

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.1033 OF 2015

State Bank of India

Petitioner

versus

Manik Metal and Trading Co.Pvt.Ltd.
and others

Respondents

Mr.Nitin Thakkar, Senior Advocate, with Ms.Hina A. Mody for
Petitioner.

Mr.K.T.Kukreja with Mr.Vivek Phalke i/by Ms.Kalkini Phadke
and Associates for Respondent nos.1 and 2.

CORAM : S.C.DHARMADHIKARI AND
B.P.COLABAWALLA, JJ.

DATE : 2 December 2015

PC :

The Petitioner-bank has challenged by way of this
petition an order on the application seeking condonation of
delay of 517 days in filing Appeal No.134 of 2012.

2. The Petitioner-bank approached the Debts Recovery
Appellate Tribunal (`DRAT') aggrieved and dissatisfied with that
part of the order passed on the Original Application No.34 of
2001 decided on 12 November 2010 wherein Debts Recovery
Tribunal (`DRT') refused to award interest on quarterly rest.

3. In the application seeking condonation of delay, an affidavit was filed by the Deputy Manager of the concerned branch which is a supplementary affidavit. The bank stated in the supplementary affidavit that in order to secure the amount of outstanding dues, documents came to be executed and though there was a proposal for settlement which was eventually not accepted, DRT passed the final order on 22 November 2010. DRT granted payment of interest @ 17.5 % p.a. from the date of suit till realization. The bank applied for execution of the recovery certificate and took further steps. During the process of execution, the Petitioner-bank realized that the computation was not in terms of the final order. The bank firstly thought to seek a clarification from the said Presiding Officer but having found that the borrowers/opponents have filed an appeal challenging the recovery certificate and the order of DRT, that the bank decided to file an appeal against the aforesaid part of the decree/order.

4. However, for that also it had to obtain clearance and that is why the reason assigned for the delay is that it is well known practice in the Government that approvals and permissions have to be obtained from head office or superiors and this invariably takes time. Recognizing the said process, the Court should condone the delay by applying liberal principles. There are no lack of bona fides or deliberate inaction or negligence.

5. The complaint of Mr.Thakkar, learned Senior Advocate for the Petitioner is that this delay is not condoned. There was no opposition to the Petitioner-Applicant's request seeking condonation of delay. The contents of the affidavit were not denied. In such circumstances, the delay should have been condoned and by imposing some reasonable conditions.

6. We are unable to accept this argument of Mr.Thakkar for more than one reason. The learned Chairperson of DRAT in the impugned order took note of the contentions. He also perused the record. He found that cause shown cannot be termed as "sufficient". Matters of internal administration cannot be taken note of merely because the Applicant before the Court or Tribunal is a State or a public body. Merely because a public financial institution is approaching the Court/Tribunal, it cannot furnish a vague explanation and when time and again Hon'ble Supreme Court of India has held that administrative approvals have to be sought and for which files move from one department to another or from one branch to another or from one office to another by itself, is not a ground to condone the delay. They have to be prompt in filing the proceedings, for they have very often and frequently a full fledged legal department or full time legal assistance. In such circumstances, the explanation of the Petitioner has rightly been turned down by the DRAT. It has termed it as "insufficient and not reasonable

to condone the delay." The reasons assigned in paragraph 5 of the impugned order do not suffer from any error or law apparent on the face of the record nor can it be termed as perverse. There were no particulars or details furnished by the Applicant-bank.

7. In such circumstances, for the reasons assigned in paragraphs 4 to 6 of the impugned order, we do not think it proper to interfere in our writ jurisdiction. Our writ jurisdiction itself being equitable and discretionary, this writ petition is dismissed.

8. Before parting, let all concerned note the following pertinent observations of the Hon'ble Supreme Court. In the case of **Office of the Chief Post Master General and others Vs. Living Media India Limited and another**¹, the Hon'ble Supreme Court held as under :

"12. It is not in dispute that the person(s) concerned were well aware or conversant with the issues involved including the prescribed period of limitation for taking up the matter by way of filing a special leave petition in this Court. They cannot claim that they have a separate period of limitation when the Department was possessed with competent persons familiar with Court proceedings. In the absence of plausible and acceptable explanation, we are posing a question why the delay is to be condoned mechanically merely because the Government or a wing of the Government is a party before us. Though we are conscious of the fact that in a matter of condonation of delay when there was no gross negligence or deliberate inaction or lack of bona fide, a liberal concession

¹ AIR-2012-SC-1506

has to be adopted to advance substantial justice, we are of the view that in the facts and circumstances, the Department cannot take advantage of various earlier decisions. The claim on account of impersonal machinery and inherited bureaucratic methodology of making several notes cannot be accepted in view of the modern technologies being used and available. The law of limitation undoubtedly binds everybody including the Government.

13. *In our view, it is the right time to inform all the Government bodies, their agencies and instrumentalities that unless they have reasonable and acceptable explanation for the delay and there was bona fide effort, there is no need to accept the usual explanation that the file was kept pending for several months/years due to considerable degree of procedural red-tape in the process. The Government departments are under a special obligation to ensure that they perform their duties with diligence and commitment. Condonation of delay is an exception and should not be used as an anticipated benefit for Government departments. The law shelters everyone under the same light and should not be swirled for the benefit of a few. Considering the fact that there was no proper explanation offered by the Department for the delay, except mentioning of various dates, according to us, the Department has miserably failed to give any acceptable and cogent reasons sufficient to condone such a huge delay. Accordingly, the appeals are liable to be dismissed on the ground of delay."*

The same view appears to have been followed in a later decision in **Maniben Devraj Shah Vs. Municipal Corporation of Brihan Mumbai²**.

(S.C.DHARMADHIKARI, J.)

(B.P.COLABAWALLA, J.)

MST