

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

**CWP-COM-63-2017
Date of decision: 12.5.2017.**

Kesar Singh and others

....Petitioners

Vs.

Punjab and Sind Bank and another

....Respondents

CORAM: - HON'BLE MR. JUSTICE RAKESH KUMAR JAIN.

Present: - Mr. D.S.Patwalia, Sr. Advocate with
Mr.Sehajbir, Advocate for petitioners.

Mr. I.P.Singh, Advocate for respondents-Bank.

.....

Rakesh Kumar Jain, J. (oral)

The present petition is filed, assailing the validity of the order passed by Debts Recovery Tribunal-III, Chandigarh-respondent No. 2 dated 27.2.2017 (Annexure P-12), vide which the application filed by the petitioners seeking condonation of delay of 63 days in re-filing has been dismissed and as a result thereof, appeal filed by petitioners has also been dismissed.

In brief, it is submitted that notice under Section 13(4) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short 'the Act') was published on 27.2.2016. The petitioners challenged the same by filing an application before the Debts Recovery Tribunal-II, Chandigarh, which was numbered as SA-290-2016, *Sh. Kesar Singh and ors vs. Authorised*

Officer, Punjab and Sind Bank. The said application was returned to the counsel for the petitioners for filing of some documents but no objection was raised at that time that it was barred by limitation. After that on 22.7.2016, the same was re-filed. By that time, the jurisdiction of Debts Recovery Tribunal-II, Chandigarh was changed to Debts Recovery Tribunal-III, Chandigarh where it was registered as *SA-10-2017*. At that time the petitioners were informed that there is a delay of 64 days in re-filing. Accordingly, the petitioners filed IA No. 1226 of 2016 seeking condonation of delay in re-filing of the Securitization Application. On the said application, notice was issued to the respondents for 11.10.2016. After filing of reply on behalf of respondents, the matter was taken up on 27.2.2017.

The petitioners averred before the Tribunal that the delay has occurred because of illness of the counsel but it was not considered sufficient. Petitioners have rather placed on record the affidavit of one of the applicant-Fateh Singh about his illness as well. The Tribunal dismissed the application on the ground that the delay was not explained and also observed in the order that there is a delay of 7 days in filing the application.

Learned counsel for petitioners has submitted that the re-filing can be done within a period of 4 weeks i.e., the applicants were to

file the said application by 21.5.2016 which was filed on 22.7.2016. He has relied upon a Division Bench judgment of this Court in *CWP-22363-2016, M/s Jai Kishan Dass Vijay Kumar Aggarwal and othes vs. ICICI Bank Ltd., and another* decided on 30.1.2017, in which delay of 155 days in re-filing the Securitization Application was allowed. He further submits that the Tribunal should not have adopted a pedantic approach in dismissing the application for re-filing.

The Apex Court in *Collector Land Acquisition, Anantnag and another vs Mst. Katiji & Ors, 1987 (2) SCC 107* held that meritorious matter should not be dismissed at the threshold only on the ground of limitation when the affected party is not going to gain in lodging their claim late.

Learned counsel for petitioners further submits that the Tribunal returned the affidavit because there was some deficiency in respect of the documents and because of the illness of the counsel, who had to re-file the same, in the prescribed time of 4 weeks, the delay has occurred. On the other hand, learned counsel for respondents has submitted that the impugned order is quite in order and does not require any interference.

I have heard learned counsel for the parties and after examining the record, I am of the considered opinion that the order passed by the Tribunal is liable to be set aside because there was a delay of 63

days in re-filing and not in filing which has been explained by the petitioners who had filed the S.A. well in time but because of deficiency of certain documents, required to be appended with the application, same was returned by the Registry and in the meantime counsel became unwell. Therefore, the delay has occurred only in re-filing but not in filing which deserves to be considered in view of the decision of the Supreme Court in the case of Collector Land Acquisition Anantnag's case (supra).

In view of above, present petition is allowed. Impugned order dated 27.2.2017 (Annexure P-12) passed by the Debts Recovery Tribunal-III, Chandigarh is set aside. The matter is remanded back to the Tribunal to decide the issue of condonation of delay of 7 days, if any, after taking application from the petitioners for seeking condonation in accordance with law and if the delay, if any, is condoned than to proceed to decide the main application as well.

(RAKESH KUMAR JAIN)
JUDGE

12.5.2017
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Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No