

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.238 OF 2015

M/s. Esquire Polymers Ltd.	.. Petitioner.
Vs.	
The Board for Industrial and Reconstruction and Others	.. Respondents.

Mr. Sugandh B. Deshmukh for the Petitioner.

**CORAM : A.S. OKA & A.K. MENON, JJ.
DATED : 7TH APRIL, 2017**

P.C.

1. Heard learned counsel appearing for the petitioner.
2. The only substantive prayer made in this petition under Article 226 of the Constitution of India is for quashing and setting aside the order dated 29th October, 2011 passed by the Appellate Authority for Industrial and Financial Reconstruction, New Delhi (AAFIR). The present petitioner preferred an appeal under Sub-Section (1) of Section 25 of the Sick Industrial Companies (Special Provisions) Act, 1985 ('SICA'). The appeal was preferred for challenging the order dated 2nd May, 2013. Even according to the petitioner, the appeal was dispatched by post on 12th August, 2014.
3. By the impugned order, the appeal has been dismissed on the ground that it was preferred beyond the maximum period of limitation.

4. The learned counsel appearing for the petitioner firstly submitted that the appeal was dispatched on 12th August, 2014 and therefore, taking into consideration the date on which the impugned order was served to the petitioner, there is no delay. He relied upon a decision of a Division Bench of this Court in the case of *Esquire Polymers Ltd. vs. Appellate Authority & Others*¹. He also relied upon a decision of the Apex Court in the case of *State Bank of India and Others vs. Sree Rayalaseema Paper Mills Ltd. and Others*².

5. We have carefully considered the submissions. Section 25 of the SICA Act reads thus :

“25. (1) Any person aggrieved by an order of the Board made under this Act may, within forty-five days from the date on which a copy of the order is issued to him, prefer an appeal to the appellate authority:

Provided that the appellate authority may entertain any appeal after the said period of forty-five days but not after sixty days from the date aforesaid if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(2) On receipt of an appeal under sub-section (1), the appellate authority may, after giving an opportunity to the appellant to be heard, if he so desires, and after making such further inquiry as it deems fit, confirm, modify or set aside the order appealed against [or remand the matter to the Board for fresh consideration.”

(underline supplied)

1 2004 (2) Mh.L.J. 739

2 (2004) 13 SCC 769

6. Under the proviso to Sub-Section (1) of Section 25, a limited power is conferred on the Appellate Authority to condone the delay. Under Sub-Section (1) of Section 25, an appeal is required to be preferred within 45 days from the date on which a copy of the impugned order is issued to the aggrieved person. The Appellate Authority can entertain any appeal preferred after expiry of 45 days but not after 60 days from the date mentioned in Sub-Section (1) of Section 25.

7. In the present case, we are not going into the question whether an appeal could have been filed by sending it by post to the Appellate Authority. We are proceeding on the assumption that it is permissible to send the appeal by post. Going by paragraph 3 of the assertions made in grounds of objections in the memorandum of appeal, the impugned order was received by the petitioner on 12th June, 2013. Even if 12th June, 2013 is excluded, the period of 60 days expired on 11th August, 2013. Even according to the case of the petitioner, the appeal was dispatched on 12th August, 2013.

8. We have perused the decision of the Apex Court in the case of *State Bank of India and Others* (supra). Reliance placed by the learned counsel to paragraph 9 of the judgment will not help the petitioner. In the case before the Apex Court, the delay was of 5 days. In any case, the Apex Court has not decided the issue whether

an appeal could be entertained after expiry of sixty days. Similarly, the decision in the case of *Esquire Polymers Ltd.* (supra) will not help the petitioner as the issue therein was of the interpretation of Sections 15(1) and 33(1) of the SICA.

9. As stated earlier, the period of limitation for preferring an appeal under Sub-Section (1) of Section 25 is 45 days from the date of issue of the impugned order to the aggrieved person. The delay in filing an appeal under the proviso to Sub-Section (1) of Section 25 can be condoned by the Appellate Authority on being satisfied about the existence of sufficient cause provided the appeal is preferred within 60 days from the date on which the impugned order is issued to the aggrieved person.

10. Hence, we find no error in the view taken by the Appellate Authority. Accordingly, writ petition is rejected.

(A.K. MENON, J.)

(A.S. OKA, J.)