

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.11.2018

CORAM :

THE HON'BLE MRS.V.K.TAHILRAMANI, CHIEF JUSTICE

AND

The HON'BLE MR.JUSTICE M.DURAI SWAMY

W.P. No.20311 of 2018 &
W.M.P.No.23860 of 2018

The Church of South India Trust Association
A Company Registered Diocese of Madras
Rep by Power Holder
Hon. Secy. MDC Rev Dr. Manuel S. Titus
226, Cathedral Road
Chennai - 600 086 .. Petitioner

v.

1 State Bank of India
Rep. by its Branch Manager
Thiruvottiyur Branch
Thiruvottiyur, Chennai - 600019

2 The Registrar
Debt Recovery Appellate Tribunal
Chennai

3 Mr. M. Janakarajan
4 Mr. M. Sowrirajan
5 Mr. S. Venkatesan
6 Mr. S. Srinivasan
7 Mr. S. Sankaran
8 Mr. S. Suresh
9 Mr. S. Ganesan

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Certiorarified Mandamus, calling for the records of the order dated 05.07.2018 in A.I.R. No. 589 of 2014 passed by 2nd respondent dismissing the application filed by the petitioner in I.A.No. 551 of 2018 seeking condonation of delay of 487 of days in setting aside the order of dismissal, to quash the same and consequently direct the 1st respondent to restore the appeal in A.I.R. No. 589 of 2014 on file and dispose of the same on merits and in accordance with law.

For Petitioner : Mr.AR.L.Sundaresan, Senior Counsel
for Mr.S.Chandrasudan
For Respondents : Mr.M.L.Ganesh - for R1
R2 - Tribunal
R3 to R9 - Given up vide order
dated 28.08.2018

O R D E R
(Order of the Court made by M.DURAI SWAMY, J.)

The petitioner has filed the above Writ Petition to issue a Writ of Certiorari and Mandamus to call for the records of the order dated 05.07.2018 in A.I.R. No. 589 of 2014 passed by the 2nd respondent dismissing the application filed by the petitioner in I.A.No. 551 of 2018 seeking condonation of the delay of 487 days in setting aside the order of dismissal, to quash the same and consequently direct the 1st respondent to restore the appeal to file and dispose of the same on merits.

2. Challenging the order dated 28.08.2014 passed in O.A.No.447 of 2007 on the file of the Debts Recovery Tribunal-III, Chennai, the petitioner filed an appeal in A.I.R. No.589 of 2014 before the Debt Recovery Appellate Tribunal, Chennai. Since the petitioner failed to appear before the Debt Recovery Appellate Tribunal, the appeal was dismissed for non prosecution on 05.01.2017. Thereafter, the petitioner filed an application in I.A.No.551 of 2018 to condone the delay of 487 days in filing the application to restore the appeal in A.I.R. No. 589 of 2014. In the affidavit filed in support of the application, the petitioner has stated that they were not aware of the dismissal of the appeal in A.I.R. No. 589 of 2014 and therefore, there is a delay of 487 days in filing the application to restore the appeal.

3. It is also brought to the notice of this court that subsequent to the dismissal of the A.I.R. No. 589 of 2014, the petitioner had also filed another appeal in A.I.R. No.32 of 2018 before the Debt Recovery Appellate Tribunal, Chennai, challenging the order passed in O.A.No.447 of 2007, dated 28.08.2014. Subsequently, the petitioner had withdrawn A.I.R. No.32 of 2018 on 26.04.2018, however, the petitioner has not obtained any liberty to file an application to restore A.I.R. No. 589 of 2014. In spite of having sufficient knowledge about the dismissal of A.I.R. No. 589 of 2014, the petitioner had chosen to file the application to restore the appeal after a lapse of 487 days.

4. It is settled position that unless a party seeking for condonation of the delay gives sufficient cause for the delay, the delay should not be condoned.

5. The learned Senior Counsel appearing for the petitioner in support of his contention relied upon a judgment reported in 2008(1) CTC 785 [Ravi Enterprises v. Indian Bank and others] wherein, the Division Bench of this court held that the court has to adopt pragmatic approach in matters regarding condonation of delay and deliver substantial justice overriding technical consideration and also held that the length of delay is immaterial.

6. However, the Apex Court, in the judgment reported in 2015 (1) SCC 680 [H.Dohil Constructions Company Private Ltd. v. Nahar Exports Limited and another] has held that the failure of the petitioner in not showing due diligence in filing the appeal and the enormous time taken can only be construed in the absence of any valid explanation as gross negligence and lacks in bona fides displayed on the part of the petitioner. Further, the Apex Court held that in the absence of sufficient reason given by the petitioner, even the delay in representation should not be condoned.

7. The ratio laid down by the Apex Court in the judgment reported in 2015 (1) SCC 680 (cited supra) squarely applies to the present case.

8. Since the petitioner has not given sufficient cause for the condonation of 487 days, the Debt Recovery Appellate Tribunal had rightly dismissed the application.

9. In these circumstances, we do not find any ground to interfere with the order passed by the Debt Recovery Appellate Tribunal. The Writ Petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

सत्यमेव जयते Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

Rj

To

1 The Branch Manager
State Bank of India
Thiruvottiyur Branch
Thiruvottiyur, Chennai - 600019

2 The Registrar
Debt Recovery Appellate Tribunal
Chennai

+1 cc to Mr.M.L.Ganesh, Advocate Sr.No.81495
+1 cc to Mr.R.Chandrasudan, Advocate Sr.No.81570

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RV (CO)
CSL/12.12.2018



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