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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 8309/2016

AJOY KHANDERIA

..... Petitioner

Through
versus

Mr. Kanishk Ahuja, Advocate

BARCLAYS BANK

..... Respondent

Through

Mr. R.P. Agarwal and Ms. Jyoti
Goyal, Advocates

CORAM:

HON'BLE MS. JUSTICE INDIRA BANERJEE

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

ORDER

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25.11.2016

This writ petition has been filed, challenging an order dated 29th August, 2016, whereby the Debts Recovery Appellate Tribunal, Delhi has dismissed the application of the petitioner dated 8th December, 2015, for condonation of the delay in filing the appeal against the order dated 29th August, 2013 passed by the Debts Recovery Tribunal –I, Delhi in OA No. 60/11 filed by the respondent bank against ORG Informatics Limited, a company within the meaning of the Companies Act 1956 and the petitioner.

It appears that the petitioner had, at some point of time, been

one of the Directors of the said ORG Informatics Limited and also its Managing Director.

The respondent Bank initiated the said proceedings being OA No.60/2011 against ORG Informatics Limited and the petitioner for recovery of its outstanding dues on account of loan facilities granted by the respondent Bank to ORG Informatics Limited

The application being OA No. 60/11 was allowed for a sum of Rs. 11,14,85,036.86 along with *pendente lite* and future interest at the rate of 17.50% per annum with monthly rests against the appellant as well as M/s ORG Informatics Limited.

The order dated 29th August, 2013 of the Debts Recovery Tribunal was apparently ex parte order as against the petitioner, as the petitioner had not appeared to contest the claim.

It is the case of the petitioner, that the petitioner was neither the borrower nor the guarantor of the loan. The petitioner had only pledged his 2 lakh shares in ORG Informatics Limited with the respondent Bank and had no further liability to the respondent Bank.

The petitioner apparently applied for review of the aforesaid

order dated 29th August, 2013. The review application was filed on 31st March, 2014, and the said review application was dismissed on 16th October, 2015.

On 15th December, 2015, the petitioner appealed against the order dated 16th October, 2015, whereby the review application had been dismissed and also against the original order dated 29th August, 2013.

There being delay in filing the appeal against the order dated 29th August, 2013, the petitioner made an application for condonation of the delay. The reasons for the delay are pleaded in the said application. The main ground pleaded is the filing of the review application which was finally disposed of by an order dated 16th October, 2015. The appeal was filed on 15th December, 2015, within 45 days from the date of receipt of the order dated 16th October, 2015.

Mr. Aggarwal appearing on behalf of the respondent/bank strenuously contended that there was delay in filing the review application. However, the delay in filing the review application was condoned and the review application was ultimately heard on merits.

If the Debts Recovery Tribunal was satisfied that there were sufficient reasons for the delay in filing the review application, we find no reason to re-open the issue and consider whether the delay during the aforesaid period was justified or not. The appeal has been filed within 45 days from the date of receipt of the order dated 16th October, 2015.

The appeal against the dismissal of the review application is in time. However, the Debts Recovery Appellate Tribunal has rejected the appeal from the Original Order dated 29th August, 2013 on the ground of the same being barred by limitation.

It is now well settled that, when rejection of an appeal on the technical ground of limitation is pitted against consideration of an appeal on merits, the Court would lead towards the latter. Rejection of a meritorious appeal on the technical ground of limitation would lead to gross injustice and immense hardship in a case like this, where the delay appears to have been sufficiently explained. Reference may in this context be made to the judgment of the Supreme Court in **Collector, Land Acquisition vs. Mst. Katiji & Ors. 1987 AIR 1353.**

Initiation of proceedings bona fide, in a court of law, is a recognised ground for condonation of delay. Pursuing a review petition is a good ground for condonation of delay in filing an appeal. Reference may be made to *Bharti Telenet Limited vs Union of India* reported in (2005) 4 SCC 72 referred to in the impugned order.

The Debts Recovery Appellate Tribunal committed a patent error in proceeding on the basis that review of an ex-parte order could only be sought on the ground of non-service of notice. In any case, even assuming that the review application was without merit, that was no ground for rejecting the application for condonation of the delay in filing an appeal, if the application was bonafide. The delay in filing the review application having duly been condoned by the Debts Recovery Tribunal, the aforesaid order ought not to have been taken note of by the Debts Recovery Appellate Tribunal.

Considering the prima facie case of the petitioner in appeal, considering that the petitioner had filed a review application, considering that the delay in filing the application had duly been condoned by the Debts Recovery Tribunal and considering that the

appeal has been filed within 45 days from the date of receipt of the order rejecting the review application, we are of the view that the delay, for which there has been sufficient cause, is liable to be condoned and is condoned.

The impugned order is misconceived, unsustainable in law and the same is set aside. The appeal shall be registered and proceeded with by the Debts Recovery Appellate Tribunal.

The writ petition is disposed of accordingly.

INDIRA BANERJEE, J

SANJEEV SACHDEVA, J

NOVEMBER 25, 2016/mw