

* HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE Ms. JUSTICE J.UMA DEVI

+ Writ Petition No.35148 of 2018

% Date: 26-11-2018

1. G.Eswara Rao S/o Late Sree Rama Murthy,
Proprietor, M/s Hemadri Enterprises,
R/o G-5, Mahindra Enclave, Near Old Toll Gate,
Tadepalli Bye Pass Road, Kunchanapalli Post,
Tadepalli, Guntur District

2. Smt. G.Swarna Latha W/o Eswara Rao,
R/o G-5, Mahindra Enclave, Near Old Toll Gate,
Tadepalli Bye Pass Road, Kunchanapalli Post,
Tadepalli, Guntur District

... Petitioners

Vs.

\$ Bank of Baroda, Benz Circle Branch, 40-1-160/A,
Kohinoor Plaza, Benz Circle, Vijayawada-520 010,
Rep. by its Authorised Officer

... Respondent

! Counsel for Petitioners: Mr. Ambadipudi Satyanarayana,
Standing Counsel

Counsel for Respondent: ---

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> Head Note:

? Cases referred:
Nil.

HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE Ms. JUSTICE J.UMA DEVI

Writ Petition No.35148 of 2018

Order: (per V.Ramasubramanian, J.)

Aggrieved by the dismissal of a petition to condone the delay in filing an appeal under Section 17 of the Securitisation Act, 2002, the borrowers have come up with the above writ petition.

2. Heard Mr. Ambadipudi Satyanarayana, learned counsel for the petitioners.

3. Notice was ordered on 01-10-2018. Service is complete and the Acknowledgement Card is filed. However, the respondent/Bank has not chosen to appear through counsel.

4. As against a sale conducted by the Bank under the Securitisation Act, the petitioners filed an appeal under Section 17. There was a delay of 304 days in filing the appeal. The application in M.A.No.5 of 2015 for condoning the delay of 304 days was dismissed by the Tribunal by the order impugned in the writ petition, forcing the petitioners to come up with the above writ petition.

5. In the Affidavit in support of the application for condonation of the delay, the petitioners have stated that the full particulars of the auction sale were not made available despite repeated payments made by the petitioners. The petitioners even filed one writ petition in W.P.No.12078 of 2014 and thereafter filed another writ petition in W.P.No.37360 of 2014, challenging the failure of the respondent to furnish

information even under the Right to Information Act, 2005. In the light of such a stand taken by the petitioners, we are of the view that the refusal of the Court below to condone the delay, cannot be sustained. In fact, the appeal concerns the sale of the secured assets by the creditor. Therefore, valuable rights to property cannot be defeated by a pedantic approach on the part of the Tribunal.

6. In fact, the order of the Tribunal shows that it has gone into the merits of the case to come to the conclusion that the petitioners have continuously defaulted. But at the stage of condonation of delay, this Court has to see only the explanation for the delay.

7. Today, the respondent/Bank has not chosen to appear before Court to contest the writ petition. Therefore, on the basis of the available material, we have no hesitation in coming to the conclusion that the delay ought to have been condoned.

8. In view of the above, the writ petition is allowed and the impugned order is set aside. The condone delay petition filed by the petitioners will stand allowed. The Tribunal shall number the appeal and proceed in accordance with law. Pending applications, if any, shall stand closed. No costs.

V.RAMASUBRAMANIAN, J.

J.UMA DEVI, J.

26th November, 2018.
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HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE Ms. JUSTICE J.UMA DEVI

Writ Petition No.35148 of 2018
(per VRS, J.)



26th November, 2018.
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