IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9324 OF 2024

Yogendra Kumar Laxminarayan Taparia & Ors. ..... Petitioners
V/s.
Central Bank of India & Ors. ..... Respondents

Mr.Yogesh K. Deshpande a/w. Mr.Mahesh Karule i/b. Mr.Vinayak S.Palande for the Petitioners.

Mr.Rohaan Cama a/w. Mr. T.N.Tripathi for the Respondent No.6.

CORAM : A.S. CHANDURKAR & RAJESH S. PATIL, JJ

DATE : 8th JULY, 2024

JUDGMENT (PER - RAJESH S.PATIL, J.) :-

This writ petition is filed under Article 226 and 227 of the Constitution of India challenging the judgment and order dated 3rd April, 2024 passed by the Debts Recovery Appellate Tribunal, Mumbai, whereby the petitioners' application for condonation of delay was dismissed.

2. The respondent no.1 is a bank who had granted certain loan facilities to the borrower-respondent no.3. The petitioners

are the legal heir of one Mr. Laxminarayan Taparia who was the guarantor for the said loan.

3. Two flats were mortgaged as collateral security with the respondent no.1 bank viz. Flat No.B/51, Chinar Building, R.A.Kidwai Road, Sewri, Mumbai – 400 031 and Flat at Building Nymph, 2-B, Narayan Dabholkar Road, Mumbai – 400 006.

4. The bank had initially filed the recovery suit against the borrowers and the guarantors before the Bombay High Court being Suit No.3890 of 1993. After the Debts Recovery Tribunal was established, under the enactment of The Recovery of Debts and Bankruptcy Act, 1993, (for short "RDBA") the said suit was transferred to Debts Recovery Tribunal, Mumbai and was numbered as Original Application No. 234 of 2001.

5. In the said Original Application No. 234 of 2001 the respondent no.1 issued a public auction notice on 14th February, 2005 with regard to the flat at Sewri. As per the said public notice, the last date to submit the bid was 24th February, 2005. Pursuant to the said auction notice, the respondent no.2

participated in the bid and was declared as a successful bidder for the Sewri flat. The respondent no.1-Bank thereafter on 17th March, 2005 filed an application to issue the said certificate to the respondent no.2 with regard to the Sewri flat. The said application of the respondent bank was allowed on 17th March, 2005, thereby issuing Sale Certificate. The borrower – the respondent no.3 thereafter on 23rd March, 2005 preferred an application before the Debts Recovery Tribunal for setting aside the order dated 17th March, 2005. So also, the guarantor of the loan Mr.Laxminarayan Taparia preferred an application for setting aside the order dated 17th March, 2005. The present petitioners are the legal heirs of the deceased Mr.Laxminarayan Taparia (Guarantor).

6. The application preferred by the Mr.Laxminarayan Taparia (Guarantor)was dismissed by an order 9th August, 2005 by the Debts Recovery Tribunal. The said guarantor preferred an appeal being Appeal (L) No. 558 of 2005, under Section 20 of the 'RDB Act' before the Debts Recovery Appellate Tribunal, challenging

the order dated 9th August, 2005 passed by the Debts Recovery Tribunal.

7. The said appeal filed by the guarantors being Appeal (L) No. 558 of 2005 was dismissed on 20th January, 2006 by the Debts Recovery Appellate Tribunal as the appellant failed to remove the office objections.

8. The present petitioners who are the legal heirs of the guarantors thereafter preferred an application for restoration of the Appeal (L) No. 558 of 2005, by way of Misc. Application No. 987 of 2008. In the said restoration application, it was the case of the petitioners that after they got knowledge about the dismissal of the appeal, they applied on 21st November, 2008 for the certified copy of the said order dated 20th January, 2006. The certified copy was received by them only on 2nd December, 2008. Since, there was a delay in preferring application for restoration of appeal, the petitioners also filed an application for condonation of delay being M.A.No. 71 of 2009.

9. The said delay condonation application M. A. No. 71 of 2009, was dismissed by the Debts Recovery Appellate Tribunal by the order dated 3rd April, 2024. The present Writ Petition challenges the impugned order dated 3rd April, 2024.

10. The advocate appearing for the petitioners submitted that by passing of the impugned order by the Debts Recovery Appellate Tribunal, the petitioners have been declined to be granted an opportunity to argue the appeal before the Debts Recovery Appellate Tribunal on merits.

11. It was further submitted that the sale of the mortgage property was conducted without any prior notice to the borrower or to the guarantor. The Debts Recovery Appellate Tribunal did not take into consideration while deciding the Original Application No. 234 of 2001, about the challenge to the confirmation of the sale order dated 17th March, 2005.

12. Mr.Cama, the learned advocate appearing on behalf of the

respondent no.1-bank, submitted that the appeal was filed before Debts Recovery Appellate Tribunal against an interim application on 2nd December, 2008. Alongwith the said restoration application, an application for delay condonation was filed. However, the petitioners did not take any steps to serve the respondent no.1 bank. In the meanwhile, the Original Application No. 234 of 2001 was decided by the Debts Recovery Tribunal on 6th November, 2009. Hence, a challenge to an order passed on an interim application has to be infructuous. Therefore, this Court should not entertain the present writ petition.

13. Mr.Cama submitted that the petitioners have taken up their chance, and only after the original application has been disposed of and a decree of recovery certificate has been granted, the pending appeal against an interim application was moved after a period of more than 10 years before the Debts Recovery Appellate Tribunal. He submitted that by a well reasoned order, the interim application for condonation of delay was dismissed

by the Debts Recovery Appellate Tribunal.

14. We have heard the learned counsel for both the sides and have gone through the documents on record.

15. It is a matter of record that the impugned order under challenge is passed on an application for condonation of delay in filing the appeal, challenging an order passed on an interim application. The delay itself was more than two years. The reasons assigned by the Petitioners in their application do not inspire confidence and also indicate lack of necessary diligence. Further though the delay application was filed in the year 2008 alongwith appeal, the petitioners did not take any steps for more than 10 years to circulate the matter for urgent relief. In the meanwhile, the Original Application No. 234 of 2001 was heard by the Debts Recovery Tribunal and was disposed of by an judgment and order dated 6th November, 2009.

16. The Debts Recovery Appellate Tribunal after hearing the petitioners on the issue of delay condonation, has taken into

consideration the averments made in the application and has disbelieved the petitioners reasons to condone the delay and by its order dated 3rd April, 2024 dismissed the delay condonation application.

17. Taking into consideration the lack of cogent reasons to explain the cause of delay coupled with the fact that the Original Application itself has been dismissed by the Debts Recovery Tribunal, and the fact that the petitioners did not take any immediate steps in the delay condonation application for restoring of the appeal before the Debts Recovery Appellate Tribunal to serve the proceedings on Respondent No.1-Bank, we do not find any reason to take a different view. The Petitioners also did not take any steps for 10 years to circulate the Delay Condonation Application. We are of the view that there is no case made out for interferring with the order passed by the Debts Recovery Appellate Tribunal. Hence, writ petition is dismissed. No costs.

[RAJESH S. PATIL, J.] **[A.S. CHANDURKAR, J.]**