

BEFORE THE DEBTS RECOVERY
APPELLATE TRIBUNAL, AT: MUMBAI
Present: Mr Justice Ashok Menon, Chairperson

Appeal No. 192/2016

Between

Pravin Padmakar Banavilkar	... Appellant/s
V/s.	
State Bank of India	...Respondent/s

And

Misc. Appeal No. 134/2022

Between

Pravin Padmakar Banavilkar	... Appellant/s
V/s.	
State Bank of India & Ors.	...Respondent/s

Mr Jamshed Ansari, Advocate for Appellant.

Ms Medha Behere, Advocate for the Respondent No. 1 Bank.

Mr Sanjay Anabhawane, i/b M/s. M & S Legal Ventures, Advocate for Respondent No.2.

-: Common Order dated: 16/01/2023:-

Appeal No.192/2016 is preferred by the sole defendant in Original Application (O.A.) No. 383 of 2012 on the files of the Debts Recovery Tribunal-III, Mumbai (DRT) challenging the interlocutory order of the Ld. Presiding Officer dated 01/04/2016 in I.A. No. 834/2016 seeking dismissal of the Original Application for the reason that despite the assignment of the debt, no steps have been taken to substitute the assignee in place of the original

applicant.

2. Misc. Appeal No 134/2022 is filed by the very same appellant challenging the order dated 15.09.2022 of the DRT allowing I. A. No. 982/2018 filed by the assignee to get substituted as the applicant in the aforesaid O.A.

3. The common question that arises for consideration in both the appeals is regarding the propriety in allowing the application for substitution of the original applicant in the O.A. after a lapse of three years, and for not dismissing the O.A. for having failed to take steps to substitute in time. Hence both these appeals are disposed of by means of a common order.

4. The facts essential for the disposal of these appeals, in brief, are thus:

The above-mentioned O.A. was filed by the State Bank of India (SBI) for the realisation of the amount due from the defendant. During the pendency of the O.A., the debt was assigned on 25/06/2014 by the SBI to the Asset Reconstruction Company India Ltd (ARCIL). The fact regarding the assignment of the debt was informed by the SBI to the defendant/appellant vide letter dated 18/09/2014. ARCIL was also sent the letter of even date by the SBI asking them to take steps to get substituted as the applicant in the O.A. Even after the lapse of three years, ARCIL has not taken any steps to get itself substituted in place of SBI. According to the defendant, this is an indication that ARCIL is not interested in pursuing the O.A. before the DRT. Hence, the defendant filed an application requesting the DRT to dismiss the O.A. Soon thereafter, I. A. No. 982/2018 was filed for substitution of the applicant and

the same was allowed vide order dated 15.09.2022.

5. The Ld. Presiding Officer, vide the impugned order dated 01/04/2016 held that the Applicant continues to prosecute the application and, therefore, there is no reason to dismiss the O.A. solely for the reason that the assignee of the debt has not substituted the Applicant. Hence, the Appellant impugns that order. The application for substitution was filed belatedly as I. A. No. 982/2018 which was allowed by the DRT vide the order dated 15.09.2022, and hence, that order is also impugned in Misc. Appeal No. 134 of 2022.

6. Heard both sides. Records perused.

7. The Ld. counsel appearing for the Appellant relies upon the decision of the Hon'ble Supreme Court in *KSEB vs. T.P. Kunhaliumma (1976) 4 SCC 634* to argue that Article 137 of the Limitation Act, 1963 applies to applications filed under any Act to a Civil Court. The Ld. counsel also relies upon the decision of the Bombay High Court in *Ballumal A. Jaisingh vs. M/s J.J. Builders and others 2003 (3) Mb. L.J 238* to argue that in absence of proper application to condone the delay, the court has no jurisdiction to condone the delay. The decision of the Hon'ble Supreme Court in *Basaraj and Another vs. Special Land Acquisition Officer (2013) 14 SCC 81* is relied upon to submit that the Applicant has to explain to the court as to what was a "sufficient cause" which means an adequate and enough reason which prevented him to approach the court within the period of limitation.

8. Per contra, the Ld. counsel appearing for the Respondent submits 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 relies on the decision of the Hon'ble Bombay High Court in *Delta Distilleries Ltd vs. Shaw Wallace and Co. Ltd 2008 (1) Mb. 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.

9. Section 130 of the Transfer of Property Act, deals with the assignment of actionable claims. These legal provisions essentially provide that an assignment must be by way of an agreement in writing, and the fact of the assignment must be notified to the debtor. In the instant case, the SBI has assigned the debt due from the defendant to ARCIL by means of an assignment deed. There is no dispute that the debtor in the instant case has been informed about the assignment. Soon after the defendant filed the application for dismissal of the O.A., I.A. No.982/2018 for substituting the original applicant SBI was filed, and now stands allowed by the DRT.

10. Under sections 5 (4) and (5) of the Securitisation & Reconstruction of Financial Assets & Enforcement of Security Interest Act, 2002 ('SARFAESI Act', for short) there is a provision for an assignee to continue the proceedings and for substitution of its name in any pending suit or appeal of the proceedings. Though there is no such specific provision under the Recovery of Debts and Bankruptcy Act, 1993, the provisions in the SARFAESI Act provide for application for substitution to be filed in a pending suit, appeal or other proceedings, and on receipt of such application, empowers the DRT or the Appellate Tribunal or Court or Authority

to pass such orders of substitution of the asset reconstruction company. The statute does not prescribe a period of limitation for such substitution.

11. Further, applying the principles of the Code of Civil Procedure under Order 1, Rule 10, a necessary or proper party can be impleaded at any stage to effectuate complete adjudication. There is no period of limitation fixed for bringing on record a proper party to the suit. Similarly, under Order 22, Rule 1 of the Code, when there has been an evolution of interest during the pendency of a suit, the suit may, by leave the court, be continued by or against persons upon whom such interest has devolved and this entitles the person who has acquired an interest in the subject matter of the litigation by an assignment or creation of a division of interest *pendente lite* or suitor or any other person interested, to apply to the court for leave to continue the suit.

12. Under the circumstances, I find 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.

As a result, the appeals are dismissed, though without costs. The Ld. Presiding Officer is directed to make earnest attempts to dispose of the Original Application No. 383 of 2012 as expeditiously as possible since the application has been pending for more than a decade.

Sd/-
Chairperson