

# Abhishek Traders & Ors vs IDBI Bank Ltd

M/s Abhishek Traders & Ors.

...Appellant

IDBI Bank Ltd.

...Respondent

Case No: Misc. Appeal No. 06/2018

Date of Judgement: 02/01/2023

Judge:

Mr Justice Ashok Menon, Chairperson

For Appellant: Mr S. N. Fuladi with Mr Radhe Aggarwal, Advocates.

For Respondent: Mr Chetan Akerkar, Advocate.

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## Facts:

This is a common order passed by the Debts Recovery Appellate Tribunal (DRAT), Mumbai, in Misc. Appeal No. 06/2018 and Misc. Appeal No. 07/2018. These appeals were filed under Section 20(1) of the Recovery of Debts and Bankruptcy Act, 1993 (RDB Act) by the defendants in Original Application (O.A.) Nos. 207 & 208 of 2014 respectively, challenging the dismissal of I.A. Nos. 338 & 339 of 2016 by the Debts Recovery Tribunal (DRT), Nagpur.

The appeals arose from the DRT's orders dated 14/12/2017 and 15/12/2017, dismissing the Appellants' applications seeking permission to receive the written statement out of time. The Appellants were different, but the Respondent IDBI Bank was the common original applicant in both the O.As filed for the recovery of debts due from the Appellants.

### **Arguments by the Appellants:**

The Appellants' counsel submitted that the Appellants had serious contentions in the Original Applications. Therefore, the recording of 'no written statement' by the Presiding Officer had been prejudicial to them and needed to be set aside. The counsel argued that an opportunity should be given to the Appellants to file a written statement.

The reasons for the delay in filing the written statement were explained in the applications. The counsel contended that there was no provision in the RDB Act to file an application for condonation of delay. Hence, in the interest of justice, the Appellants should be given an opportunity to plead their defence, and the O.A. should be disposed of after considering the pleadings of the defendants and hearing them on merits.

### **Arguments by the Respondent Bank:**

The Respondent Bank's contention was that the Appellants had not made out any reason for getting the delay condoned in filing the written statement. Additionally, the DRT was not empowered to condone the delay in filing written statements.

### **Court's Elaborate Opinions:**

The Presiding Officer had rejected the prayer to receive the written statements out of time, reasoning that the delay could not be condoned without an application filed under Section 5 of the Limitation Act.

The Appellants' counsel argued that when the reasons for the delay were stated in the applications for receiving the written statements out of time, a separate application under Section 5 of the Limitation Act might not be required. Therefore, the Presiding Officer erred in holding that the application could be entertained only upon filing a separate application for condonation of delay under Section 5 of the Limitation Act.

The court referred to the Supreme Court's ruling in Sesh Nath Singh &

Anr vs. Baidyabati Sheoraphuli Cooperative Bank Ltd.& Anr Live Law 2021 SC 177, which clarified that Section 5 of the Limitation Act does not mandate filing a formal application. The court can always insist on an application or affidavit showing cause for the delay. However, the court's discretion to condone the delay is not barred in the absence of a formal application.

The court found the Presiding Officer's finding that a formal application under Section 5 of the Limitation Act is required to condone the delay to be erroneous. Even if a separate application was deemed essential, the Presiding Officer ought to have granted an opportunity to make good the defect rather than dismissing the applications.

The main question for consideration was whether the DRT had the power to condone the delay in exercising jurisdiction under the Limitation Act.

The court referred to the Supreme Court's decisions in International Asset Reconstruction Company of India vs. Official Liquidator of Aldrich Pharmaceuticals Ltd. (2017) 16 SCC 137, Standard Chartered Bank Ltd vs. MSTC Ltd. (2020) 13 SCC 618, and Avneesh Chandan Gadgil vs. Oriental Bank of Commerce Live Law 2021 SC 679, which clearly established that Section 5 of the Limitation Act has no application before the DRT to condone delays.

The Appellants' counsel relied on a Division Bench decision of the Bombay High Court in Madhao Somaji Sarode vs. Jotiba Dhyan Upasak Shikshan Sanstha Dudhala 2004 (3) MhLJ 1078, arguing that the Tribunal should have given an opportunity to make an application for condonation of delay before rejecting the application for receiving a written statement. However, the court distinguished this decision, as it dealt with the application of Section 5 of the Limitation Act in appeals under the Code of Civil Procedure, not before the DRT.

Based on the Supreme Court's decisions, the court held that the delay in filing the written statement beyond the period stipulated under Rule 12(1) of the DRT Rules could not be condoned. The maximum

permissible extension, upon reasons recorded in writing, was only 15 days and nothing beyond.

### **Cases Cited:**

Sesh Nath Singh & Anr vs. Baidyabati Sheoraphuli Cooperative Bank Ltd.& Anr Live Law 2021 SC 177

International Asset Reconstruction Company of India vs. Official Liquidator of Aldrich Pharmaceuticals Ltd. (2017) 16 SCC 137

Standard Chartered Bank Ltd vs. MSTC Ltd. (2020) 13 SCC 618

Avneesh Chandan Gadgil vs. Oriental Bank of Commerce Live Law 2021 SC 679

Madhao Somaji Sarode vs. Jotiba Dhyan Upasak Shikshan Sanstha Dudhala 2004 (3) MhLJ 1078

### **Sections and Laws Referred:**

Section 20(1) of the Recovery of Debts and Bankruptcy Act, 1993

Section 5 of the Limitation Act, 1963

Rule 12(1) of the Debts Recovery Tribunal (Procedure) Rules, 1993

### **Order:**

The appeals were dismissed, though without costs. However, the court clarified that since the defendants had appeared in the O.A., although they had not filed written statements, the learned counsel for the defendants was at liberty to argue the matter on all legal issues. Since there were no pleadings regarding the facts, no arguments based on factual matters that ought to have been pleaded could be entertained.