

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

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

**Appeal No. 171/2016**

**Between**

ICICI Bank Ltd. ... Appellant/s  
V/s.  
Kulkarni Engineering Associates Ltd. & Ors. ... Respondent/s  
Ms Ankita Doke, i/b M/s. Divekar Bhagwat & Co., Advocate for  
Appellant.

**-: Order dated: 01/06/2023:-**

ICICI Bank Ltd. is the Appellant which is aggrieved by the order of the Debts Recovery Tribunal, Pune (D.R.T.) in I.A. No. 463/2016 in Original Application (O.A.) No. 148/2003, dated 23/03/2016.

2. The aforesaid O.A. was filed by the Sangli Bank Ltd. against Respondent No. 1 which is a company which availed Inland Bill Discounting facility from the aforesaid Sangli Bank to the tune of ₹65 lakhs which was enhanced from time to time. Respondents Nos. 2 and 3 were the directors of the company and also stood as guarantors for the aforesaid facility. The 4<sup>th</sup> Respondent is the acceptor of bills of exchange drawn by the 1<sup>st</sup> Respondent. Respondents Nos. 5 to 8 were holding pari-passu charges over the collateral securities. The 1<sup>st</sup> Respondent failed to repay the debt, and the account of the company was classified as Non-Performing Assets (NPA). The Sangli Bank issued a loan recall notice to the 1<sup>st</sup>

Respondent and its directors and the 4<sup>th</sup> Respondent calling upon them to pay a sum of ₹1,20,45,475/- due as of 31/03/2003. The 4<sup>th</sup> Respondent filed a civil suit No. 483/2003 before the Civil Court at Kanpur for a declaration and injunction against the Sangli Bank and obtained an injunction. Thereafter, the Sangli Bank filed the aforesaid O.A. for the realisation of the amount due.

3. The 4<sup>th</sup> Respondent filed an application for a stay of the proceedings concerning it, as Exhibit 36 contending that the civil suit was filed prior to the O.A. and hence the proceedings are to be stayed before the D.R.T. On 04/03/2004 the D.R.T. rejected the application filed by the 4<sup>th</sup> Respondent. The order of the D.R.T. was challenged in appeal before this Tribunal as Misc. Appeal No. 150/2004. The appeal was allowed vide order dated 16<sup>th</sup> March 2005 and the proceedings before the D.R.T. in the O.A. was stayed. Sangli Bank challenged the order of this Tribunal before the Hon'ble High Court of Bombay in Writ Petition No. 7226 of 2005. Sangli Bank was amalgamated with the ICICI Bank. When the O.A. was taken up for hearing on 17/03/2015 the Ld. Presiding Officer observed that the stay granted by this Tribunal vide order dated 16/03/2005 was only in terms of prayer clause 6 (a) and hence, operated with regard to the 4<sup>th</sup> Respondent alone. On 07/07/2015 Sangli Bank filed I.A. No.62/2015 for amendment and substitution of the Applicant in view of the amalgamation. Vide order dated 09/03/2016, the D.R.T. rejected I.A. No.62/2015 stating that since the Sangli Bank was no longer in existence as a consequence of its amalgamation to the ICICI Bank, it could not have applied for substitution. Thereafter, the Appellant ICICI Bank filed a fresh

application as I.A. No. 463/2016 for substitution. This application too was rejected vide order dated 23/03/2016 on the ground that no explanation regarding the belated filing of the application was forthcoming, and there were no sufficient reasons for condoning the delay. The Appellant is aggrieved and hence in appeal.

4. The Appellant contends that the Ld. Presiding Officer erred in observing that there was no explanation forthcoming explaining the reasons for the delay in applying for substitution. The finding that the earlier application filed by the Sangli Bank as I.A. No. 62/2015 was rejected also on the grounds of delay amongst other grounds is also erroneous. That application was rejected solely on the ground that the Applicant Bank did not have the locus because it was no longer in existence because of the amalgamation. The reasons for the delay in applying for substitution were already explained in I.A. No. 62/2015. Hence, it is prayed that the impugned order dated 23/03/2016 I.A. No. 463 of 2016 may be quashed and set aside. The Respondents were served, but none appeared to contest the appeal. It is submitted by the Ld. Counsel appearing for the Appellant that the claim against Respondent Nos. 2 and 3 has already been settled and that a 'No dues Certificate' has also been issued to them. The 1<sup>st</sup> Respondent company went into liquidation. Though the liquidator was served, none appeared.

5. The Ld. Counsel appearing for the Appellant was heard. Records perused.

6. The question that arises for consideration in this appeal is whether the Ld. Presiding Officer was justified in dismissing the application for substitution on the ground of limitation. It is to be

noted that two applications for substitution were filed in O.A. No. 148/2003. The first one was filed by the original Applicant Sangli Bank as I. A. No. 62/2015. The Ld. Presiding Officer dismissed that I.A. solely for the reason that the Sangli Bank was no longer in existence consequent to its amalgamation with ICICI Bank, and therefore, did not have any locus to apply to substitute the Applicant with ICICI Bank and that only the ICICI Bank could file an application and continue with the lis. The Ld. Presiding Officer has also observed that he was otherwise inclined to allow the application.

7. After the dismissal of the I.A. No.62/2015, the ICICI Bank applied for substitution and that was dismissed by the impugned order solely for the reason that it is barred by limitation.

8. It is true that the provisions of the Code of Civil Procedure do not apply to the proceedings before the D.R.T. But the principles do apply. Under Order 1 Rule 10 of the CPC the court has the power to add any party at any stage of the proceedings either upon or without the application of either party and exercising that power a plaintiff could be substituted. It is also pertinent to note that the proceedings before the D.R.T. in the O.A. was considered as stayed consequent to the order of the D.R.A.T. in Misc. Appeal No. 150/2004. It is only subsequently that the Presiding Officer realised that the stay operated only against the fourth Defendant and not against the rest of the Defendants. Only when the O.A. was t consideration that the Applicant realised the necessity of substituting Sangli Bank with ICICI Bank. There is absolutely no embargo for the D.R.T. to substitute the Applicant whose presence

before the Tribunal was necessary to enable the Tribunal to effectually and completely adjudicate upon and settle all the questions involved in the proceedings. The Tribunal should not be pedantic in its approach and substantial justice is what should be intended to be imparted. Under the circumstances, I find that the impugned order needs to be set aside.

Resultantly, the appeal is allowed and the impugned order dated 23/03/2016 in I.A. No. 463/2016 in O.A. 148/2003 is set aside and the application is allowed permitting the Applicant Sangli Bank to be substituted with ICICI Bank.

Sd/-  
Chairperson

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DRAFT MUMBAI