

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 11521 OF 2024

Rohini Ramesh Kalyankar Since Deceased
Throu. Legal heirs Rasik Ramesh Kalyankar
and Ors.

...Petitioners

Versus

The State of Maharashtra and Ors.

...Respondents

Mr. Amogh Karandikar, Advocate for the Petitioners.

Mr. S.H. Kankal, Assistant Government Pleader for the Respondent
No.1/State.

Mr. Sunil Kadam, Advocate for the Respondent No.2/Bank.

Mr. Satwindar Singh, Officer of the Central Bank of India present.

**CORAM : A.S.CHANDURKAR AND
M.M. SATHAYE, JJ.**

DATE : 28th MARCH 2025

P.C. :

1. Heard.

2. In this writ petition challenge is raised to the judgment dated 25.11.2014 passed by the learned Chairperson, Debts Recovery Appellate Tribunal, Mumbai (for short "DRAT") thereby modifying the order passed by the Debts Recovery Tribunal, Mumbai (for short "DRT") dated 28.04.2010. By the said order, the DRT exonerated the present Petitioners from any liability in making repayment. The Respondent No.2-Central Bank of India being aggrieved, challenged the said judgment by filing separate appeals. By the impugned judgment, the DRAT modified the order passed by the DRT and held the Petitioners liable to pay the outstanding debt.

3. Considering the fact that a challenge has been raised in this writ petition filed in June 2024 to the order passed by the DRAT dated 25.11.2014, the aspect of delay and laches on the part of the petitioners in approaching this Court requires to be first examined.

4. The learned Counsel for the petitioners invited our attention to the averments in paragraph 15 of the writ petition. Paragraph 15 reads as under:

“15. The Petitioners state that in the pending Special Civil Suit Nos. 50/2007 to 68/2007 and 129/2007 before Civil Judge Senior Division, Panvel, the Respondent No.1 on or around 16.12.2023 filed an application to frame the Issue of jurisdiction as a Preliminary Issue and further prayed to decide the said Issue and dismiss the said Suits. In the said applications, the Respondent No.1 for the first time given a reference of filing of an appeal before the Debt Recovery Appellate Tribunal, Mumbai in the year 2011 challenging the Order passed by the Debt Recovery Tribunal, Mumbai dismissing the said original applications against the Petitioners. The copy of the said applications was served upon the Petitioner No.1 in or around in the month of February 2024. At that moment, the Petitioners, for the first time came to know that the Respondent in the year 2011 filed the appeals before the Debt Recovery Appellate Tribunal, Mumbai, mentioned hereinabove. The Petitioners filed reply to the said application in the month of March 2024, filed in the Special Civil Suit No. 50/2007 to 68/2007 and 129/2007. The Petitioners state that in the reply the Petitioners have taken a specific stand that they have no knowledge of the filing of appeals by the Respondent No.1 before the Debt Recovery Appellate Tribunal, Mumbai and the Orders passed therein. It is also stated in the said reply that the Petitioners have not received any notice of any of the appeal from the Respondent No.1 or from the Debt Recovery Appellate Tribunal, Mumbai. The said application was heard by the Civil Judge Senior Division, Panvel and by Order dated

15.06.2024, the application filed by the Respondent No. 1 in the pending Special Civil Suit No. 50/2007 to 68/2007 and 129/2007 as appearing from the Roznama. Hereto annexed and marked as Exhibit 'J (Colly)' are copies of the applications filed by the Respondent No.1 in pending Special Civil Suit No. 50/2007 to 68/2007 and 129/2007. Hereto annexed and marked as Exhibit 'K (Colly)' are copies of the replies filed by the Petitioners to the said applications. Hereto annexed and marked as Exhibit 'L (Colly)' are copies of the Roznama dated 15.06.2024 in Special Civil Suit No. 50/2007 to 68/2007 and 129/2007.”

5. The learned Counsel for the petitioners therefore, submitted that it was only in the month of February 2024 that the petitioners got knowledge of the fact that the DRAT had determined their liability by the order dated 25.11.2014. Since the petitioners were not heard by the DRAT, it was submitted that the writ petition be entertained on merits.

6. The learned Counsel appearing for the Bank tendered copy of order passed below Exh.11 in R.C.S. No. 166 of 2016 which was a suit filed by the original petitioner - Mrs.Rohini Ramesh Kalyankar. In the said suit, the petitioner sought declaration that the action initiated by the Bank was illegal and contrary to law. The prayer for grant of status quo was considered by the trial Court on 16.06.2016 and by observing that in view of specific order passed by the DRT as well as the DRAT no case was made out for grant of status quo. The learned Counsel has further referred to the written statement filed on behalf of the Bank in the aforesaid suit filed by the petitioners. In paragraph 5(t), it has been pleaded as under.

“5(t) Meanwhile, the Appeal 144 of 2011 have been finally heard and allowed. The Plaintiff, Mr. Ramesh

*Kalyankar and their Company R.R. Kalyankar Construction Co. Pvt. Ltd. have been held liable to claim of these Defendants. Hereto annexed and marked as **Exhibit-B** is copy of order dated 25th November, 2024.”*

7. From the aforesaid, it is evident that in the order dated 16.06.2016 passed in the civil suit filed by the petitioner herself, a specific reference has been made to the orders passed by the DRT as well as the DRAT. Similarly, in the written statement filed by the Bank on 25.08.2016, it has been specifically pleaded that the appeal preferred by the Bank came to be allowed on 25.11.2014. Thus from the record of the suit filed by the original petitioner, it is clear that there is a reference to the aforesaid proceedings in the year 2016 itself.

8. In the light of this record of the suit filed by the original petitioner herself, it is not possible to accept the averments made in the paragraph 15 of the writ petition that the petitioner No.1 got knowledge of aforesaid order only in February 2024. Since we find that the petitioners have failed to explain the aspect of delay and laches in a fair manner, we are not inclined to exercise discretion in favour of the petitioners. Hence, on the ground of unexplained delay and laches, the writ petition is not entertained. It is therefore dismissed.

9. The amount of Rs.1 crore deposited by the petitioners without prejudice shall be returned back to Petitioner No.2.

(M.M. SATHAYE, J.)

(A.S.CHANDURKAR, J.)