

Jitendra A Pathak v. Bank of Maharashtra & Ors.

Jitendra A Pathak

...Appellant

Bank of Maharashtra & Ors.

...Respondent

Case No: Misc. Appeal No. 101/2022

Date of Judgement: 27/09/2023

Judges:

Mr Justice Ashok Menon, Chairperson

For Appellant: Mr Sanjay Dubey, i/b Mr Arun Upadhyay, Advocate.

For Respondent: Mr Sachin Koli, Advocate.

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Facts:

The case pertains to a Miscellaneous Appeal filed by Jitendra A Pathak (hereinafter referred to as "Appellant") against the order dated 01.08.2022 passed by the Debts Recovery Tribunal-III, Mumbai (DRT) in Miscellaneous Application (M.A.) No. 13 of 2022 in Original Application (O.A.) No. 2093 of 2016. The DRT had dismissed the Appellant's application for condonation of a delay of 680 days in filing an application under Section 19(25) of the Recovery of Debts and Bankruptcy Act, 1993 (RDB Act) to set aside the order dated 05.04.2018 in O.A. No. 2093/2016. The Appellant claimed to be the owner of apartment flats Nos. 201, 202, and 203 C-wing, 2nd floor, Urvashi Apartment, village More, Nallasopara (East), Palghar (hereinafter referred to as the "subject property"), which he alleged to have purchased from Swastik Construction vide a registered agreement for sale dated 12.11.2004, after availing a housing loan

from the Bassein Catholic Co-operative Bank Ltd., Nallasopara Branch. On 27.01.2021, the Appellant received a letter from the Respondent Bank of Maharashtra and the Advocate Court Receiver for taking physical possession of the apartments, scheduled for 23.02.2021. Upon inquiry, the Appellant learned that the Bank of Maharashtra had filed O.A. No. 2093/2016 against Respondent Nos. 2 to 4 for the recovery of debt allegedly due from them and obtained an ex parte decree vide judgment and order dated 05.04.2018, along with a Recovery Certificate concerning the subject property. The Appellant claimed to have borrowed a sum of ₹33 lakhs from one Chogaram Kalaji Chaudhary and entered into a Memorandum of Undertaking for the sale of all three flats in favor of Chogaram Kalaji Chaudhary and Prabhuram Purkhaji Chaudhary due to financial difficulties. The Appellant alleged that a purported power of attorney was executed by him in favor of Chogaram Kalaji Chaudhary, and upon inquiry with the Bassein Catholic Co-operative Bank Ltd. regarding the pending housing loan, he was informed vide letter dated 06.09.2012 that the debt had been cleared by the Respondent Bank of Maharashtra, and the title deeds were handed over to them. The Appellant lodged a police complaint on 13.07.2012, alleging that a power of attorney had been forged, and the subject property was fraudulently transferred by Chogaram Kalaji Chaudhary with the assistance of Advocate D.R. Kudrigi. The Appellant issued a legal notice on 25.09.2012 to the Bassein Catholic Co-operative Bank Ltd. to obtain details regarding the purported power of attorney used by Chogaram Kalaji Chaudhary to usurp the property and received a reply on 28.09.2012 from the said bank. The co-operative society where the flats are situated informed the Appellant that no NOC had been issued in favor of Chogaram Kalaji Chaudhary or anyone else. The Appellant had filed an application for intervention before the Recovery Officer, but it was rejected. The Appellant approached the DRT with an application to set aside the judgment and order in O.A. No. 2093/2016, relying on the order of the Recovery Officer dated 25.04.2022 as the starting period of limitation.

Arguments by the Parties:

Appellant's Arguments:

The Appellant argued for condonation of the delay of 680 days in filing the application under Section 19(25) of the RDB Act to set aside the order dated 05.04.2018 in O.A. No. 2093/2016. The Appellant claimed to be the rightful owner of the subject property and alleged that the property was fraudulently transferred by Chogaram Kalaji Chaudhary using a forged power of attorney. The Appellant relied on the order of the Recovery Officer dated 25.04.2022 as the starting point of the limitation period.

Respondent Bank's Arguments:

The Respondent Bank of Maharashtra vehemently opposed the Miscellaneous Application for condonation of delay filed by the Appellant.

Court's Elaborate Opinions:

The Tribunal expressed surprise that the Appellant did not take any action for more than a decade after coming to know about the alleged sale of the subject property in favor of Respondents Nos. 2 and 3 by Chogaram Kalaji Chaudhary, purportedly using a forged power of attorney of the Appellant. The Tribunal noted that while the Appellant had allegedly filed a police complaint on 13.07.2012 accusing forgery and fraud, the fate of that complaint was not known. The Tribunal opined that if there was indeed fraud and forgery in executing the sale deed by using a forged power of attorney as alleged, the Appellant should have approached a Civil Court of competent jurisdiction to get the documents set aside, but no such action was taken. The Tribunal observed that it was not clarified whether the Appellant had cleared the admitted debt of ₹33 lakhs due to Chogaram Kalaji Chaudhary as per the Memorandum of Undertaking (MOU) executed by him. The Tribunal expressed surprise that until 2012, the Appellant did not inquire about the housing loan admittedly taken by him from the Bassein Catholic Co-operative Bank Ltd., despite not paying the EMIs due. The Tribunal noted that even after coming to know about the closing of the debt due to the Bassein Catholic Co-operative Bank Ltd. as early as 2012, the Appellant remained complacent about the action to be taken. The Tribunal stated that the law does not come to the

assistance of those who sleep over their rights, and the Appellant had woken from his slumber after a decade, only when the subject property was sought to be attached in the Recovery Proceedings. The Tribunal found no reason to interfere with the DRT's order rejecting the application for condonation of delay and concluded that the appeal had no merits and deserved to be dismissed.

Sections and Laws Referred:

Recovery of Debts and Bankruptcy Act, 1993 (RDB Act)

- Section 19(25) (Setting aside orders passed ex parte)

In conclusion, the Debts Recovery Appellate Tribunal dismissed the Miscellaneous Appeal filed by the Appellant, finding no reason to interfere with the DRT's order rejecting the application for condonation of the delay of 680 days in filing an application under Section 19(25) of the RDB Act. The Tribunal expressed concerns over the Appellant's inaction for more than a decade, despite being aware of the alleged fraudulent transfer of the subject property, and held that the law does not come to the assistance of those who sleep over their rights.