

HON'BLE SRI JUSTICE SANJAY KUMAR
AND
HON'BLE SRI JUSTICE T.AMARNATH GOUD

WRIT PETITION No.13745 of 2018

ORDER: (Per Hon'ble Sri Justice Sanjay Kumar)

The petitioner is the appellant in Tender No.196 of 2017, an appeal filed before the Debts Recovery Appellate Tribunal (*hereinafter*, 'the Appellate Tribunal') at Kolkata, under Section 18 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'the SARFAESI Act'). As there was a delay of 608 days in the presentation of the said appeal, the petitioner filed Application No.618 of 2017 therein seeking condonation of the said delay. By order dated 16.02.2018, the Appellate Tribunal dismissed the said application holding that no grounds were made out to condone the delay in exercise of power under Section 5 of the Limitation Act, 1963 (for short, 'the Act of 1963').

Perusal of the order under challenge reflects that the petitioner wanted to prefer the aforesaid appeal against the order dated 15.02.2016 passed by the Debts Recovery Tribunal, Hyderabad, in S.A.No.6 of 2016. Aggrieved by the said order, the petitioner filed W.P.No.6784 of 2016 before this Court in the first instance. The said writ petition was disposed of, *vide* order dated 21.04.2016, giving liberty to the petitioner to file an appeal under Section 18 of the SARFAESI Act. This Court observed that the writ petition was filed on 29.02.2016, by which time the appellate remedy was still available to the petitioner, and accordingly directed her to prefer an appeal invoking Section 14 of the Act of 1963, so that the period consumed in prosecuting the writ petition

could be excluded while computing the limitation for filing the appeal. However, the petitioner preferred the subject appeal only on 14.11.2017. In the affidavit filed in support of the condone delay application, the petitioner stated that due to her ill health, she could not meet her counsel and take steps for preferring the appeal.

Sri V.V.Ramana, learned counsel for the petitioner, fairly concedes that no medical certificate was produced in support of the plea that the petitioner was suffering from ill health.

It may be noted that the petitioner is aged about 36 years going by the cause title and there is no indication as to what ill health afflicted her from 21.04.2016 up to 14.11.2017 rendering it difficult for her to take steps to file the appeal as permitted by this Court. Having slept over the matter for well over one and a half years, the petitioner did not even choose to offer a cogent excuse supported by proof to seek condonation of the delay.

In the light of the aforesaid facts, this Court finds no error having been committed by the Appellate Tribunal in refusing to condone the enormous delay in the presentation of the appeal by the petitioner.

The writ petition is devoid of merit and is accordingly dismissed.

Pending miscellaneous petitions, if any, shall also stand dismissed.

No order as to costs.

SANJAY KUMAR, J

T.AMARNATH GOUD, J

Dt: 07.08.2018.
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