

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.06.2018

CORAM:

THE HON'BLE MR.JUSTICE S.MANIKUMAR

AND

THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P.No.11784 of 2018
and WMP No.13756 of 2018

1. Mrs.R.Bhuvaneswari,
2. Mrs.P.Kanagalakshmi
3. Mrs.A.N.Leelavathy
4. Mr.V.S.Mohanarangam Petitioners

vs.

1. Union Bank of India,
Rep. by its Chief Manager,
Mount Road Branch,
No.152, Mount Road,
Chennai - 600 002.

2. M/s.SVNR Exports,
A partnership firm, having office at
No.3-C, III Floor, JVL Towers,
No.117, Nelson Manickam Road,
Aminjikarai, Chennai - 600 029.

3. Mrs.Mythili Ramachandran

4. Mr.K.M.Narasimhan

5. Mr.R.Ramesh

6. Mr.Lawrence Oliver

7. Mr.S.Venu

8. Mr.S.Vaidyanathan

... Respondents

WRIT Petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of Certiorarified Mandamus, calling for the record comprised in the proceedings of the Hon'ble Debts Recovery Appellate Tribunal, Chennai

culminating in the order dated 02.04.2018 in I.A.No.113 of 2018 in AIR No.834 of 2017 and quash the same and consequently direct the Appellate Tribunal to take on file the appeal filed by the petitioners against the order dated 26.07.2016 in T.A.No.4 of 2016 on the file of the Hon'ble Debts Recovery Tribunal-II, Chennai and dispose of the same in accordance with law.

For Petitioners: Mr.P.Seshadri

For Respondents: Mr.P.Karikalan (for R1)
for NVS & Associates.

Mr.G.Desingu (for R4 to R8)

ORDER

(Order of the Court was made by SUBRAMONIUM PRASAD, J)

By the order impugned herein, the Debts Recovery Appellate Tribunal, Chennai has refused to condone the delay in filing an appeal against the order dated 26.07.2016, passed by the Debts Recovery Tribunal-II, Chennai in TA No.4 of 2016.

2. The factual matrix of the case is as hereunder:

(a) The respondent, Union Bank of India, filed a suit for recovery of a sum of Rs.97,61,307.36p, on the Original Side of High Court of Madras in C.S.No.437 of 1996. After the constitution of the Debts Recovery Tribunal, the suit was transferred to Debts Recovery Tribunal-I, Chennai and numbered as T.A.No.608 of 1997. It was further renumbered as T.A.No.4 of 2016 on the file of Debts Recovery Tribunal-II, Chennai. By order dated 26.07.2016, the said TA was allowed by the Debts Recovery Tribunal-II, Chennai, permitting the bank to recover Rs.97,61,307.36p, with interest at the rate of 12% per annum, from the date of institution of the plaint ie. 15.02.1996 till realisation. This order was challenged by filing an appeal in AIR No.834 of 2017, before the Debts Recovery Appellate Tribunal, Chennai. There is a delay of 466 days in filing the appeal.

(b) The petitioner has filed an application viz., I.A.No.113 of 2018, for condonation of delay, giving reasons as to why the delay was caused. The tribunal by its impugned order in AIR No.834 of 2017 dated 02.04.2018, refused to condone the delay. Aggrieved by the same, petitioners have filed the instant writ petition.

3. We have heard the learned counsel appearing for the parties.

4. Perusal of the order impugned herein would show that the Debts Recovery Appellate Tribunal, Chennai, has not given any reasons as to why the delay ought not to be condoned. It is

well settled that any order passed, must contain reasons, to substantiate the decision arrived at. The tribunal in this case has only held that there is a possibility of delaying tactics, by way of litigation, by the petitioner herein, which is not a sufficient reason, for refusing to condone the delay. Further, there is also a factual error in the recording of the facts, inasmuch as the tribunal has observed that suit originally filed before the High Court, in the year 1996, is still pending for recovery. The tribunal has failed to note that the suit has been transferred to Debts Recovery Tribunal-II, Chennai and that is the suit, which has been adjudicated on.

5. Petitioners in the application for condonation of delay has given the following reasons for condoning.

"7. I most respectfully submit that we do not have any personal knowledge of the proceedings during the life time of our parents. We, the legal heirs of the deceased 2nd defendant / father and 9th defendant / mother, came to know of the above proceedings only on 16.11.2017 when the 9th respondent's counsel contacted over the phone and informed about the pendency of the proceedings before the debt recovery tribunal for return of the original title deeds from the bank. Immediately, we contacted the advocate appearing on behalf of my father / the 2nd defendant and enquired about the status proceedings. I further submit that the counsel advised us to file the present appeal against the order 26.07.2016, without any further delay."

6. Reasons given by the petitioners is a sufficient ground for condoning the delay. It is well settled that when the petitioner has a statutory right to prefer an appeal under Section 18 of the SARFAESI Act, 2002 and such rights should not be taken away, merely on the ground of delay, which has been explained. Further, the amount involved in the present proceedings is a substantial sum of money.

7. Therefore, in the facts and circumstances of the case, the order made in I.A.No.113 of 2018 in AIR No.834 of 2017 dated 02.04.2018, is liable to be set aside and is accordingly, set aside. The delay of 466 days in filing the appeal against the order dated 26.07.2016, passed by the Debts Recovery Tribunal-II, Chennai, is condoned and the Debts Recovery Appellate Tribunal, Chennai, is directed to consider the appeal and dispose of the same on merits and in accordance with law, as expeditiously as possible.

8. With the above directions, the writ petition is allowed.
No costs. Consequently, the connected Writ Miscellaneous
Petition is closed.

Sd/-
Assistant Registrar (CS-)

//True Copy//

Sub Assistant Registrar

ars

To

1. THE CHIEF MANAGER,
UNION BANK OF INDIA,
MOUNT ROAD BRANCH,
NO.152, MOUNT ROAD,
CHENNAI - 600 002.
2. THE DEBTS RECOVERY APPELLATE TRIBUNAL,
CHENNAI.
3. THE DEBTS RECOVERY TRIBUNAL - II,
CHENNAI.

+1cc to Mr.P.SESHADRI, Advocate, S.R.No.37292

W.P.No.11784 of 2018
and WMP No.13756 of 2018

SJ(CO)
TR(03/07/2018)

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