

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP No. 22363 of 2016

DATE OF DECISION : 30.01.2017

M/s Jai Kishan Dass Vijay Kumar Aggarwal and others

.... PETITIONERS

Versus

ICICI Bank Ltd., and another

..... RESPONDENTS

CORAM :- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL

HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: Mr. Aalok Jagga, Advocate,
for the petitioners.

Mr. Sandeep Suri, Advocate,
for the respondents.

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RAMENDRA JAIN , J.

1. Reply on behalf of respondent No.1 bank has been filed in court today. Same is taken on record and its copy has been handed over to learned counsel for the petitioners.

2. The petitioners by way of the instant writ petition under Article 226 of the Constitution of India has sought quashing of order dated 26.09.2016 (Annexure P-12) passed by the Debts Recovery Tribunal – II, Chandigarh, vide which their application for condonation of delay of 155 days in re-filing the Securitisation Application (SA) has been dismissed.

3. In nutshell, the petitioners who were involved in trading of iron and steel, had availed overdraft facility of ₹ 1 Crore from the respondent bank, by mortgaging their shop No. 329, Sector 3 C, Loha Bazar, Mandi

Gobindgarh. However, in the year 2012, on account of acute recession, the petitioners could not deposit interest of some months, leading to declaration of their loan account as Non Performing Asset (NPA) by the respondent bank on 31.12.2014. Thereafter, on 10.02.2015, the respondent bank issued demand notice (Annexure P-1) under Section 13 (2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (hereinafter referred to as 'the Act'). On 10.04.2015, the petitioners submitted objections (Annexure P-2) under Section 13 (3-A) of the Act, to which reply (Annexure P-3) was filed by the respondent bank on 29.04.2015. On 18.05.2015, the respondent bank issued notice (Annexure P-4) to the petitioners intimating them regarding taking of symbolic possession of their mortgaged property. Aggrieved by the said notice, the petitioners filed Securitisation Application (SA) on 27.05.2015, which was returned with some objections. Still the petitioners were negotiating with the respondent bank for amicable settlement, and on 27.06.2015, One Time Settlement (OTS) was entered into with the respondent bank, whereby both the accounts of the petitioners, i.e. the account in question of petitioner No.1 and another connected account of M/s JK Steel, for ₹ 2 lacs each, were settled. Thus, a total sum of ₹ 4 lacs was to be deposited immediately, which was duly deposited by the petitioners on 30.06.2015. Thereafter, on account of recession in the market, the petitioners could not arrange for payment of the next installment due to the respondent bank on 30.09.2015 for ₹ 3 lacs each. Their request for extension of OTS also did not find favour with the respondent bank. Hence, finding no other option, the petitioners re-filed the SA with an application dated 27.11.2015 (Annexure P-5) for condonation of

delay of 155 days in re-filing the SA, which has been dismissed by the DRT-II, Chandigarh, vide the impugned order. Hence, this writ petition.

4. In the reply filed on behalf of respondent No.1 bank, it is the specific case of the respondents that while passing the impugned order, the DRT-II, Chandigarh has also considered the merits of the matter. Therefore, against the impugned order, the petitioners have the remedy of filing appeal under Section 18 of the Act.

5. Learned counsel for the petitioners, while relying upon judgments of the Apex Court in Veda Bai Vs. Shanta Ram Babu Rao Patil 2001 (9) SCC 106, State of Nagaland Vs. Lipok 2005 (3) SCC 752 and S. Ganesha Raju Vs. Narasamma 2013 (11) SCC 341, submitted that it is well settled proposition of law that the courts must adopt liberal approach in condoning the delay, especially in re-filing, when the main SA was filed within limitation, and the respondents have failed to show any malafide on the part of the petitioners.

6. Learned counsel for the respondents argued that SA of the petitioners has been dismissed not only on account of delay in re-filing the same, but also on merits, and all the aforesaid judgments were also considered by the DRT-II, Chandigarh.

7. We have given our thoughtful consideration to the submissions made by learned counsel for the parties.

8. At the first instance, it will be appropriate to note that the DRT-II, Chandigarh, while considering all the aforesaid three judgments of the Apex Court, has observed that the delay should be condoned keeping in

view the facts and circumstances of each case. But while considering the fact that after the SA was returned with certain objections on 28.05.2015, it was re-filed by the petitioners after a delay of 155 days, only after the OTS had failed. It was observed that the delay in re-filing was deliberate. Hence, the application for condonation of delay in re-filing the SA was dismissed. A perusal of the impugned order does not reveal that merits of the case have been considered by the DRT-II, Chandigarh.

9. So far as the delay in re-filing the SA is concerned, it is the admitted case of both the parties that after the filing of SA well within limitation, the petitioners were negotiating with the respondent bank for amicable settlement, and an OTS was entered into on 27.06.2015 and in terms of the OTS, a sum of ₹ 4 lacs was deposited by the petitioners on 30.06.2015. It is, thus, apparent that the petitioners were intending to settle the dispute and they were not having any malafide intention. However, on account of recession in the market, when the petitioners could not arrange payment of the next installment due to the bank on 30.09.2015 and their request for extension of OTS was declined by the bank, they re-filed the SA with an application for condonation of delay. Hence, we are of the opinion that the petitioners have shown sufficient cause seeking condonation of delay in re-filing the SA and same has been explained satisfactorily.

10. Consequently, the impugned order dated 26.09.2016 (Annexure P-12) passed by the Debts Recovery Tribunal – II, Chandigarh, is hereby set aside, and the matter is remitted to the learned Tribunal, with a direction to consider the SA of the petitioners on merits, in accordance with law, and

decide the same within a period of six months from the date of receipt of certified copy of the order.

11. Writ petition is, accordingly, allowed, in the aforesaid terms.

**(RAMENDRA JAIN)
JUDGE**

January 30, 2017
ndj

**(AJAY KUMAR MITTAL)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No