

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.3042 of 2015

1. Rajesh Kumar

2. Prabhat Kumar

Both sons of Late Shashi Ranjan @ Shashi Ranjan Sahu resident of 197 - B
Shrikrishnapuri, P.S. S.K. Puri, Town & District - Patna

.... Petitioners

Versus

1. The Punjab National Bank, having its Branch office at Abu Lane, Meerut Cantt.
P.S. Sadar, District Meerut, U.P.

2. The Debt Recovery Tribunal, Bihar, 34, Bank Road Opp. New Police Line
Lodipur Patna 1 (East), Patna

3. Bharat Auto Traders, a partnership firm situated at 172 Abu Lane, Meerut Cantt.
P.S. Sadar, District Meerut, U.P.

4. V.M. Aggrawal son of U.S. Aggrawal resident of J - 1/47 Jawahar Quarters,
Meerut, P.S. Lal Kurti, District - Meerut, U.P.

5. Smt. Manju Jain wife of Late A. Jain resident of J - 1/47 Jawahar Quarters, P.S.
Lal Kurti, Meerut, U.P.

6. Karti Kumar son of Late Shashi Ranjan @ Shashi Ranjan Sahu resident of B -
197 Shrikrishnapuri, P.S. Shrikrishnapuri, District - Patna

7. Pankaj Gupta son of Dr. G.C. Gupta

8. Mukta Gupta wife of Dr. G.C. Gupta Both residing at 83 Konark Colony,
Roorkee Road, Meerut (UP)

9. Shivanidhi Dalmia son of

10. Mridula Dalmia wife of Shivanidhi Dalmia Both residing at Sikandra Road,
New Delhi

11. Madhu Aggrawal wife of V.M. Aggrawal resident of 129 Sector 14, Faridabad,
Haryana

12. Mamta Sahu Wife of Jugal Kishore Sahu resident of Puja Bazar, Motijheel,
Muzaffarpur, District - Muzaffarpur

.... Respondents

Appearance :

For the Petitioners : M/s Kali Das Chatterji, Sr, Advocate and
Amlesh Kumar Varma, Advocate

For the Respondent - : Mr. Nilamber Prasad Verma, Advocate
Bank

CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN

ORAL JUDGMENT

Date: 17-04-2015

The two matters, i.e., C.W.J.C. No. 3317 of 2015 as
well as C.W.J.C. No. 3042 of 2015 were being heard analogous but in

the facts and circumstances described in the order dated 17.4.2015 passed in C.W.J.C. No. 3317 of 2015, this matter is being considered and decided separately.

I have heard the parties and perused the records.

Petitioners seek quashing of Annexure 20 which is an order dated 12.2.2015 passed in R.A. Case No. 10 of 2014 by which the review application filed by the petitioners under Rule 5A of Debts Recovery Tribunal Rules 1993 has been dismissed on the ground of limitation.

Learned counsel for the petitioners has submitted that the Tribunal has erred in recording the finding that the petitioners were not able to show sufficient cause for condonation of delay and, in fact, delay itself was not of such a period which should have not been condoned in a routine manner specially when the Debts Recovery Tribunal has not recorded any finding that the petitioners were acting mala fide or with the intention of delaying the matter or the review itself was filed by way of a dilatory tactics.

The petitioners had earlier also moved before this Court and this is the third writ application filed by them. On earlier occasion, the petitioners had approached this Court by filing C.W.J.C. No. 6673 of 2010 challenging the final order passed by Debts Recovery Tribunal as the petitioners, being guarantors, were



also fastened with liabilities of clearing the concerned debts of the Punjab National Bank. A single Bench of this Court, vide its order dated 16.12.2013 (Annexure 15), had set aside the judgment of Tribunal and matter was remanded to the Tribunal for fresh consideration. The Tribunal after fresh hearing in the matter passed its order dated 12.3.2014 (Annexure 16) which again came to be challenged before this Court by filing C.W.J.C. No. 11628 of 2014. The matter was again disposed of vide order dated 14.7.2014 granting opportunity to the petitioners to withdraw the writ application for moving before the Tribunal by way of review. However, at the same time the Single Bench of this Court had made it clear that it was not inclined to interfere with the impugned order primarily because the petitioners had not exhausted the statutory alternative remedy available to them either by moving before the Tribunal by way of filing review or preferring statutory appeal against the concerned order / judgment. It also stands recorded in the aforesaid order that if the review is filed and petitioner seeks condonation of delay in filing of review application apparently the same will be considered in accordance with law.

The petitioners, thereafter, approached the Debts Recovery Tribunal by filing review application being R.A. No. 10/2014 along with a petition of condonation of delay which stands

appended as Annexure 19 in this writ application.

Learned counsel for the petitioners submits that judgment was passed by Debts Recovery Tribunal on 12.3.2014 which became ready on 1.4.2014 and was communicated to the applicant in the month of May, 2014. After receiving the certified copy of the aforesaid judgment, the applicants were advised to moved this Court on 3.7.2014. the writ application was heard and disposed of vide Annexure 18 on 14.7.2014 granting liberty to the petitioner to file a review application.

The petitioners, thereafter, filed review application on 4.8.2014. Learned counsel submits that delay between passing of the Annexure 18 and filing of the review application is about 21 days. It appears from Annexure 18 that copy of the order was ready on 22.7.2014. If that is taken into consideration then the delay would be about 15 days which was caused due to consultation with the counsel and preparation of drafts etc.

So far the delay before filing of the writ application is concerned, it is contended that the judgment is dated 12.3.2014 and the limitation period of filing any review about 60 days from the date of judgment. A stand has been taken in the limitation petition that the copy of the order dated 12.3.2014 became ready on 1.4.2014 and if that period is accepted then the 60 days period would fall on 1st or



2nd of June, 2014. In view of the fact that on earlier occasion writ application was filed by the petitioners before this Court challenging the judgment of the Debts Recovery Tribunal and the same was entertained, the petitioners took a decision to file writ application itself in place of exhausting the statutory alternative remedy but they could not file it immediately after 1st / 2nd of June, 2014 in view of the fact the High Court was closed for annual summer vacation. Learned counsel further submits that the same could not be filed even on opening day of the High Court rather the same was filed on 3.7.2014, i.e., after delay of about 15 days. Thus, it is contended that since 15 days period of delay for filing the writ application would be immaterial as the provisions of the Limitation Act are not applicable in the cases of writ petitioners filed under Article 226. That period cannot be considered as inordinate delay in filing of the writ application and, even if it is considered as such, then after taking in account the 15 days before filing and 21 days after filing, the total period of delay would be of 36 days only and not 46 days as has been stated in the impugned order. Thus, it is contended that, in view of the facts and circumstances of the case, the delay should have been condoned. It is further contended that even if it is assumed that the period of filing of review application ended on 11.5.2014 itself and the further delay of about five or six days is



added then the total period of delay becomes of 51 days in filing. The period between 3.7.2014 to 22.7.2014 during which the writ petition was filed and the order dated 14.7.2014 was passed in C.W.J.C. No. 11628/2014 and a copy became ready, should not be considered as a period of delay caused by the petitioner as it is not the case that the petitioner, with some intention of causing delay, had filed the writ application. In fact on the earlier occasion also the petitioners had approached this Court against the judgment of the Debts Recovery Tribunal and the writ application was maintained and the judgment was set aside.

No counter affidavit has been filed by the Bank. However, at the time of hearing of this writ application learned counsel for the Bank has vehemently opposed the contentions raised behalf of the petitioners. Learned counsel has submitted that they deliberately did not file a review or an appeal against the order passed by Debts Recovery Tribunal and had filed writ application in which this Court, in clear terms, has stated that, since the alternative remedy has not been exhausted, it would not be intervening into the matter. He submits that even thereafter the petitioners did not prefer appeal which is a proper remedy available to the petitioners rather the petitioners got filed review application which has got a very limited scope, thus, it can be construed that every



thing was done by the petitioner only for causing delay in the recovery of the debts due to the Bank. Learned counsel has placed reliance upon a decision of the Apex Court in **Esha Bhattacharjee Versus Managing Committee of Raghunathpur Nafar Academy and others [(2013)12 Supreme Court Cases 649]** in which Apex Court has rendered a finding that the High Court has erred in condoning the delay in the facts and circumstances of the case brushing aside the contention that the concerned delay was due to lack of knowledge of order passed by Single Judge of High Court.

Per contra the learned counsel appearing for the petitioners has placed reliance upon a decision of Apex Court in **S.Ganesharaju Versus Narasamma [(2013) 11 Supreme Court Cases 341]** holding that the delay being only for 53 days would certainly not all fall in the category of exorbitant or inordinate delay and that should be condoned in routine manner.

On consideration of rival contention, this Court finds force in the submissions raised on behalf of the petitioner. It is evident that the delay can only be calculated after expiry of the 60 days period from the date of judgment passed by the Tribunal. The date of judgment is admittedly 12.3.2014 the stand of the petitioner is that the copy of the judgment was ready on 1.4.2014 and limitation should be counted from that date only as the period



between passing of judgment and copy having prepared should be deducted while doing the calculation. There is no counter affidavit on behalf of the Bank controverting the aforesaid statement of the petitioner. The Debts Recovery Tribunal has noticed from the record that the impugned order was passed on 12.3.2014 and applicants applied for copy on 26.6.2014 only and the copy was delivered on the same day but it has not considered as to whether a copy in terms of Rule 21 of Section 19 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 was sent to the petitioner or was received by the counsel of the petitioners or not. Even if it is assumed that review ought to have been filed on 60 days and the date for filing review had expired on 11.5.2014 itself then again, since writ application was filed on 3.7.2014 in place of review or appeal and the High Court was closed for annual vacation from 19th of May, 2014 till 15th of June, 2014 and 17th and 18th of May, 2014 was Saturday and Sunday, the delay would be of above about 21 days only and it should have been kept in mind that the petitioners were not going for review but were going to file writ application in which the provisions of Limitation Act would not be appreciate. Thus, 21 days cannot be considered to be an inordinate delay for filing of the writ application.

Learned counsel for the Bank has pointed out that this



Court has clearly stated that it would not intervene in the matter because the petitioner has come without exhausting the remedy of review or appeal but at the same time the writ application filed by the petitioners was entertained earlier and was allowed also and vide Annexure 18. By the aforesaid order also, a Single Bench of this Court had given liberty to file a review application. Thus, in my considered opinion the delay cause in filing review would not fall in the category of exorbitant or inordinate delay and in view of the decision of the Apex Court in **S.Ganesharaju (supra)** that ought to have been condoned and the review should have been considered on merit. For better appreciation the relevant passage from the aforesaid decision is quoted as under:

8. We have also critically gone through the averments of IA No. 1 of 2008 to find out ourselves if the appellants have been able to explain delay of 53 days satisfactorily or not and if sufficient cause has been shown by them. After having gone through the same, we are more than satisfied that delay has been explained properly and to our satisfaction. It reflects that sufficient cause was shown and proved before the learned Single Judge. It is also to be noted that delay was only for 53 days, which would certainly not fall in the category of exorbitant or inordinate delay. If delay of 53 days is not condoned and the matter is not heard on merits, then it would tantamount to rendering injustice to the appellants, who were seeking condonation of delay. Looking to short delay, as a routine, it should have been

condoned and the matter should have been heard on merits. “

The contention of the learned counsel for the Bank that the review has been filed only for purpose of delay would also not be tenable as there is a statutory provision of review under Rule 22(2)(e) read with Rule 5 A of the Rules and this Court vide Annexure 18 has also granted liberty to file such review application.

The Tribunal has recorded a finding that the delay can only be condoned if there is explanation by the applicants for day to day delay and even after one day delay cannot be condoned if the delay is not properly explained.

In **State of Bihar v. Kameshwar Prasad Singh [2000(3)PLJR (SC) 81]**, the Apex Court has expressed its view that the requirement of explaining every day delay does not mean that a pedantic approach should be made. For better appreciation relevant passage from the aforesaid decision is quoted as under:

“11. Power to condone the delay in approaching the court has been conferred upon the courts to enable them to do substantial justice to parties by disposing of matters on merits. This Court in **Collector, Land Acquisition, Anantnag & Anr. Vs. Mst. Katiji & Ors.** [1987 (2) SCR 387] held that the expression ‘sufficient cause’ employed by the legislature in the Limitation Act is adequately elastic to enable the courts to apply the law in a meaningful manner which subserves the ends of justice- that being the life purpose for the existence of the institution of courts. It was further observed that a

liberal approach is adopted on principle as it is realized that:

“1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.

2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.

3. ‘Every day’s delay must be explained’ does not mean that a pedantic approach should be made. Why not every hour’s delay, every second’s delay? The doctrine must be applied in a rational common sense pragmatic manner.

4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.

5. There is no presumption that, delay is occasioned deliberately, or on account of culpable negligence, or on account of *mala fides*. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.

6. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so.”

In above view of the matter, in my considered opinion, this was a fit case in which delay should have been condoned by the

Tribunal and the matter should have been heard and decided on merit.

As a result this writ application succeeds and the order of the Debts Recovery Tribunal dated 12.2.2015 as contained in Annexure 20 is quashed and set aside. The delay in filing of R.A. Case No. 10 of 2014 is condoned and the matter is remitted back to the Presiding Officer, Debts Recovery Tribunal, Patna to consider it on its own merit and in accordance with law.

(Dr. Ravi Ranjan, J)

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