

Mamatha R. vs Punjab National Bank & Ors.

Mamatha R.

...Appellant

Punjab National Bank & Ors.

...Respondent

Case No: Appeal No. 264/2015

Date of Judgement: 13/02/2023

Judge:

Mr Justice Ashok Menon, Chairperson

For Appellant: Mr Puneet Gogad along with Mr Kushal Sawant, Advocates.

For Respondent: Ms Asha Bhuta, i/b M/s. Bhuta & Associates, Advocates.

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Facts:

This is an order passed in M.A. No. 669/2015 (CoD) in Appeal No. 264/2015 by the Debts Recovery Appellate Tribunal, Mumbai. The appeal challenges the judgment of the Debts Recovery Tribunal-I, Ahmedabad (DRT) dated 29/10/2014 in Original Application (O.A.) No. 216/2012. In the O.A., Punjab National Bank sought to recover ₹1,90,68,540/- from four defendants, including a proprietorship firm, its sole proprietor, and two guarantors. The DRT allowed the O.A. and issued a recovery certificate against the defendants jointly and severally, and from the hypothecated and mortgaged properties. The appellant claims to be the absolute owner of a residential house mentioned in Schedule II, situated in Bangalore. The appellant alleged that she was deceived by the fourth respondent (second defendant in the O.A.) into selling her property for ₹54 lakhs, but he paid only ₹21,50,000 and mortgaged the property with the bank. The appellant filed a civil suit and a writ

petition before the High Court of Karnataka, which were dismissed due to the DRT's exclusive jurisdiction. The appeal was filed with a delay of 176 days, and the appellant sought condonation of the delay.

Court's Elaborate Opinions:

The court was inclined to condone the delay of 176 days in filing the appeal, giving the appellant an opportunity to be heard, but on the condition of paying costs.

Arguments by All Parties:

Appellant's Arguments:

The appellant claimed that the order passed by the DRT was never communicated to her, and she was not made a party to the proceedings by the bank. The appellant came to know about the impugned judgment only during the last week of May 2015, and thereafter, she made arrangements to challenge the order in appeal. The delay was not deliberate, and the appellant sought indulgence of the Tribunal to condone the delay.

Respondent Bank's Arguments:

The respondent bank contended that the appellant was aware of the original application as early as in July 2013. The appellant had admitted having knowledge of the proceedings before the DRT at Ahmedabad and the auction sale notice fixed on the compound wall of the subject property during March 2013. The civil suit was dismissed by the rejection of the plaint as early as on 04/03/2015. After failing to obtain any favorable order in the civil suit or the writ petition, the appellant approached the Tribunal, and the appeal is not maintainable.

Case Laws Referred:

No case laws were referred in the order.