

# Pravin Padmakar Banavilkar vs State Bank of India

Pravin Padmakar Banavilkar

...Appellant

State Bank of India

...Respondent

Case No: Appeal No. 192/2016

Date of Judgement: 16/01/2023

Judge:

Mr Justice Ashok Menon, Chairperson

For Appellant: Mr Jamshed Ansari, Advocate.

For Respondent: Ms Medha Behere, Mr Sanjay Anabhawane, Advocates.

Download Court Copy [CLICK HERE](#)

## Facts:

This is a common order passed by the Debts Recovery Appellate Tribunal (DRAT), Mumbai, in Appeal No. 192/2016 and Misc. Appeal No. 134/2022. Both appeals were filed by the same Appellant, Pravin Padmakar Banavilkar, against the State Bank of India (SBI).

## Appeal No. 192/2016:

This appeal challenged the interlocutory order dated 01/04/2016 of the Debts Recovery Tribunal (DRT)-III, Mumbai, in I.A. No. 834/2016. The Appellant sought the dismissal of Original Application (O.A.) No. 383 of 2012, filed by SBI against the Appellant, on the ground that despite the assignment of the debt, no steps had been taken to substitute the assignee in place of the original applicant (SBI).

## Misc. Appeal No. 134/2022:

This appeal challenged the DRT's order dated 15.09.2022, allowing I.A. No. 982/2018 filed by the assignee, Asset Reconstruction Company India Ltd (ARCIL), to get substituted as the applicant in the aforementioned O.A.

### Arguments by the Appellant:

The Appellant's counsel relied on the following cases to argue that the application for substitution filed by ARCIL was time-barred:

KSEB vs. T.P. Kunhaliumma (1976) 4 SCC 634 – Article 137 of the Limitation Act, 1963 applies to applications filed under any Act to a Civil Court.

Ballumal A. Jaisingh vs. M/s J.J. Builders and others 2003 (3) Mh. L.J 238 – In the absence of a proper application to condone the delay, the court has no jurisdiction to condone the delay.

Basaraj and Another vs. Special Land Acquisition Officer (2013) 14 SCC 81 – The Applicant has to explain to the court what was a "sufficient cause" that prevented them from approaching the court within the period of limitation.

### Arguments by the Respondent Bank (SBI):

The Respondent Bank's counsel submitted that the concept of abatement is inapposite where a merger takes place in the course of a scheme of amalgamation sanctioned by the company court. He relied on the decision of the Bombay High Court in Delta Distilleries Ltd vs. Shaw Wallace and Co. Ltd 2008 (1) Mh. L.J 899 to argue that the assignment of debt by a bank to an Asset Reconstruction Company has a similar effect, and therefore, the provisions of the Limitation Act would not apply.

### Court's Elaborate Opinions:

The court referred to Section 130 of the Transfer of Property Act, which deals with the assignment of actionable claims. In the present case, SBI had assigned the debt due from the Appellant to ARCIL by means of an assignment deed, and the debtor (Appellant) had been

informed about the assignment.

The court noted that under Sections 5(4) and (5) of the Securitisation & Reconstruction of Financial Assets & Enforcement of Security Interest Act, 2002 (SARFAESI Act), there is a provision for an assignee to continue proceedings and for substitution of its name in any pending suit or appeal. Although there is no such specific provision under the Recovery of Debts and Bankruptcy Act, 1993, the provisions in the SARFAESI Act empower the DRT or the Appellate Tribunal to pass orders for the substitution of the asset reconstruction company upon receiving an application. The statute does not prescribe a period of limitation for such substitution.

The court further applied the principles of the Code of Civil Procedure, specifically Order 1, Rule 10, which allows for the impleadment of a necessary or proper party at any stage to effectuate complete adjudication, without any period of limitation. Similarly, under Order 22, Rule 1 of the Code, when an interest has evolved during the pendency of a suit, the suit may be continued by or against persons upon whom such interest has devolved, including persons who have acquired an interest in the subject matter of the litigation by an assignment or creation of a division of interest pendente lite.

Based on these considerations, the court found no error in the impugned orders of the DRT, either in dismissing the application for dismissal of the O.A. or in allowing the application for substitution, calling for any interference in appeal.

### Cases Cited:

KSEB vs. T.P. Kunhaliumma (1976) 4 SCC 634

Ballumal A. Jaisingh vs. M/s J.J. Builders and others 2003 (3) Mh. L.J 238

Basaraj and Another vs. Special Land Acquisition Officer (2013) 14 SCC 81

Delta Distilleries Ltd vs. Shaw Wallace and Co. Ltd 2008 (1) Mh. L.J

**Sections and Laws Referred:**

Section 130 of the Transfer of Property Act

Sections 5(4) and (5) of the Securitisation & Reconstruction of Financial Assets & Enforcement of Security Interest Act, 2002 (SARFAESI Act)

Order 1, Rule 10 of the Code of Civil Procedure

Order 22, Rule 1 of the Code of Civil Procedure

**Order:**

The appeals were dismissed, though without costs. The Presiding Officer of the DRT was directed to make earnest attempts to dispose of the Original Application No. 383 of 2012 as expeditiously as possible, since the application had been pending for more than a decade.