

**HON'BLE SRI JUSTICE RAMESH RANGANATHAN
AND
HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI**

WRIT PETITION No.36100 of 2017

ORDER: (per Hon'ble Sri Justice Ramesh Ranganathan)

In this Writ Petition, the petitioner questions the order dated 22.09.2017 passed by the Debts Recovery Appellate Tribunal, Kolkata (DRAT), in dismissing Application No.325 of 2015 in Tender No.75/2014/578, seeking condonation of the delay in filing the appeal against the orders passed by the DRT initially in O.A.No.1679 of 1999 dated 30.06.2009, and later in M.A.No.26 of 2010 dated 21.02.2014.

Facts, to the extent necessary, are that the Debts Recovery Tribunal, Hyderabad (DRT) allowed O.A.No.1679 of 1999, filed by the Bank, by its order dated 30.06.2009; on the premise that the said order was passed *ex parte*, the petitioner filed M.A.No.26 of 2010 requesting the DRT to recall its earlier order; M.A.No.26 of 2010 was dismissed by the DRT on 21.02.2014 holding that the earlier order, passed in O.A.No.1679 of 1999 dated 30.06.2009, was not an *ex parte* order, but was an order on merits; aggrieved thereby, the petitioner filed W.P.No.5770 of 2014, and a Division Bench of this Court, by its order in W.P.No.5770 of 2014 dated 03.03.2014, while dismissing the Writ Petition, granted liberty to the petitioner to avail the remedy of an appeal to the DRAT, and observed that, since the petitioner was pursuing the matter with the DRT, the DRAT should consider the condone delay petition sympathetically.

The petitioner, thereafter, approached the DRAT which, in the order impugned in this Writ Petition dated 22.09.2017, rejected the appeal preferred against the order passed in O.A.No. 1679 of 1999 dated 30.06.2009 on the ground that it was unduly belated, and was filed beyond time by 1692 days.

With respect to the delay in filing M.A.No.26 of 2010, the Debt Recovery Appellate Tribunal observed that the date of filing the MA had not been disclosed; the MA was rejected on 21.02.2014; it was not clear when the Writ Petition was filed before this Court; the Writ Petition was dismissed on 03.03.2014; though it was contended that the appeal was despatched by registered post on 25.03.2014, they were not inclined to condone the delay as the M.A. was not filed within 45 days; it was filed after expiry of limitation; immediate steps ought to have been taken by the petitioner to file the appeal; as even after the Writ Petition was dismissed on 03.03.2014, the petitioner was prosecuting his case before the wrong forum, it would not be a ground for condonation of such a long period; the petitioner could not file the M.A. as well as an appeal against the order dated 30.06.2009; and despite knowing that, against the impugned order as well as against the order in M.A, an appeal lies under Section 20 of the Act, the petitioner had preferred the Writ Petition.

In so far as the appeal preferred against the order passed by the DRT, in O.A.No.1679 of 1999 dated 30.06.2009, is concerned, a Full-Bench of this Court, in

Raziuddin Mohd. Siddiqui v. Zaihab Khatoon¹ held that the time spent, in pursuing the petition to set aside the *ex parte* order, would not save limitation as Section 14 of the Limitation Act, 1963 was not attracted. In the light of the law declared in the judgment of the Full Bench Judgment of this Court, and as the DRT has held that the petitioner was under a misconception that the order passed by it was an *ex parte* order, we see no reason to interfere with the order passed by the DRAT rejecting the appeal preferred by the petitioner herein on the ground of inordinate delay in filing the appeal of 1692 days.

The fact, however, remains that M.A.No.26 of 2010 was dismissed by the DRT only on 21.02.2014; and even if the time spent in filing the Writ Petition and the pendency of the Writ proceedings before this Court were to be excluded, the petitioner had preferred the appeal to DRAT on 04.04.2014 i.e. 49 days after M.A.No.26 of 2010 was dismissed by the DRT on 21.02.2014.

Section 20 (1) of the Recovery of Debts and Bankruptcy Act, 1993 (for short “the Act”) confers a right on any person, aggrieved by an order made by the Debt Recovery Tribunal, to prefer an appeal to the Appellate Tribunal. Under Section 20(3), prior to its amendment by Act 44 of 2016 which came into force with effect from 01.09.2016, the appeal could be filed, under Section 20(1) of the Act, within a period of 45 days from the date on which a copy of the order was made, or

¹ 2004(6) ALD 564

is deemed to have been made, by the Tribunal and is received by him. Under the proviso to Section 20(3), the Appellate Tribunal has the power to entertain the appeal after expiry of the said period of 45 days, if it is satisfied that there is sufficient cause for not filing it within that period. Even if the petitioner is presumed to have received a copy of the order of the DRT, in M.A.No.26 of 2010 on the very same day on which it was passed i.e. 21.02.2014, and after excluding the period of 45 days stipulated in Section 22(3), the delay in preferring the appeal to the DRAT is merely 4 days. The DRAT has failed to examine whether the delay of four days, in preferring the appeal, is so inordinate as to justify refusal to entertain the appeal preferred against the order passed by the DRAT in M.A.No.26 of 2010 dated 21.02.2014.

While Sri Chakrala Srinivasa Rao, learned Counsel for the respondents, would submit that the M.A. is liable to be dismissed even on merits, the fact remains that the merits of the order passed by the DRT, in M.A.No.26 of 2010 dated 21.02.2014, is for the DRAT to examine, and not for this Court to adjudicate in proceedings under Article 226 of the Constitution of India, more so as W.P.No.5770 of 2014 filed by the petitioner was dismissed on 03.03.2014 relegating the petitioner to avail the remedy of an appeal to the DRAT.

While we see no reason to interfere with the order of DRAT rejecting the appeal filed against the order passed by the DRT in O.A.No.1679 of 1999 dated 30.06.2009, the impugned order, to the extent the appeal preferred against

the order of the DRT in M.A.No.26 of 2010 dated 21.02.2014, was dismissed, is set aside.

The DRAT shall consider the application to condone the delay of four days in preferring the appeal and, if it is satisfied that the delay should be condoned, it shall examine the validity of the order passed in M.A.No.26 of 2010 on its merits uninfluenced by any observations made by us in this order.

Sri Chakrala Srinivasa Rao, learned Counsel for the respondents, would submit that a pre-deposit of 75% of the debt due is a pre-condition for an appeal to be entertained by the DRAT under Section 21 of the Act. Sri M.Damodar Reddy, learned Counsel for the petitioner, would, however, point out that, in terms of the proviso to Section 21 of the Act prior to its amendment by Act 44 of 2016 (with effect from 01.09.2016), it was open to the DRAT to either waive or reduce the amount of pre-deposit. Needless to state that, on an application being filed in this regard, it is open to the DRAT to consider whether the appeal should be entertained with or without deposit, of a part of the debt due, in terms of the proviso to pre-amended Section 21 (1) of the Act.

The Writ Petition is, accordingly, disposed of. Miscellaneous Petitions pending, if any, shall also stand disposed of. However, in the circumstances, without costs.

RAMESH RANGANATHAN, J

KONGARA VIJAYA LAKSHMI, J

Date: 17.08.2018
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