

Dr. Sandip Ashok Bharude & Ors. v. Canara Bank

Dr. Sandip Ashok Bharude & Ors.

...Appellant

Canara Bank

...Respondent

Case No: Misc. Appeal No. 145/2023

Date of Judgement: 22/12/2023

Judges:

Mr Justice Ashok Menon, Chairperson

For Appellant: Mr. Anant Deshmukh, Advocate for Appellant.

For Respondent: Mr. Gajendra Rajput, Advocate.

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Facts:

The case involves a Miscellaneous Appeal No. 145/2023 filed by Dr. Sandip Ashok Bharude & Ors. (Appellants) against Canara Bank (Respondent). The Appellants are the defendants in Original Application (O.A.) No. 277 of 2016 before the Debts Recovery Tribunal, Aurangabad (D.R.T.). The Appellants are aggrieved by the dismissal of Interlocutory Application (I.A.) No. 457 of 2083, filed by them in the aforementioned O.A., vide order dated 23/05/2023. The D.R.T. refused to condone the delay in filing the written statement in the O.A. by the Appellants.

Arguments by the Parties:

Appellants' Arguments:

The Appellants sought condonation of the delay in filing the written

statement in the O.A. before the D.R.T. They argued that the D.R.T. has the power to condone the delay in filing the written statement, which was not filed within the stipulated time period.

Respondent's Arguments:

The Respondent's arguments were not explicitly mentioned in the order.

Court's Elaborate Opinions:

The court referred to Rule 12(1) of the Debts Recovery Tribunal (Procedure) Rules, 1993, which states that the defendant shall file a written statement, including a claim for set-off or counter-claim, if any, within 30 days from the date of service of the summons. Rule 12(3) empowers the Presiding Officer, in exceptional cases and special circumstances to be recorded in writing, to extend the said period by a further period not exceeding 15 days. Section 19(5)(i) of the Recovery of Debts & Bankruptcy Act, 1993, also states that the defendant shall present a written statement of defense, including a claim for set-off or counter-claim, if any, within 30 days from the date of service of the summons. The court noted that Section 19(5)(i) was amended in 2016, and the earlier version granted the Presiding Officer the power to allow more than two extensions to the defendant to file the written statement in exceptional cases and special circumstances to be recorded in writing. The court referred to the Hon'ble Supreme Court's decision in International Asset Reconstruction Company of India vs. Official Liquidator of Aldrich Pharmaceuticals Limited, (2017) 16 SCC 137, which held that delay in filing an appeal under Section 30 of the RDB Act before the D.R.T. cannot be condoned by resorting to Section 5 of the Limitation Act. The court also cited the Hon'ble Supreme Court's decisions in Standard Chartered Bank Limited vs. MSTC Limited (2020) 13 SCC 618 and Avneesh Chandan Gadgil vs. Oriental Bank of Commerce, Live Law 2021 SC 679, which reiterated that Section 5 of the Limitation Act has no application before the D.R.T. to condone delays. Based on these precedents, the court held that the Ld. Presiding Officer was justified in dismissing the application for condonation of delay to file a written statement. The court clarified that the Appellants are at liberty to argue the O.A.

on merits based on legal issues, but no arguments based on factual matters without pleadings shall be heard.

Cases Cited:

International Asset Reconstruction Company of India vs. Official Liquidator of Aldrich Pharmaceuticals Limited, (2017) 16 SCC 137
Standard Chartered Bank Limited vs. MSTC Limited (2020) 13 SCC 618
Avneesh Chandan Gadgil vs. Oriental Bank of Commerce, Live Law 2021 SC 679

Sections and Laws Referred:

Rule 12(1) and Rule 12(3) of the Debts Recovery Tribunal (Procedure) Rules, 1993

Section 19(5)(i) of the Recovery of Debts & Bankruptcy Act, 1993

Section 5 of the Limitation Act (referred to but not explicitly mentioned)

Section 30 of the Recovery of Debts & Bankruptcy Act, 1993 (referred to but not explicitly mentioned)

The court dismissed the Miscellaneous Appeal No. 145/2023, upholding the D.R.T.'s order dismissing the application for condonation of delay in filing the written statement. However, the court clarified that the Appellants are at liberty to argue the O.A. on merits based on legal issues, but no arguments based on factual matters without pleadings shall be heard.