

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.2446 OF 2020

1. Sandip s/o Balasaheb Sonawane
Age: 34 years, Occu: Business,
R/o: Sai Traders, Near SBI,
Shrirampur, Tq. Shrirampur,
Dist. Ahmednagar

... Petitioner

Versus

1. Nivrutti s/o Haribhau Tupe
Age: 45 years, Occu: Business,
Proprietor of Shri. Agro Agencies,
Shop No.1 and 2 at Khatod Market,
Complex, Shrirampur, Tq. Shrirampur,
Dist. Ahmednagar

2. The Authorised Officer,
State Bank of India
Shrirampur Branch, At Post
Shrirampur, Tq. Shrirampur,
Dist. Ahmednagar

3. Vijaya w/o Nivrutti Tupe
Age: 40 years, Occu: Household,
R/o Nehru Sahakari Griharachana,
Sanstha, Ward No.3, Near Khatod
Kanya High School, Near Central Bank of India

4. Sandip s/o Tukaram Jagtap
Age: 42 years, Occu: Agril.,
R/o At Post Nandur, Tq. Rahata,
Dist. Ahmednagar

... Respondents

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Mr. R. R. Karpe, Advocate for the Petitioner
Respondent Nos.1 to 4 served

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CORAM

**: NITIN W. SAMBRE &
S. G. CHAPALGAONKAR, JJ.**

Date

: 03.05.2023

FINAL ORDER : [PER S. G. CHAPALGAONKAR, J.]

1. The petitioner approaches this Court under Article 226 of the Constitution of India, thereby challenging the order dated 19/06/2019 passed by the Debts Recovery Appellate Tribunal at Mumbai [hereinafter referred to as 'DRAT Mumbai' for short], in MCA Nos. 244/2017 and 245/2017 in Appeal No.112/2015.

2. The contention of the petitioner is that respondent no.1 had availed a loan facility from respondent no.2/bank. As a sequel to failure of respondent no.1 to repay the loan, his account was classified as NPA. The respondent no.2/bank initiated an action under Section 13(2) of SARFAESI Act 2002. The secured asset was put to the auction. The respondent no.2 / bank had published a sale notice. The petitioner was declared as successful bidder.

3. The respondent no.1 had filed Securitization Application No.103/2013 challenging the sale notice and consequential action before the Debts Recovery Tribunal, Aurangabad [hereinafter referred to as 'DRT Aurangabad' for short]. The said application was allowed vide judgment and order dated 19/12/2014. Thereafter, the petitioner approached DRAT, Mumbai against the judgment and order dated 19/12/2014 passed by DRT, Aurangabad. Since there was delay in filing the appeal, it was accompanied with an application seeking condonation of delay. On 16/02/2017, DRT Mumbai dismissed the application seeking condonation of delay as well as the appeal for want of prosecution. The petitioner filed MCA No.244/2017 seeking restoration of the appeal along with MCA No.245/2017 seeking condonation of delay in filing the application for restoration. On 19/06/2019, DRT Mumbai dismissed the application observing that the applicant was not diligent in prosecuting the case and

failed to supply adequate reasons for his absence on the day when his application for condonation of delay of 07 days along with other two applications were taken up for hearing that was scheduled on 16/02/2017.

4. Learned Advocate Mr. R. R. Karpe appearing for the petitioner would submit that the DRAT adopted hyper technical approach and rejected the prayer of the applicant. He would submit that a pragmatic view ought to have been taken while dealing with an application seeking condonation of delay of 07 days. This Court had issued notices to the respondents vide order dated 10/02/2020. Although respondent nos.1 to 4 in writ petition are served, none appears for them. A perusal of the order dated 19/06/2019 shows that the DRAT Mumbai has not assigned adequate reasons for not entertaining the request of the petitioner to condone the delay of 07 days in filing the application seeking restoration of MCA No.263/2015 along with MCA No.245/2017.

5. Since there is no contest to the pleadings and grounds made out in this writ petition, we deem it fit to allow the writ petition and quash and set aside the order dated 19/06/2019 passed in MCA Nos.244/2017 and 245/2017 in Appeal No.112/2015. The DRAT Mumbai is requested to consider and decide MCA Nos.262/2015, 263/2015 and 264/2015 in Appeal No.112/2015 on its own merits, after hearing the concerned parties.

6. The writ petition is allowed in the above terms.

(S. G. CHAPALGAONKAR, J.)

(NITIN W. SAMBRE, J.)