

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

Present: Mr Justice Ashok Menon, Chairperson

I.A. No. 125/2022 (CoD)

In

Appeal on Diary No. 32/2022

Between

Pradip J. Mundhra

V/s.

Punjab National Bank

Mr Puneet Gogad along with Ms Samita V., i/b M/s. Pritesh Burad & Associates, Advocate for Appellant.

Ms Asha Bhuta, i/b M/s. Bhuta & Associates, Advocate for Respondent.

... Appellant/s

... Respondent/s

∴ Order dated: 28/02/2023:-

The original Defendant No. 7 in O.A. No. 141 of 2015 on the files of the Debts Recovery Tribunal (D.R.T.), Aurangabad is the Appellant who is aggrieved with the order of the D.R.T. dated 07.04.2016 in Exhibit 41. The Appellant and others who were affected by the impugned order had in the first instance approached the High Court of Judicature of Bombay at Aurangabad by filing Writ Petition No. 4406 of 2015 and the Petitioner No. 2 therein was granted ad-interim order on 20.06.2016 permitting him to travel to South Africa on certain conditions. The seat of Chairperson of DRAT, Mumbai was at that point in time lying vacant and that is the reason why the Hon'ble High Court was approached with the Writ. The Writ came up for consideration again on 19.04.2017 and the Counsel for the Petitioners, on instruction, sought leave to

withdraw the petition with liberty to avail the remedy of presenting an appeal before the DRAT. The leave was granted by the Hon'ble High Court, and the Writ Petition was thus disposed of on 19.04.2017, with a direction to the DRAT to give due regard to the aspect of time spent in prosecuting the remedy of the Writ Petition before the High Court while dealing with the application for condonation of delay in filing the appeal.

2. The Appellant states that he had made several applications seeking permission to travel abroad before the D.R.T. and all those applications were also allowed. It is stated that the impugned order is erroneous since the D.R.T. has no jurisdiction or power to restrain a person from travelling abroad in absence of specific powers to that effect. Refusing permission to travel abroad is made in contravention of the provisions of Article 21 of the Constitution of India and is, therefore, violative of the rights guaranteed to the Appellant therein. There is no provision to regulate the right of a person to travel abroad provided in the Act and Rules concerning the proceedings before the D.R.T. Apart from the exclusion of the time spent by the Appellant in prosecuting the Writ, the Appellant would also seek the benefit of the exemption granted by the Hon'ble Supreme Court in view of of the pandemic

3. The first Respondent has opposed the application for condonation of delay with all vehemence. It is submitted that the reasons stated for the condonation of delay are not sufficient. There is an unreasonable delay of 2105 days. It is also pointed out that the appeal ought to have been filed prior to the starting of the pandemic and that there was already a delay about more than four years prior

to the onset of the covid pandemic. Under the circumstances, the judgment of the Hon'ble Supreme Court condoning the delay for the pandemic period will not come to the aid of the Appellant.

4. Heard both sides. Records perused. The Ld. Counsel for the Appellant has relied upon the decision of the Hon'ble High Court Bombay in *Anurag vs. Bank of India & Ano.* 2022 SCC OnLine Bom 1160 wherein it is held that the Debts Recovery Tribunal has no power to restrain a person from travelling abroad in the absence of specific provisions to that effect. The Ld. Counsel would therefore submit that the Appellant has a meritorious case. The Ld. Counsel could thereafter rely on the decision of the Hon'ble Supreme Court in *State of Kerala & Ors. vs. V. S. Raveendran* MANU/SC/0109/2009 and *Mahindra and Mahindra Financial Services Ltd. vs. Maheshbbhai Tinabhai Rathod & Ors.* (2022) 4 SCC 162 and *Collector, Land Acquisition, Anantnag & Ors vs. Katiji & Ors.* MANU/SC/0460/1987 to argue that the expression "sufficient cause" employed by the legislature is adequately elastic to enable the courts to apply the law in a meaningful manner which subserves the ends of justice.

5. Coming to the facts of the case, it is seen that the DRAT was not chaired and therefore, the Appellant approached the Hon'ble High Court Bombay Bench at Aurangabad for reliefs and in the Writ Petition 4406/2016 vide order dated 03.05.2016 the Appellant was permitted to travel abroad on certain conditions. Thereafter, the Appellant wanted to challenge the order before this Tribunal and sought permission to withdraw the Writ. Vide order dated 19.04.2017 the Hon'ble High Court granted permission to the Appellant to withdraw the Writ and file an appeal before this

Tribunal. The period spent prosecuting the Writ Petition was also directed to be excluded while considering the application for condoning the delay. In the meanwhile, Insolvency Petition was filed by Bank before the NCLT and the company was declared insolvent and the amount realised after the sale of the company. The Appellant had, in the meanwhile, filed several applications before the D.R.T. seeking permission to travel abroad and the same were allowed. Under the circumstances, there was much delay in filing the application.

6. It is true that even after the exclusion of the time spent for prosecuting Writ before the Hon'ble High Court, the Appeal ought to have been filed prior to the onset of the pandemic. The Appellant may, therefore, not get the benefit of the exclusion of limitation by the Hon'ble Supreme Court. However, considering the fact that the Appellant does not stand to gain anything by not preferring an appeal and also for the reason that the Appellant has a meritorious case, I am of the opinion that the delay needs to be condoned. However, in view of the fact that there is a prolonged delay, the Appellant will have to be put to terms for allowing the application. In the result, the application for condonation of delay is allowed subject to payment of Rs.10,000/- 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 on 17.03.2023 before the Registrar for reporting compliance.

Sd/-
Chairperson