

**BEFORE THE DEBTS RECOVERY**  
**APPELLATE TRIBUNAL, AT: MUMBAI**

**Present: Mr Justice Ashok Menon, Chairperson**

**M.A. No. 669/2015 (CoD)**

**In**

**Appeal No. 264/2015**

**Between**

Mamatha R. ... Appellant/s

V/s.

Punjab National Bank & Ors. ... Respondent/s

Mr Puneet Gogad along with Mr Kushal Sawant, Advocate for Appellant.

Ms Asha Bhuta, i/b M/s. Bhuta & Associates, Advocate for Respondents. Nos. 1 & 2.

**:- Order dated: 13/02/2023:-**

This is an application for condonation of delay in filing the appeal challenging the judgment of the Debts Recovery Tribunal-I, Ahmedabad (DRT) dated 29/10/2014 in Original Application (O.A.) No. 216/2012.

2. The aforesaid O.A. was filed by the Punjab National Bank seeking to recover a sum of ₹1,90,68,540/- from the four defendants impleaded therein. The 1<sup>st</sup> defendant is a proprietorship of which the 2<sup>nd</sup> defendant is the sole proprietor. Defendants Nos. 3 and 4 are the guarantors for the loan availed by the 1<sup>st</sup> defendant through the 2<sup>nd</sup> defendant. Defendants Nos. 1 and 2 did not appear to contest the O.A. while defendants Nos. 3 and 4 appeared and filed a written statement denying the claim made by the bank. They

alleged cheating, deceit, fraud and misrepresentation, and that their signatures were obtained on blank printed forms by the bank under pretext, and misused. The Ld. Presiding Officer, in the impugned order, refused to accept the allegations raised by defendants Nos. 3 and 4 and allowed the O.A. to issue a recovery certificate to recover the aforesaid amount claimed together with interest at the rate of 12% per annum with effect from the date of the filing of the application till realisation from the defendants jointly and severally and from out of the hypothecated and mortgaged properties described in Schedules I and II of the application.

3. The Appellant claims to be the absolute owner in peaceful possession and enjoyment of the residential house mentioned in Schedule II situated in Bangalore. The contention of the Appellant is that during 2010 she was in acute financial difficulties and was looking to either mortgage or sell the property belonging to her. She comes across an advertisement published by the 4<sup>th</sup> Respondent herein (the original 2<sup>nd</sup> defendant) offering private finance against property. The Appellant responded to that advertisement and approached the 2<sup>nd</sup> defendant. In the first instance, the 2<sup>nd</sup> defendant agreed to finance by mortgaging the property by deposit of title deeds, but thereafter, he agreed to purchase the property and the Appellant also agreed to his proposal to buy the subject property for a sale consideration of ₹54 lakhs. The property was divided into two portions, and the first portion was sold vide a sale deed executed on 12/01/2011 and registered on 13/01/2011. The sale deed with regard to the second portion was executed and registered

on 15/04/2011. Both documents were registered in the office of the Sub-Registrar, Banasavadi, Bangalore. The 2<sup>nd</sup> defendant however did not pay the entire sale consideration and the Appellant has received only a sum of ₹ 2,150,000 towards consideration, and the 4<sup>th</sup> Respondent cheated her by not paying the balance consideration. On being contacted, the 2<sup>nd</sup> defendant revealed that the property has been mortgaged with the bank and the title deeds deposited. However, it was undertaken that the mortgage would be redeemed and the documents returned to the Appellant at the earliest. However, the 2<sup>nd</sup> Respondent did not perform in accordance with the promise and a police complaint has also been registered against him by the Appellant. During March 2013, the Appellant noticed in the auction sale notice a fixed of the compound wall of her property. The Appellant approached the DRT with the grievance and was also granted an interim relief with regard to the sale of the property. However, the DRT dismissed the application filed by the Appellant on 21/01/2014 and in consequence, any auction notice was issued. The Appellant filed a Writ Petition No. 12453/2014 before the Hon'ble High Court of Karnataka. An interim stay was granted and the writ was admitted. The Appellant contends that the 2<sup>nd</sup> defendant in the O.A. had colluded with the bank officials to cheat and defraud the Appellant. The civil suit filed by the Appellant as OS No. 5288/2013 before the civil court Bangalore as also the writ petition was disposed of in view of the exclusive jurisdiction of the DRT. Hence, the Appellant approached this Tribunal with the appeal challenging the judgment of the DRT. The Appellant seeks a prayer to quash and set aside

the impugned judgment of the DRT with regard to the property mentioned in Schedule II belonging to the Appellant order in the alternate to remand the O.A. for fresh disposal by the DRT.

4. The Appellant has filed this appeal with a delay of 176 days and seeks to condone the same in this application. It is stated that the order passed by the DRT in OA No. 216/2012 was never communicated to the Appellant and that she was not made a party to the proceedings by the Applicant bank. According to the Applicant, this was a deliberate omission on the part of the bank. The Appellant had come 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. It is submitted that the delay was not deliberate and therefore, the Appellant seeks indulgence of this Tribunal to condone the delay.

5. Per contra, the Respondent bank contends that the Appellant was aware of the original application as early as in July 2013 and that she had filed a civil suit before the City Civil Court Bangalore and the Appellant had admitted having knowledge of the proceedings before the DRT at Ahmedabad and the auction sale notice which was fixed on the compound wall of the subject property during March 2013. The Appellant even gives the details of the claim made by the Respondent bank in the aforesaid O.A. filed before the DRT. The civil suit was dismissed by the rejection of the plaint as early as on 04/03/2015. After having failed in obtaining any favourable order either in the civil suit or in the writ petition referred to above, the Appellant has approached this Tribunal with this appeal which

is not maintainable.

6. After having heard both sides, I find that the Appellant was prosecuting the matter before the City Civil Court Bangalore and had also filed a writ petition before the Hon'ble High Court of Karnataka. Without going into the merits of the appeal in the contentions raised by the Appellant in great detail, I am inclined to condone the delay of 176 days in filing the appeal for the reason that the Appellant should be given an opportunity to be heard, but should be put to terms.

In the result, the application to condone the delay is allowed but on payment of cost ₹5000/- to the DRT Bar Association Mumbai for the purchase of books and periodicals within a period of two weeks, failing which, the application shall stand dismissed.

Post before the Registrar for reporting compliance.

Sd/-  
Chairperson

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