whenever there is a statutory

remedy available, this Court should refrain from invoking that power under Article 226.

5. The writ petition is dismissed with liberty to the petitioner to prefer an appeal. The time spent in prosecuting the present remedy from the date of filing of this petition till date shall be considered under Section 14 of the Limitation Act, 1963.

6. After pronouncement the learned advocate Mr. Broulkar would submit that in view of the impending attachment, some breathing time be given.

7. Once we have come to the conclusion that the petitioner had the remedy of appeal and still has approached this Court and have refused to exercise the power under Article 226 of the Constitution of India, no interim relief can be granted, more so when even the petition was filed after the period of limitation to prefer statutory appeal was over.

(Y. G. KHOBRAGADE, J.)

(MANGESH S. PATIL, J.)