

In the High Court of Judicature at Madras

Dated: 16.06.2015

Coram:

The Hon'ble Mr.Justice SATISH K. AGNIHOTRI  
and  
The Hon'ble Mr.Justice M.VENUGOPAL

W.P.No.15809 of 2015

M/s.Surya Dairy Farm  
rep. through its Proprietor  
A.P.Venkatachalam  
No.33, Annamalai Street,  
Ammapet, Salem-636 003.

.. Petitioner

Vs.

- 1.The Registrar,  
Debt Recovery Appellate Tribunal,  
Chennai.
- 2.The Authorised Officer,  
Indian Overseas Bank,  
6/671, Car Street,  
Salem.
- 3.The Branch Manager,  
Indian Overseas Bank,  
6/671, Car Street,  
Salem.
- 4.The Chairman,  
Indian Overseas Bank,  
Central Office,  
762, Anna Salai, P.B.No.3765,  
Chennai-600 002.

- 5.Balachandar
- 6.Suresh Kumar
- 7.V.Amutha
- 8.P.Murugesan
- 9.P.V.Tamilchelvan
- 10.P.V.Balaji
- 11.P.V.Raja

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for a writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order in AIR SA 105 of 2011 dated 06.12.2013 on the file of the First Respondent and to quash the same as far as the dismissal of the I.A.No.178 of 2011 and issue an order of direction, directing the First Respondent to decide the I.A.No.178 of 2011 on merits and in accordance with law.

For Petitioner : Mr.M.Kumarasamy  
for M/s.K.J.Sivakumar

For Respondent : Mr.F.B.Benjamin George  
Nos.2 to 4

O R D E R

[Order of the Court was made by  
M.VENUGOPAL, J.]

The Petitioner has preferred the instant Writ Petition praying for passing of an order by this Court in calling for the records relating to the impugned order in AIR SA.105 of 2011 dated 06.12.2013, on the file of the First Respondent and to quash the same insofar as the dismissal of I.A.No.178 of 2011 is concerned. Further, it has sought for passing of an order by this Court, directing the First Respondent/Debt Recovery Appellate Tribunal, Chennai to decide the Interlocutory Application I.A.No.178 of 2011 on merits and in accordance with law.

2.The First Respondent/Debt Recovery Appellate Tribunal, Chennai while passing the impugned order in I.A.No.178 of 2011 on 06.12.2003 had observed is under:

"IA 309/2012 (Restoration):  
Heard. This IA is allowed.

IA 178/2011 (Delay):

IA309/2012 is allowed. Hence this IA is restored to file.

It is seen that the Hon'ble High Court of Madras has held on 28.8.2012 in W.P.Nos.13456/2012, 8381/2012 and 12970/2012 that condonation of delay does not arise in cases of appeals filed under Section 18 of the SARFAESI Act. This tribunal being bound by the orders of the Hon'ble High Court of Madras is therefore driven to dismiss this IA. Accordingly this IA is dismissed."

3.According to the Learned counsel for the Petitioner, the impugned order dated 06.12.2013 passed by the First Respondent/Appellate Tribunal in I.A.No.178 of 2011 in AIR SA.105 of 2011 is not a valid one in the eye of law. It is the submission of the Learned counsel for the Petitioner that the First Respondent/Appellate Tribunal had passed the impugned order on 06.12.2003 in I.A.No.178 of 2011, in a non speaking fashion and that too without any reasoning and devoid of merits. The Learned counsel for the Petitioner urges before this Court that the First Respondent/Appellate Tribunal ought to have decided the petition to condone the delay in filing the appeal on merits and in fact, the Tribunal had failed to take note of the very vital fact that the appeal was entertained during the year 2011 but the petition to condone the delay in filing the appeal was dismissed based on the judgment passed by this Court on 28.08.2012. As such, the Petitioner is an aggrieved party in regard to the delay in deciding

the case and further, that the delay is attributed to the respondents in the appeal.

4. Conversely, it is the contention of the Learned counsel for the Respondents 2 to 4 that the Respondents strongly opposes the petition on the ground that the Debt Recovery Appellate Tribunal, Chennai has no jurisdiction to condone the delay. Even otherwise, the Petitioner/borrower does not deserve any sympathy to be shown by this Court.

5. In this regard, the Learned counsel for the Respondents 2 to 4 cites the order passed by the Hon'ble Division Bench of this Court dated 28.08.2012 in W.P.15386,8099, 12970, 13456 of 2012, wherein, it is held that "the provisions of Limitation Act for condoning the delay in filing the appeal is not applicable to SARFAESI Act and Debt Recovery Appellate Tribunal has no jurisdiction to condone the delay in preferring the Appeal".

6. Admittedly, the First Respondent/Debt Recovery Appellate Tribunal, Chennai is not a Civil Court. In reality, Limitation Act applies to 'Courts of Law' and not to Judicial Tribunals or Executing Authorities.

7. As far as the present case is concerned, the Petitioner had filed I.A.No.178 of 2011 in AIR SA.105 of 2011 along with five others before the First Respondent/Appellate Tribunal praying to condone the delay of 19 days in preferring the SARFAESI Appeal. The reason assigned in I.A.178 of 2011 by the Petitioner and others was that there arose workers' problem in Petitioner's Dairy Farm and petitioner was to solve the problem and therefore, its counsel was not contacted and consequently, pushed into some unfortunate situation. As such, non appearance on its part and others in I.A.178 of 2011 is neither wilful nor wanton but only due to the aforesaid reasons.

8. It is to be noted that by and large, a litigant does not stand to benefit by preferring a petition/application belatedly. Even there is possibility of a meritorious matter being thrown out at the very earliest stage, if the delay in question is not condoned. Per contra, if the delay in issue is condoned, there is every chance of hearing the main case on its own merits. Generally speaking, a litigant/party does not stand to benefit by filing an application either with a short or land delay. Indeed, he/she/it runs a grave risk as opined by this Court.

9. Be that as it may, taking note of the fact that there arose some workers' problem in the Petitioner's Dairy farm and this Court by taking a justice oriental approach and also, taking a liberal and lenient view to condone the delay of 19 days in the interest of justice, of course, on being subjectively satisfied to the reason ascribed by the Petitioner. Moreover, in the present case, it cannot be said that there was negligence, inaction or want of bona-fide immutable by the Petitioner and in fact, the reason ascribed by the Petitioner in I.A.No.178 of 2011 before the First

Respondent/Debt Recovery Appellate Tribunal, Chennai namely, some workers problem has arisen in the Dairy Farm is the sufficient cause which ought to receive liberal construction so as to advance substantial justice. Added further, arising of some workers farm is the act beyond the control of the Petitioner and as such, it cannot be blamed on any score in the considered opinion of this Court. Consequently, the writ Petition is allowed. The First Respondent/Appellate Tribunal is directed to take up the appeal S.A.No.105 of 2011 and to dispose of the same on merits in an expeditious manner, of course, providing due opportunities to the respective sides. No costs.

Sd/-  
Assistant Registrar

//True Copy//

Sub Assistant Registrar

DP  
To

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Central Office,  
762, Anna Salai, P.B.No.3765,  
Chennai-600 002.

+3 ccs to Mr.K.S. Sivakumar, Advocate, S.R.No.29954  
+1cc to Mr.F.B. Benjamin George, Advocate, S.R.No.29375

NM(CO)  
EU(30/06/2015)

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