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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.12028 OF 2022

1. M/s Gadekar Ginning and Pressing Pvt.Ltd.,
Through it's director Jayashree Vishnu Gadekar,
Gut No.367, Dongargaon (K),
Tal.Phulambri, District Aurangabad

2. Jayashree Vishnu Gadekar,
Age-65 years, Occu-Business,
House at Gut No.367, Dongargaon (K),
Tal.Phulambri, District Aurangabad

-- PETITIONERS

VERSUS

1. Canara Bank
Through its Authorized Officer,
R/o Jalna Road Branch,
Aurangabad

2. M/s Adarsh Ginning and Pressing
through it's Prop.Sunil Ambadas Patil
Plot No.30, Shivjyoti Colony, N-6,
CIDCO, Aurangabad.

-- RESPONDENTS

Mr.P.B.Paithankar, Advocate for the Petitioners.
Mr.G.A.Rajput, Advocate for Respondent No.1.
Mr.M.B.Ubale h/f Mr.VB.Garud, Advocate for Respondent No.2.

(CORAM : RAVINDRA V. GHUGE AND
Y.G.KHOBRADE, JJ.)

DATE : SEPTEMBER 3, 2024

ORAL JUDGMENT [Per Ravindra V Ghuge, J]

1. Rule. Rule made returnable forthwith and heard finally by

the consent of the parties.

2. Having heard the learned Advocates for the respective sides for quite some time, in the light of the pleadings before the learned Debt Recovery Appellate Tribunal (for short 'DRAT'), it is obvious that the pleadings and the submissions of the parties before the learned DRAT, were in a tangent. The short issue before the learned DRAT was as to whether the order of the learned Debt Recovery Tribunal (for short 'DRT') dated 05.07.2022 in Diary No.453/2020, rejecting the interlocutory application No.424/2020 seeking condonation of delay, was legal and proper. The parties addressed the DRAT on the point of depositing 50 % amount, as a pre-condition for entertaining the Application for Condonation of Delay.

3. This Court [Coram : S.A.Bobde (as his Lordship then was), J.] held in **Dilawar Hakim Shah Versus Special Recovery Officer and Others [2006(3) Mh.L.J.256]** that in the matter of condonation of delay along with a statutory appeal / revision, the Revisional Authority u/s 154 (2A) of the Maharashtra Co-operative Societies Act, has to deal with the only issue of condonation of delay. The mandate of sub-

section (2A) will not apply to an application for condonation of delay.

4. It was held that the statutory scheme of Section 154 would apply after the Revisional Authority takes up the Revision for decision. The Revision can be said to have been received along with the application for condonation of delay, but is not to be entertained until the delay is condoned. The mandate of Section (2A) cannot be said to be applicable until the Application for condonation of delay is decided and the Revision is accepted. It is categorically concluded in paragraph No.5 that Section 154 does not bar the Registrar from considering the application for condonation of delay, which precedes the hearing of a Revision unless the deposit of 50% of the total recoverable amount is made. In paragraph Nos.6 and 7, it is concluded as under :-

“6. What falls for consideration in an application for condonation of delay is whether the applicant had sufficient cause for not making the application within the prescribed period. The entertainment of the revision is another matter, the occasion for which arises if and after delay is condoned. There is thus a clear demarcation between the proceedings taken for establishing that there was sufficient cause for not approaching the Registrar within the prescribed period and the entertainment of the revision itself.

7. The word entertain has been interpreted by the Supreme Court in

*(Lakshmiratan Engineering Works Ltd. v. Assist. Commissioner (Judicial), Sales Tax, Kanpur Range)*¹, A.I.R. 1968 S.C. 488 in the context of an appeal wherein Their Lordships held that the word entertain means to deal with or admit to consideration and not receiving or filing of the appeal. This decision has been subsequently followed by Their Lordships in *(Hindustan Commercial Bank Ltd. v. Punnu Sahu)* ², A.I.R. 1970 S.C. 1384. Undoubtedly, therefore, because the application for condonation of delay is filed along with the appeal, it cannot be said that bar of sub-section (2-A) applies even for considering the application for condonation of delay. The statutory scheme of section 154 is clear. It firstly requires a party to show sufficient cause for preferring the revision beyond the prescribed period and empowers the Registrar to entertain the revision only after sufficient cause is shown. The revision can be said to have been received along with the application for condonation of delay, but is not entertained until the delay is condoned as required by sub-section (3) itself. The bar of sub-section (2-A) applied to the entertainment of a revision unless the applicant deposits 50% of the total amount of recoverable dues. It is clear that it cannot be said that the revision is entertained unless the delay in filing it is condoned and by making out sufficient cause.”

5. The view taken by the learned Single Judge in the matter of Dilawar Hakim (supra), would squarely apply to the facts of this case in the light of Section 18 of the The Securitisation and Reconstruction

of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act). Section 18 reads as under :-

“18. Appeal to Appellate Tribunal—(1) Any person aggrieved, by any order made by the Debts Recovery Tribunal¹[under section 17, may prefer an appeal along with such fee, as may be prescribed] to the Appellate Tribunal within thirty days from the date of receipt of the order of Debts Recovery Tribunal.

²[Provided that different fees may be prescribed for filing an appeal by the borrower or by the person other than the borrower:]

*³[Provided further that **no appeal shall be entertained** unless the borrower has deposited with the Appellate Tribunal fifty per cent. of the amount of debt due from him, as claimed by the secured creditors or determined by the Debts Recovery Tribunal, whichever is less:*

Provided also that the Appellate Tribunal may, for the reasons to be recorded in writing, reduce the amount to not less than twenty-five per cent. of debt referred to in the second proviso.]

(2) Save as otherwise provided in this Act, the Appellate Tribunal shall, as far as may be, dispose of the appeal in accordance with the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993) and rules made thereunder.”

[Emphasis supplied]

5. It is, thus, clear that the person aggrieved by an order of the DRT can prefer an appeal to the Appellate Tribunal. No Appeal would be entertained unless the borrower has deposited with the

Appellate Tribunal, 50% of the amount of debt due from him, as claimed by the secured creditors or determined by the DRT, whichever is less. The 3rd proviso below Section 18(1) permits the Appellate Tribunal to reduce the amount to not less than 25% of the debt.

6. The language used u/s 18 is quite similar to the language u/s 154 of the M.C.S. Act. Entertaining an Appeal on the merits is the main limb of the litigation. That stage would arrive only if the delay is condoned. The Petitioner before us stands on a better footing. It's delay application was rejected by the learned Tribunal on it's merits, purely on the issue of limitation. There was no occasion to touch the merits in the proceeding initiated by the Petitioner u/s 17 of the SARFAESI Act. Unless the delay is condoned, the proceedings would not be registered, much less, be taken up for adjudication by the DRT. Having suffered a rejection order on the Application for condonation of delay, the Petitioner approached the Appellate Tribunal (DRAT).

7. In our view, mistakenly, the Petitioner has preferred an application for waiver of pre-deposit, when the issue was purely on whether the delay application was rightly rejected or not. This

Application for waiver was not required to be filed, much less to be considered, since the only issue before the DRAT was as regards the condonation of delay. If the said proceedings before the DRAT would have been allowed, the Application for condonation of delay, filed before the DRT, would have stood allowed. Thereafter, the main proceedings before the DRT u/s 17 would have been registered and the DRT would have then commenced the hearing on the merits of the application filed u/s 17. The DRAT only had to consider whether the order of the DRT can be construed to be perverse and erroneous so as to cause interference.

8. In view thereof and considering the law as is settled by this Court in Dilawar Hakim(supra), the DRAT could not have directed the Petitioner to deposit 50% of the amount due from him keeping in view that an auction sale had already occurred and the DRT had not determined any amount to be recovered from the Petitioner. Moreover, the Petitioner has deposited Rs. 50,00,000/- with the DRAT.

9. We, therefore, conclude that in the matters of condonation of delay, unless the delay is condoned, the main proceedings would not

be taken up for hearing. Hence the stage of depositing the amount as may be prescribed / engrafted in any statute as a pre-condition for entertaining a substantive proceeding, would not be applicable for dealing with applications for condonation of delay.

10. **This Writ Petition is allowed.** The impugned order of the learned DRAT dated 17.10.2022, to the extent of directing the Petitioners to deposit 50% of the amount, stands quashed and set aside. The proceedings are remitted to the learned DRAT. Both the parties agree to appear before the DRAT, on 18.09.2024. Notices are dispensed with. The proceedings shall be listed on the daily cause list of the learned DRAT, on the said date. Since the Petitioners have already deposited Rs.50,00,000/-, the same shall be subject to the final result of the proceedings.

11. Needless to state, the DRAT would consider whether the impugned order of the DRT, refusing to condone delay, is sustainable or not. All contentions to this extent, are kept open.

12. Rule is made absolute in the above terms.

13. Pending Civil Application would not survive and stands disposed off.

(Y.G.KHOBRADE, J.)

(RAVINDRA V. GHUGE, J.)