

*** THE HIGH COURT OF DELHI AT NEW DELHI**

+ Crl.M.C. 151/2010

Date of Order: 19.12.2011

M/S. BRUSHMAN INDIA LTD. & ANR Petitioner
Through: Mr.Ch.Ranjit Singh, Advocate.
versus

STANDARD CHARTERED BANK Respondent
Through: Mr.Sumit Bansal, Advocate.

**CORAM:
HON'BLE MR. JUSTICE M.L. MEHTA**

M.L. MEHTA, J. (Oral)

1. This is a petition under Section 482 CrPC assailing the order dated 11.11.2009 of the learned M.M., Dwarka Courts whereby the application under Section 142 of the Negotiable Instruments Act (for short, the 'Act') filed on behalf of the complainant/respondent Standard Chartered Bank seeking condonation of delay in filing the complaint was allowed. The petition has been filed assailing the said order mainly on the ground that delay of 45 days in filing the complaint was not explained by the complainant and that being so, the Magistrate was not justified in condoning the delay vide the impugned order.

2. The admitted facts of the case are that the petitioner had taken an overdraft facility of Rs. 3 Crores from the complainant bank. A cheque of Rs. 3 Crores was given on 23.11.2008. It was returned dishonoured on 29.11.2008. Notice under Section 138, N.I.Act was given by the complainant bank on 25.3.2009 and the same was received by the petitioner on 27.3.2009. The complainant bank was required to file complaint within 15 days of the intimation of the receipt of information from the bank. This period expired on 11.4.2009. It was within 30 days thereafter that the complainant could file the complaint. That being so, the period of filing of complaint expired on 10.4.2009. The complaint was filed on

25.06.2009, which was 45 days after the prescribed period of limitation. It was the intimation of dishonour of cheque, which gave rise to the cause of action.

3. In the application filed by the complainant bank for seeking condonation of delay under Section 142 of the Act, the complainant bank had stated that the delay had occasioned due to resignation of the Constituted Attorney Mrs. Anuradha M.Suri of the complainant bank on 10.2.2009 and there being no Constituted Attorney in the concerned department, the complaint could not be filed. It was stated that the present Constituted Attorney Sunil Prabhu joined the services of the bank since 18.5.2009 and the power of attorney in his favour, authorizing him to file and institute the present complaint was executed on 3.6.2009 at Mumbai office. Thereafter, the said power of attorney was made available to Mr. Sunil Prabhu only after 14th June, 2009 after completion of necessary formalities. At the time of the appointment of Mr. Prabhu, the courts were closed on account of summer vacation. The courts reopened on 25.6.2009 and the complaint was filed immediately on the opening day of the courts. The delay in filing of the complaint was stated to be neither intentional nor deliberate.

4. The aforesaid application was opposed by the petitioner herein submitting that once the limitation period had started, it could not be stopped till the time the condonation application is filed and each day's delay was required to be explained by the complainant bank. It was averred that the complainant bank failed to explain as to why the complaint could not be filed till 15.4.2009 when Mrs. Anuradha M.Suri was continuing as their attorney. It was also averred that in any case, the power of attorney was executed in favour of Mr. Prabhu on 3.6.2009, but the complaint was filed on 25.6.2009 without their being any explanation for such a delay.

5. I have heard the learned counsel for the petitioner and the respondent.

6. The learned counsel for the petitioner relied upon the judgments of **Sitaram Ramcharan and Others Vs. M.N. Nagrashana, Authority under the Payment of Wages Act for Ahmedabad Area, Ahmedabad and Others** , AIR

1960 SC 260, **Union of India Vs. Sunil Kumar**, 1971 Rajdhani Law Reporter (DB) 36, **The State of West Bengal Vs. The Administrator, Howrah Municipality and Others etc.**, AIR 1972 SC 749 and **Sadanandan Bhadran Vs. Madhavan Sunil Kumar**, 1998 CRI.L.J. 4066 to contend that the complainant failed to explain the whole period of delay and that once limitation has run out, its operation cannot be stayed by any action taken by complainant after that date. He submitted that the application for condonation of delay was filed to circumvent the limitation of filing complaint. He submitted that the trial court erred in condoning the delay without there being any sufficient cause for the entire period of delay by the complainant.

7. Section 142 of the Act wherein the Magistrate takes cognizance of such cases under Section 138 of the Act reads as under:

“142. Cognizance of offences

Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974).-

(a) No court shall take cognizance of any offence punishable under section 138 except upon a complaint, in writing, made by the payee or, as the case may be, the holder in due course of the cheque; (b) Such complaint is made within one month of the date on which the cause of action arises under clause (C) of the proviso to section 138:

["Provided that the cognizance of a complaint may be taken by the Court after the prescribed period, if the complainant satisfies the Court that he had sufficient cause for not making a complaint within such period.]

(c) No court inferior to that of a Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under section 138]”.

8. As per the proviso of the Section as quoted above, the cognizance could be taken after the prescribed period of one month of intimation of dishonour of cheque by the Magistrate if the complainant satisfied the court that it had sufficient cause for not making a complaint within such period.

9. While allowing the application under Section 142 whereby the delay was condoned, the learned MM referred to various judgments relied upon by the petitioners as well as the complainant/ bank. He noted that while condoning the delay, the learned MM reasoned as under:

“23. The important condition which is to govern the discretion of the court is the potentiality of the prejudice or injustice which is likely to be caused to the other side. One cannot lose sight of the fact that the complainant is a banking institution and not a private individual and there might be a delay in completing necessary formalities to engage the new Authorized Representative. Considering the fact that the complainant is a banking institution in which public money is also involved and also the fact that a huge amount of Rs. 3 crores is involved in the present case, I am of the considered opinion that the interest of justice would be met if the delay in filing the present complaint case is condoned as the grounds taken by the complainant are believable and the application is duly supported by the affidavit of the Authorized Representative of the complainant and there is no reason to disbelieve the averments made by the complainant at this stage.”

10. The approach of courts while considering application under Section 5 of the Limitation Act, 1963 has been indicated in several decisions. In the case of **N.Balakrishnan Vs. M.Krishnamurthy, JT 1998 (6) SC 242**, the Supreme court observed thus:

“It is axiomatic that condonation of delay is a matter of discretion of the court. Section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit. Length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncondonable due to want of acceptable explanation whereas in certain other cases delay of very long range can be condoned as the explanation thereof is satisfactory. Once the court accepts the explanation as sufficient it is the result of positive exercise of discretion and normally the superior court should not disturb such finding, much less in revisional jurisdiction, unless the exercise of discretion was on whole untenable grounds or arbitrary or perverse. But it is a different matter when the first court refuses to condone the delay. In such cases, the superior court would be free to consider the cause shown for the delay afresh and it is open to such superior court

to come to its own finding even untrammelled by the conclusion of the lower court”.

11. In the case of **Ram Nath Sao @ Ram Nath Sahu Vs. Gobardhan Sao & Others**, [2002] 2SCR 77, the Supreme court observed thus:

“Thus it becomes plain that the expression "sufficient cause" within the meaning of Section 5 of the Act or Order 22 Rule 9 of the Code or any other similar provision should receive a liberal construction so as to advance substantial justice when no negligence or inaction or want of bona fide is imputable to a party. In a particular case whether explanation furnished would constitute "sufficient cause" or not will be dependant upon facts of each case. There cannot be a straitjacket formula for accepting or rejecting explanation furnished for the delay caused in taking steps. But one thing is clear that the courts should not proceed with the tendency of finding fault with the cause shown and reject the petition by a slipshod order in over jubilation of disposal drive. Acceptance of explanation furnished should be the rule and refusal an exception more so when no negligence or inaction or want of bona fide can be imputed to the defaulting party. On the other hand, while considering the matter the courts should not lose sight of the fact that by not taking steps within the time prescribed a valuable right has accrued to the other party which should not be lightly defeated by condoning delay in a routine like manner. However, by taking a pedantic and hyper technical view of the matter the explanation furnished should not be rejected when stakes are high and/or arguable points of facts and law are involved in the case, causing enormous loss and irreparable injury to the party against whom the lis terminates either by default or inaction and defeating valuable right of such a party to have the decision on merit. While considering the matter, courts have to strike a balance between resultant effect of the order it is going to pass upon the parties either way”.

12. The words “sufficient cause for not making the application within the period of limitation” should be understood and applied in a reasonable, pragmatic, practical and liberal manner, depending upon the facts and circumstances of the case, and the type of case. The words ‘sufficient cause’ in Section 5 of Limitation Act should receive a liberal construction so as to advance substantial justice, when the delay is not on account of any dilatory tactics, want of bona fides, deliberate inaction or negligence on the part of the complainant. The decisive factor in condonation of delay, is not the length of delay, but sufficiency of a satisfactory

explanation. It is trite that the court shall exercise the powers available for condoning the delay also in order to advance the cause of justice and that mere technicalities cannot be allowed to come in the way of administration of justice.

13. The constituted attorney Ms. Anuradha had tendered her resignation on 10.2.2009 and the same came to be accepted on 15.4.2009. In an organization such like that of complainant, after tending resignation, the attorney may not like to continue to perform such onerous duties which would require follow up even after resignation. It was also more so as the resignation was tendered with immediate effect and in a situation like this, it is the normal human conduct to wait for acceptance of the resignation which normally is to be accepted shortly after resignation. Mr. Prabhu could only be appointed attorney on 3.6.2009 at Mumbai Office and the same was made available to him only on 14.6.2009. By that time, the courts were closed for summer vacation. The complaint was filed immediately on the opening of the court on 25.6.2009. Keeping in view the fact that the complainant was a bank institution and not a private one, there is likelihood of delay in completion of necessary formalities for appointment of a new attorney. Since the stakes involved were high, the complainant could not be said to be delaying on account of negligence. The disputes involved are on the basis of facts and law and the interest of justice demanded that the issues should be decided on merits. No prejudice could be seen to have been caused to the petitioner by condoning the delay by learned MM.

14. I do not find any infirmity or illegality in the impugned order. The petition is dismissed with costs of Rs.10,000/- to be paid to the Delhi High Court Legal Services Committee.

**M.L. MEHTA
(JUDGE)**

DECEMBER 19, 2011

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