

BEFORE THE DEBTS RECOVERY
APPELLATE TRIBUNAL, AT: MUMBAI

Present: Mr Justice Ashok Menon, Chairperson

Misc. Appeal No. 145/2023

Between

Dr. Sandip Ashok Bharude & Ors.
V/s.

... Appellant/s

Canara Bank

... Respondent/s

Mr. Anant Deshmukh, Advocate for Appellant appeared through Video Conferencing.

Mr. Gajendra Rajput, Advocate for Respondent appeared through Video Conferencing.

:- Order dated: 22/12/2023:-

The matter is taken up for hearing by way of a praecipe filed by the Appellants for seeking urgent relief.

2. The Appellants are the defendants in Original Application (O.A.) No. 277 of 2016 on the files of the Debts Recovery Tribunal, Aurangabad (D.R.T.) are aggrieved by the dismissal of the Interlocutory Application (I.A.) No. 457 of 2083 filed by the Appellants in the aforesaid O.A. vide order dated 23/05/2023 refusing to condone the delay in filing the written statement in the O.A.

3. The question that arises for consideration in this appeal is whether the D.R.T. is empowered to condone the delay in filing the written statement which is not filed within the time stipulated period.

4. Rule 12 (1) of the Debts Recovery Tribunal (Procedure) Rules, 1993 states that the defendant shall within a period of 30 days from the date of service of summons, file a written statement including the claim was set of or counter claim, if any, along with documents in a

paper book form. If the defendant fails to file the written statement of his defence, including the claim for set off or counter claim under sub rule (1), if any, within the period of 30 days, subrule 3 empowers the Presiding Officer in exceptional cases and special circumstances to be recorded in writing to extend the said period, mice such further period, not exceeding 15 days.

5. Section 19 (5) (i) of the Recovery of Debts & Bankruptcy Act, 1993 also states that the defendant shall within a period of 30 days from the date of service of summons, present a written statement of his defence including claim for set-off under sub-section (6) or a counter-claim under sub-section (8), if any, and such written statement shall be accompanied with original documents are true copies thereof with the lever the Tribunal, relied upon by the defendant in his defence.

6. Sub-section (5) (i) was amended in 2016 and the earlier section prior to amendment granted power to the Presiding Officer in exceptional cases and in special circumstances to be recorded in writing, allow more than 2 extensions to the defendant to file the written statement.

7. The Hon'ble Supreme Court had in *International Asset Reconstruction Company of India vs. Official Liquidator of Aldrich Pharmaceuticals Limited*, (2017) 16 SCC 137 held that delay in filing appeal under section 30 of the RDB Act before the D.R.T. cannot be condoned resorting to section 5 of the Limitation Act. This decision has been followed in a No. of subsequent decisions of the Hon'ble Apex Court. In *Standard Chartered Bank Limited vs. MSTC Limited* (2020) 13 SCC 618, it was held that delay in filing a review

application under Rule 5 A of the D.R.T. (Procedure) Rules cannot be condoned under section 5 of the Limitation Act. In *Avneesh Chandan Gadgil vs. Oriental Bank of Commerce*, *Live Law* 2021 SC 679, it is reiterated that section 5 of the Limitation Act has no application before the D.R.T. to condone the delay.

For the foregoing reasons, the Ld. Presiding Officer was justified in dismissing the application for condonation of delay to file a written statement. The appeal has no merits and is therefore dismissed. It is made clear that the Appellants are at liberty to argue the O.A. on merits based on legal issues. No arguments based on factual matters, without pleadings, shall be heard.

Sd/-
Chairperson

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