

23.09.2024
Item No.29 DL
Ct.19
A.J.

**IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION**

C.O. 3383 of 2024

Shri Bhagirath Pasari

-Vs-

Kotak Mahindra Bank & Ors.

Mr. Deepan Kumar Sarkar,
Mr. Samriddha Sen,
Mr. Aayush Lakhotia,
Mr. Tirthankar Das.

.....for the petitioner.

Mr. Aniruddha Chatterjee,
Mr. Pratik Ghose,
Mr. Avishek Roy Chowdhury,
Mr. Abir Lal Chakraborty.

.....for the opposite parties.

Affidavit of service filed on behalf of the petitioner be kept with the record.

The petitioner had an outstanding loan from *UCO Bank*; for realization of it, the said bank had filed a suit.

The *Kotak Mahindra Bank Limited*, the opposite party no.1 herein being the assignee of the said loan had filed the *TA. No. No. 9 of 2002* for recovery of the said loan amount before the Debts Recovery Tribunal-I, Kolkata, but the said application was dismissed for default; the application for restoration of it was also dismissed vide order dated December 02, 2019.

The opposite party no.1 aggrieved by the said order had preferred the *Appeal No.46 of 2020* along with an application for condonation of delay.

The Appellate Tribunal had condoned the said delay.

The petitioner had assailed the said order in C.O. 3926 of 2023 which was allowed by the order dated April 12, 2024 holding that the appeal and the application were *non est* in the eye of law as the affidavit in support of the appeal and application thereto were defective; liberty however was granted to file a fresh appeal with an application for condonation of delay; in pursuance thereof, the opposite party no.1 has filed the connected *Miscellaneous Appeal Diary No. 376 of 2024* before the Appellate Tribunal along with an application for condonation of delay.

The Appellate Tribunal by the impugned judgment and order dated August 07, 2024 has condoned the delay in filing of the said appeal; consequently, has allowed the appeal itself.

The grievance of the petitioner is the appeal cannot be allowed in consequence of condonation of delay in filing of it.

The grievance is justified; the delay since has already been condoned, the Appellate Tribunal is required to dispose of the appeal on its merit, in accordance with law, after affording an opportunity of hearing to the petitioners.

C.O. 3383 of 2024 is disposed of with the above observations without any order as to costs.

Urgent Photostat certified copies of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(Biswajit Basu, J.)