

Nikita

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.4779 OF 2023

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IDFC First Bank Ltd. (Erstwhile M/s.
Capital First Ltd. and M/s. Future
Capital Holdings Ltd.)

... Petitioner

V/s.

Stay at Home

... Respondent

Mr. Kaustubh Gupte for the Petitioner.

Mr. Binod R. Thadani for Respondent-in-person (stay at
Home).

CORAM : AMIT BORKAR, J.

DATED : OCTOBER 31, 2023

P.C.:

1. By the impugned order, the Appellate Court refused to condone the delay of 931 days in filing the first appeal against the decree for recovery of amount and for compensation. By the impugned decree the Trial Court directed defendant to pay an amount of Rs.8,31,065.28/- along with the compensation of Rs.5,00,000/-

2. The Appellate Court passed a decree on 16th January 2019. The petitioner filed appeal along with application for condonation of delay on 12th November 2021. Therefore, there was delay of 931 days in filing the appeal. The petitioner pleaded two reasons:

a) That the petitioner bank had submitted proposal for approval

before National Company Law Tribunal to composite scheme of amalgamation of Capital First Limited, Capital First Home Finance Limited and Capital First Securities Limited with IDFC Bank Limited, and were into the rush of intimating the same to SEBI. The defendant in the suit was Capital First Limited. Since there is change in the name of the appellant company, the appellant company did not receive any intimation before passing of impugned order.

b) The second reason is the benefit of Covid period.

3. The Appellate Court rejected the application for condonation of delay on the ground that the petitioner was aware of the passing of decree. The Appellate Court recorded finding that amalgamation order was passed on 12th December 2018. The petitioner appeared before the Executing Court on various dates till 22nd February 2021 and submitted various adjournment applications. Therefore, the petitioner had knowledge of the decree.

4. The learned advocate for the petitioner submitted that sufficient cause under Section 5 of the Limitation Act, 1963 needs to be construed liberally. Since the appeal was filed during the period of exclusion of limitation as per Order of Supreme Court in Suo-motu petition No.3 of 2020 and considering the reasons of change of name the proceedings being pending. The delay ought to have been condoned.

5. On consideration of the impugned order it appears that the decree was passed on 16th January 2019. Ordinarily the period for

filing of appeal to the District Court is 30 days. According to the petitioner the delay was of 931 days. The order of Supreme Court in Suo-motu Petition No.3 of 2020, grants benefit of exclusion of limitation from 15th March 2020 till 20th February 2022. Even if the petitioner is entitled to this benefit of period of exclusion, he needs to explain the delay till 15th March 2020. The reason for not filing the appeal till 15th March 2020, is pendency of proceedings to change the name of the petitioner. It was obligatory on the petitioner to produce documents regarding amalgamation. The respondent had filed copy of amalgamation order at 12th December 2018 which is much before the passing of impugned decree. The reason, therefore, pleaded in the application remains to be pendency of the proceedings to change the name of petitioner company. In my opinion, reason for delay on the ground of pendency of the proceedings for change of name cannot be construed as sufficient cause for the delay from 16th February 2019 till 15th March 2020.

6. Therefore, the Appellate Court has rightly refused to condone the delay. There is no error of jurisdiction.

7. The writ petition stands dismissed. No costs.

(AMIT BORKAR, J.)