

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

Present: Mr Justice Ashok Menon, Chairperson

Misc. Appeal No. 101/2022

Between

Jitendra A Pathak
V/s.

... Appellant/s

Bank of Maharashtra & Ors.

...Respondent/s

Mr Sanjay Dubey, i/b Mr Arun Upadhyay, Advocate for Appellant.
Mr Sachin Koli, Advocate for Respondent No. 1 Bank.

:- Order dated: 27/09/2023:-

The Appellant is in appeal impugning the order dated 01.08.2022 in Misc. Application (M.A.) No. 13 of 2022 in Original Application (O.A.) No. 2093 of 2016 on the files of the Debts Recovery Tribunal-III, Mumbai (D.R.T.) by which the application for condoning the delay of 680 days in filing an application under section 19 (25) of the Recovery of Debts and Bankruptcy Act, 1993 ('RDB Act', for short) was dismissed. The Appellant is aggrieved and hence in appeal.

2. The Appellant claims to be the owner of apartment flats Nos. 201, 202 and 203 C-wing, 2nd floor Urvashi Apartment, village More, Nallasopara (East), Palghar (subject property) which he claims to have purchased from Swastik Construction vide registered agreement for sale dated 12.11.2004, after availing a housing loan from the Bassein Catholic Co-operative Bank Ltd., Nallasopara Branch and continues to remain in actual possession and enjoyment of the flats.

3. The Appellant states that he received a letter for taking over

physical possession of the apartments issued by the Respondent Bank of Maharashtra and the Advocate Court Receiver on 27.01.2021 scheduling the date of possession on 23.02.2021. The notice was found pasted on the front of the apartment. On enquiry, it was revealed that the Bank of Maharashtra had filed O.A. No. 2093/2016 against Respondent Nos. 2 to 4 for recovery of the debt allegedly due from them and obtained an ex parte decree vide judgment and order dated 05.04.2018 and obtained a Recovery Certificate with regard to the subject property.

4. On coming to know about the issuance of a Recovery Certificate for the realisation of the amount allegedly due to the first Respondent with a charge over the subject property, the Appellant approached the D.R.T. with the M.A. No. 13 of 2022 to condone the delay of 680 days in filing the application under Sec. 19(25) of the RDB Act to get the order in the O.A. No. 2093/2016 dated 05.04.2018 set aside. The first Respondent Bank opposed the M.A. vehemently. After hearing both sides, the Ld. Presiding Officer vide impugned order dated 01.08.2022, dismissed the M.A. refusing to condone the delay. The Appellant is aggrieved and hence, in appeal.

5. The Appellant claimed to be the owner of the subject property allegedly purchased by him on 12.11.2004 by means of a registered agreement for sale. He also obtained a housing loan from the Bassein Catholic Co-operative Bank, Nallasopara on deposit of title deeds. The Appellant was in financial difficulties and borrowed a sum of ₹33 lakhs from one Chogaram Kalaji Chaudhary and entered into a

Memorandum of Undertaking for the sale of all the three flats in favour of aforesaid Chogaram Kalaji Chaudhary and Prabhuram Purkhaji Chaudhary. The Appellant comes to know that a purported power of attorney has been executed by him in favour of Chogaram Kalaji Chaudhary. On enquiry made by the Appellant with Bassein Catholic Co-operative Bank Ltd. regarding the pending housing loan, the Appellant was informed by the said Bank vide letter dated 06.09.2012 that the debt has been cleared by the first Respondent Bank of Maharashtra and the title deeds handed over to them.

6. The Appellant lodged on police complaint on 13.07.2012 alleging that a power of attorney had been forged and the subject property was transferred fraudulently by Chogaram Kalaji Chaudhary with the assistance of Advocate D.R. Kudrigi. The Appellant also issued a legal notice on 25.09.2012 to the Bassein Catholic Co-operative Bank Ltd. to get the details regarding the purported power of attorney used by Chogaram Kalaji Chaudhary to usurp the property. A reply was received on 28.09.2012 from the said bank giving the details. The co-operative society where the flats are situated has informed that no NOC has been issued in favour of Chogaram Kalaji Chaudhary or anyone else. The Appellant had filed an application for intervention before the Recovery Officer but the same was rejected. Possession of the property is intended to be taken in the Recovery Proceedings. Hence, the Appellant approached the D.R.T. with an application to set aside the judgment and order in the O.A. The Appellant has relied upon the order of the Recovery Officer dated 25.04.2022 as the starting period of limitation. Later the aforesaid M.A.

No. 13 of 2022 was filed for condonation of delay.

7. Heard both sides. Records perused.

8. It is surprising that the Appellant did not take any action for more than a decade after he came to know about the sale of the subject property in favour of Respondents Nos. 2 & 3 by Chogaram Kalaji Chaudhary by allegedly using a forged power of attorney of the Appellant. A police complaint was allegedly filed by the Appellant on 13.07.2012 with accusations of forgery and fraud. The fate of that complaint is not known. In case there is fraud and forgery in executing a sale deed by using a forged power of attorney as alleged, the Appellant should have approached a Civil Court of competent jurisdiction to get the documents set aside. No such action is taken by him. It is not clarified whether the Applicant/Appellant had cleared the admitted debt of Rs.33 lakhs due to Chogaram Kalaji Chaudhary as per the MOU which he has admittedly executed. More surprising is the fact that till 2012, the Appellant did not enquire about the housing loan admittedly taken by him from the Bassien Catholic Co-operative Bank Ltd. He was admittedly not paying the EMIs due. Even after coming to know about the closing of the debt due to the Bassien Catholic Co-operative Bank Ltd. as early as 2012, the Applicant was complacent about the action to be taken. Law does not come to the assistance of those who sleep over their rights. The Applicant has woken from his slumber after a decade, only when the subject property was sought to be attached in the Recovery Proceedings.

The Ld. Presiding Officer has rightly rejected the application for

condonation of delay. I find no reason to interfere.

The appeal has no merits and deserves to be dismissed.

Sd/-

Chairperson

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DRAFT MUMBAI