

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6222/2017

Dattatray Kashinath Nanal

... Petitioner

V/s.

Central Bank of India & Ors.

... Respondents

Mr. Sidharth Samarathray i/b. Pallavi Kulkarni for the Petitioner
Mrs. Maneesha Patel for the Respondent No.1.

**CORAM: K.K. TATED &
S. K. SHINDE, JJ.**

DATED : OCTOBER 9, 2018

P.C. :

1 Heard. Petitioner is permitted to carry out amendment in prayer clauses, forthwith.

2 By this petition under Article 226 and 227 of the Constitution of India the Petitioner challenges the order dated 13.04.2017 passed by the Debts Recovery Appellate Tribunal Mumbai in M.A.No.72/2015 in M.A.No.598/2014 in Misc. Appeal No.124/2016 dismissing their Application for condonation of delay in restoring the appeal which stood dismissed for non prosecution.

3 The learned counsel for the Petitioner submits that inadvertently, the learned counsel for the Petitioner had noted wrong date of adjournment and therefore no one appeared when

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the matter was on board on 01.07.2014 before the Debts Recovery Appellate Tribunal. He submits that in fact there is delay of 3 days in making the Application for restoration. He submits that the Debts Recovery Appellate Tribunal dismissed their Application on the ground that the Petitioner has failed to disclose sufficient cause for condonation.

4 The learned counsel for the Petitioner submits that because of mistake on the part of the advocate, the litigant should not suffer. He submits that in the interest of justice, this Hon'ble Court be pleased to condone the delay and allow their Application for restoration and appeal to be decided on merits. He submits that the Petitioner has good chance of success in the appeal. He submits that if the appeal is not restored, irreparable loss will be caused to the Petitioner.

5 On the other hand, the learned counsel for the Respondent has vehemently opposed the Writ Petition. She submits that the Petitioner has failed to disclose sufficient cause for condonation of delay. She submits that the Debts Recovery Appellate Tribunal has specifically recorded in the impugned order that though the Petitioner learnt about dismissal of the appeal on 04.08.2014 they made the Application for restoration in the month of September 2014 and nothing was stated in their Application as to why they waited till September 2014. Therefore, there is no substance in the Writ Petition. Same may be dismissed with costs.

6 We heard both sides at length. It is to be noted that in the present proceedings there was delay of 36 days in making the Application for restoration of the Misc. Appeal No.124/2006. Because of mistake on the part of the advocate, no one remained present before the Debts Recovery Appellate Tribunal when the matter was called out.

7 It is to be noted that the Apex Court in the matter of ***N.Balkrishnan Vs. M. Krishnamurthy (1998) 7 SCC 123*** held that the object of fixing the time limit is not meant to destroy the rights. The law of limitation fixes a lifespan for such legal remedy for the general welfare. Paragraph Nos.11, 12 and 13 of the said judgment read thus :

11. Rules of limitation are not meant to destroy the right of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. Law of limitation fixes a life-span for such legal remedy for the redress of the legal injury so suffered. Time is precious and the wasted time would never revisit. During efflux of time newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the courts. So a life span must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. Law of limitation is thus founded on public policy. It is enshrined in the maxim Interest reipublicae up sit finis litium (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the right of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time.

12. A Court knows that refusal to condone delay would result in foreclosing a suitor from putting forth his cause.

There is no presumption that delay in approaching the court is always deliberate. This Court has held that the words "sufficient cause" Under Section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice vide Shakuntala Devi Jain v. Kuntal Kumari, 1969 SC 575 and State of West Bengal v. The Administrator, Howrah Municipality, AIR 1972 SC 749.

13. It must be remembered that in every case of delay there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of mala fides or it is not put forth as part of a dilatory strategy the court must show utmost consideration to the suitor. But when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time then the court should lean against acceptance of the explanation. While condoning delay the Court should not forget the opposite party altogether. It must be borne in mind that he is a loser and he too would have incurred quite a large litigation expenses. It would be a salutary guideline that when courts condone the delay due to laches on the part of the applicant the court shall compensate the opposite party for his loss."

8 Considering these facts and the ratio laid down by the Apex Court and as the Petitioner is ready and willing to pay costs of Rs.10000/- we are satisfied that the Petitioner has made out a case for following order.

9 Hence, following order is passed:

a. The order dated 13.04.2017 passed by the Debts Recovery Appellate Tribunal Mumbai in M.A.No.72/2015 is set aside.

b. M.A.No.72/2015 filed by the Petitioner before the Debts Recovery Appellate Tribunal for condonation of delay

is allowed.

c. M.A.n0.598/2014 filed by the Petitioner before the Debts Recovery Appellate Tribunal Mumbai for restoration of Misc. Appeal No.124/2006 is also allowed.

d. Debts Recovery Appellate Tribunal to decide the Misc. Appeal No.124/2006 on merits.

e. The Petitioner to pay cost of Rs.10000/-.

f. Cost shall be paid to Kirtikar Law Library, High Court, Mumbai, within three weeks from today and place a receipt thereon in Misc. Appeal no.124/2006 pending before the Debts Recovery Appellate Tribunal, failing which said appeal shall stand dismissed without further reference to the court.

(S. K. SHINDE, J.)

(K. K. TATED, J.)