

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21/3/2018

C O R A M

THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

Writ Petition No.11594 of 2014

1. Dr.Zubaida Begum
2. Dr.Akthar Hussain ... Petitioners

Vs

Indian Bank
rep. By its Manager
Guindy Branch
Chennai. ... Respondent

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of certiorari to call for the records pertaining to the demand notice dated 22/8/2002 culminating into the impugned orders dated 6/5/2009 in S.A.No.75 of 2008 on the file of the DRT - II and the order dated 5/10/2012 in I.A.No.1378 of 2009 in A.I.R.(SA) No.779 of 2009, on the file of the DRAT and order dated 16/1/2014 in I.A.No.1142 of 2012 in A.I.R(SA) No.779 of 2009 on the file of DRAT and quash the same as illegal.

For petitioners ... Mr.S.Senthilkumar
for Mr.S.Sethuraman

For respondent ... Mr.Jeyesh B.Dolia

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O R D E R

(Order of the Court was made by S.MANIKUMAR, J)

Material on record discloses that being aggrieved by an order, dated 6/5/2009, of the Debts Recovery Tribunal - 2, Chennai, in S.A.No.75 of 2008, an appeal has been filed before the Debts Recovery Appellate Tribunal, Chennai, with a delay of

142 days. I.A.No.1378 of 2009 has been filed to condone the delay. Based on the decision of this Court in W.P.No.13556 of 2012, etc., dated 28/8/2012, vide order, dated 5/10/2012, Debts Recovery Appellate Tribunal, Chennai, dismissed I.A.No.1378 of 2009 in A.I.R.(SA) No.779 of 2009 (SA No.75 of 2008, on the file of the Debts Recovery Tribunal - II, Chennai).

2. A Review petition filed in I.A.No.1142 of 2012, has also been dismissed on 16/1/2014, by the Debts Recovery Appellate Tribunal. Order reads thus:-

"Heard the learned counsel for the petitioners. Heard the learned counsel for the respondent Bank.

It is seen that this Tribunal has passed orders in I.A.No.1378 of 2009 in obedience to the orders of the Hon'ble High Court of Madras, dated 28/8/2012 passed in W.P.Nos.13456/2012, 8381 of 2012 and 12970 of 2012. Therefore, in view of the fact that the petitioner has not established any case for reviewing the order of this tribunal, this Tribunal is driven to pass the following order:

"This Review Petition is dismissed."

3. As against the order passed in review petition, dated 16/1/2014, instant writ petition has been filed.

4. Heard the learned counsel for the parties and perused the materials available on record.

5. From the above, it could be deduced that based on the law declared by this Court, in W.P.No.13456 of 2012, etc., dated 28/8/2012, Debts Recovery Appellate Tribunal, Chennai, declined to condone the delay of 142 days. We are aware that subsequently, in Baleshwar Dayal Jaiswal Vs. Bank of India and Others, reported in {(2016) 1 Supreme Court Cases 444}, the Hon'ble Supreme Court held that Appellate Tribunal has power to condone the delay, if an appeal, under Section 18 of the SARFAESI Act is filed. Relevant paragraphs are extracted hereunder:-

"14. We have already held that the power of condonation of delay was expressly applicable by virtue of Section 18 (2) of the SARFAESI Act read with proviso to Section 20 (3) of the RDDB Act and to that extent, the provisions of the Limitation Act having been expressly incorporated under the special

statutes in question, Section 29 (2) stands impliedly excluded. To this extent, we differ with the view taken by the Andhra Pradesh High Court as well as the Madras and Bombay High Courts. We are also in agreement with the principle that even though Section 5 of the Limitation Act may be impliedly inapplicable, principle of Section 14 of the Limitation Act can be held to be applicable even if Section 29 (2) of the Limitation Act does not apply, as laid down by this Court in Consolidated Engg. Enterprises Vs. Irrigation Deptt {(2008) 7 SCC 169} and M.P. Steel Corpn, Vs. CCE {(2015) 7 SCC}.

15. As a result of the above discussion, the question is answered in the affirmative by holding that delay in filing an appeal under Section 18 (1) of the SARFAESI Act can be condoned by the Appellate Tribunal under proviso to Section 20 (3) of the RDDB Act read with Section 18 (2) of the SARFAESI Act. The contrary view taken by the Madhyapradesh High Court in Seth Banshidhar Kedia Rice Mills (P) Ltd., case is overruled."

6. Decision rendered at a later point of time, can be prospectively applied to pending cases.

7. Having regard to the above settled legal position, applying Baleshwar Dayal Jaiswal's case, we are of the view that both the Tribunal and High Court, in exercise of the powers, under Section 18 of the SARFAESI Act, 2002 and Article 226 of the Constitution of India, respectively, as the case may be, can consider as to whether the petitioner has offered sufficient cause, to condone the delay of 142 days, in filing the appeal, before the Debts Recovery Appellate Tribunal. Original order of DRT has been passed on 6/5/2009. More than nine years have been lapsed. When the number of days delay is only 142, litigation has taken nine years. Therefore, while setting aside the order of the Debts Recovery Appellate Tribunal, dated 16/1/2014, in I.A.No.1142 of 2012 in A.I.R.(SA) No.779 of 2009, this Court in exercise of powers under Article 226 of the Constitution of India, proposed to consider as to whether the appellant has made out sufficient cause for condonation of delay of 142 days in filing the appeal. At paragraph No.14 of the supporting affidavit filed to condone the delay of 142 days in filing, in the appeal filed before the Debts Recovery Appellate Tribunal, Chennai, the petitioners have stated as hereunder:-

"I humbly submit that due to the conduct of my erstwhile counsel who did not intimate about the stage of the proceedings of S.A.75 of 2008 and due to the misunderstanding between him and us,

we issued a legal notice revoking his vakalat and calling upon him to surrender all material paper. He did not intimate me about the order dated 6/5/2009 in S.A.No.75/2008. When we came to know about the order through different source, I applied for the order copy on 27/7/2009 which was delivered on 5/8/2009. We preferred C.R.P.No.2996 of 2009 in the Hon'ble Madras High Court which was dismissed giving liberty to file appeal before this Tribunal. I submit that this appeal has been filed with a delay of 142 days in the aforementioned circumstances. Consequently, a delay of 142 days has occasioned in filing the above appeal which is due to the aforementioned bonafide reasons and it is neither willful nor wanton or deliberate. I therefore, humbly pray that this Hon'ble Tribunal may be pleased to condone the delay of 142 days in filing the above appeal and thus render justice."

8. We are satisfied with the reasons assigned. Delay in filing A.I.R.(SA) No.779 of 2009 is condoned. Accordingly, writ petition is allowed. Registry of the Debts Recovery Appellate Tribunal, Chennai, is directed to process the appeal papers in A.I.R(SA) No.779 of 2009 and if it is otherwise in order, assign appropriate number and place it before the Debts Recovery Appellate Tribunal, Chennai, to proceed further and pass orders. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

mvs

To

1. The Debts Recovery Appellate Tribunal, Chennai.
2. The Debts Recovery Tribunal - II, Chennai.
3. The Manager
Indian Bank
Guindy Branch
Chennai.

+1cc to Mr.S.Sethuraman, Advocate, S.R.No.21514

+1cc to Mr.Aiyer & Dolia, Advocate, S.R.No.21307

W.P.No.11594 of 2014

PA(CO)

RRK(17/04/2018)



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