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IN THE HIGH COURT OF DELHI AT NEW DELHI

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RSA 161/2018 and CM APPL. 46819-46821/2018

M/S JAIN COOPERATIVE BANK LTD Appellant

Through: Mr.Kamal Bansal, Advocate

versus

BABU RAM SHARMA

..... Respondent

Through:

CORAM:

HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER

% **11.12.2018**

CM APPL. No.46821/2018 (Exemption)

Exemption allowed, subject to just exceptions.

CM APPL. No. 46819/2018 (condonation of delay)

The appellant, vide the present Regular Second Appeal, under Section 100 of the CPC assails the impugned judgment dated 23.10.2015 of the learned Additional District Judge-07 (Central), Tis Hazari Courts in RCA No. 16/2015 which has upheld the impugned judgment and decree dated 15.3.2014 of the learned Civil Judge -05 (Central) in Suit No. 661/2012.

Along with the appeal is CM APPL. No. 46819/2018 filed on behalf of the appellant seeking condonation of delay which delay is of a period of 1005 days.

The reasons mentioned in the said application for the delay are stated to be:

2. The Appeal is being filed within the prescribed period of limitation, since the Appellant did not lose on any time to file the present appeal. On 23.10.2015 RCA was decided vide Impugned

Judgment dated. Its certified copy was applied on 29.10.2015, which was made available on 31.10.2015 and was forwarded to the Bank and so received by the Bank on 03.11.2015. During this period, in terms of Delhi Cooperative Societies Act, 2003 and rules made thereunder, the Registrar of Co-operative Societies was pleased to supersede the BOD on 04.02.2015 and since then an Administrator so appointed continued as the Sole Authority. During this period from 04.02.2015 till 17.07.2016 various Administrator about (five in numbers, namely, Sh. Prakash Chander, Sh. Ajit Shrivastva, Sh. AS Dagar, Sh. SL Bansal and Sh. Vishawamithar Bhaghi) were repeatedly changed/appointed. During this period from 04.02.2015 till 17.07.2016, due to continued internal crisis within the Bank and due to rival groupism, the administrator was not kept informed about the pending litigation qua the present case or related cases in respect thereof.

3. On 17.07.2016, elections were held to elect the managing committee of Bank and its results were declared on 17.07.2016 and the newly elected managing committee on 20.07.2016 took oath, took charge and held its first board meeting. The said elections were challenged before the Hon'ble Delhi High Court vide several writ petitions, which were either withdrawn or dismissed vide separate orders from 01.02.2017 and 26.04.2017.

4. The BOD would about to settle when on 08.11.2016, the Government of India declared demonetization of currency leading to heavy rush of depositors to deposit demonetized currency from 08.11.2016 to 31.12.2016. During, the demonetization phase, the entire bank machinery

became extensively involved in the said aspect without intentionally refraining from taking any decision on the aspect of filing second appeal against the Impugned Judgment. During this period, on 26.12.2016 to 30.12.2016, the bank faced Income Tax raid. The Bank during the demonetization period received deposits of about Rs. 32.14 Crore, which RBI refused to accept, accordingly, the Bank filed a Special Leave Petition (C) before the Hon'ble Supreme Court of India on 20.03.2017. In the interregnum, the RBI permitted the Bank to deposit aforesaid amount of Rs. 32.14 Crore on 19.07.2017. The aforesaid Special Leave Petition was renumbered as Writ Petition (C) No. 169/2017, which was disposed off vide order dated 03.11.2017.

5. The bank was still under process of recovery from aforesaid jolts, in November 2017, its staff started creating troubles for the day-to-day functioning of bank. When their acts persisted, the Bank was constrained to take legal recourse and commenced initiation of disciplinary actions against its delinquent staff/ officers in March 2018. In response to such actions, the Bank's staff went on an indefinite strike from 16.04.2018 till September 2018, whereof the entire functioning of the day-to-day working of the bank faced severe blow. In the interregnum, in mid September 2018, the Bank instructed its counsel to file an appeal against judgment/decreree dated 19.03.2018 corrected as passed by Sh. Saurabh Kulshreshtha, Ld. ADJ-11 (Central), Tis Hazari Court, Delhi in CS No. 13954/2016 as corrected vide order dated 25.07.2018. During the preparation of said appeal, the Ld. Counsel inquired about reasons for non-filing of any appeal against Impugned

Judgment, and further advised the Bank to prefer second appeal against Impugned Judgment on urgent basis or the decision rendered would continue to operate against the Bank. In view thereof, the Bank instructed the Ld. Counsel to file a second appeal against the Impugned Judgment. On receiving such instructions, the Ld. Counsel advised the Bank to obtain and provide certified copies of entire trial court with documents, exhibits and to also obtain certified copies of RCA No. 16/2015. Accordingly, the Bank applied for 19.09.2018 the certified copies were applied, which were received on 26.09.2018 and 27.09.2018. Thereafter, the said documents, were discussed and perused within the Bank and its officials and thereafter with Bank's Chairman. Thereafter, on 28.09.2018, the Bank again approached and met Ld. Counsel with available copies. During discussion, it was found that documents with proper Exhibit Marks were missing from the certified copies and its was again advised to obtain certified copies of documents with proper Exhibit marks. Accordingly, on 01.10.2018, the Bank applied to obtain certified copies of documents with Exhibit marks, which was made available on 06.10.2018.

6 Thereafter, various meetings were held with Ld. Counsel to discuss about the reasons /grounds for second appeal and also reasons for seeking condonation of delay in filing the second appeal. On said aspect of seeking condonation of delay, Ld. Counsel sought various documents, which were made available to the Ld. Counsel. On 22.10.2018, all relevant documents, certified copies, etc. were finally discussed with the Ld. Counsel who sought time to

prefer an appropriate second appeal alongwith application for seeking condonation of delay of 1005 days from 23.10.2015 to 23.10.2018 after deducting 90 days allowed to file an appeal before the Hon'ble Delhi High Court.

7. The delay, if any, that occasioned in filing the accompanying appeal was neither intentional nor deliberate on the part of the Appellant/Plaintiff but for the aforesaid bonafide reasons also due to decision making hierarchy and its absence for taking effective decision qua the present appeal. Furthermore, actions have been initiated against bank officers who had executed the lease deed and remitted payments to the Respondent/Plaintiff. The reasons of delay in filing have sufficiently been explained in the preceding paragraphs, which are bonafide reasons. Furthermore, no prejudice would be caused to the Respondent/Defendant if the relief sought herein is allowed in favour of the Appellant/Plaintiff. Furthermore, the delay as occasioned be construed liberally in the interest of justice.

8. Immense prejudice would be caused to the case of the Appellant/Plaintiff, if the relief sought herein is not allowed and on the contrary no prejudice would be caused to the Respondent/Defendant. The present application is being preferred bonafide without any further unwarranted delay or latches.”

A bare perusal of the said application supported with an affidavit of the present CEO of the appellant vouching the contents of the application to be true and correct indicate that even if for a moment

the delay in institution of the appeal till the period 26.4.2017 is taken into account and condoned in view of the changes in the various administrators of the appellant and subsequent elections of the appellant which elections were also challenged before this Court stated through Civil Writ petitions which were either withdrawn or dismissed vide orders dated 1.2.2017 and 26.4.2017, the rest of the averments made in the application read *inter alia* to the aspect of demonetization of currency leading to heavy rush of the depositors to deposit demonetized currency from 8.11.2016 to 31.12.2016 to a subsequent raid on the bank from 26.1.20216 to 30.12.2016, institution of an SLP by the appellant herein as Writ Petition (Civil) No. 169/2017 which was disposed of vide order dated 3.11.2017 and thereafter in November, 2017 the staff of the Bank started creating trouble in the day-to-day functioning of the bank as a consequence of which, the appellant was constrained to take legal recourse and commenced initiation of disciplinary actions against its delinquent staff/officers in March, 2018, from March, 2018 the bank's staff went on an indefinite strike from 16.4.2018 till September, 2018 and thereafter in mid September, 2018, the bank instructed its counsel to file an appeal against the judgment and decree dated 19.3.2018 passed in CS No. 13954/2016 and it was during that period that they were advised to prefer the instant second appeal against the impugned judgment and the bankers are thus indicated to have applied for the certified copies of the documents filed on 1.10.2018 which certified copies were made available to the appellant on 6.10.2018 and

consequently, the appeal was filed with a delay of 1005 days, which has ostensibly not been explained satisfactorily.

On behalf of the appellant, reliance is sought to be placed on a verdict of this Court ***Top Shop v. New Delhi Municipal Council*** in CM(M)No. 982/2018 and CM APPL. No.34458-34460/2018 submitting to the effect that in the said case, the period of 670 days' delay in filing the first appeal had been condoned.

It is essential to observe that for an application of Section 5 of the Limitation Act, 1963, the facts and circumstances of each case have to be considered and taken into account and sufficient cause for delay to seek condonation of delay has to be explained in the facts and circumstances of each case. The reliance that has been placed on behalf of the appellant on the verdict referred to hereinabove, dated 27.8.2018, which specifically mentions the reasons there in paragraph No. 13 and 14 of the said order, which are as under:

“13. It has further been submitted on behalf of the respondent that in the instant case there is a fundamental issue involved which would affect public interest in relation to about 3600 shops situated in Palika Bazar, Connaught Place, New Delhi and that vide the impugned judgment dated 24.09.2013 in Suit No. 8/8/87 of the CCJ, PHC, New Delhi, the petitioner herein has been held to be a lessee of the shop No. 87, Palika Bazar, Connaught Place, New Delhi and if the said order is not allowed to be challenged, it would set a precedent in relation to 3600 shops situated at Palika Bazar, Connaught Place, New Delhi in as much as the respondent seeks to contend that the petitioner herein and all other persons likewise

situated in such premises in such shops situated at Palika Bazar, Connaught Place, New Delhi are licensees and that there would be a grave loss to the public exchequer and public interest would be affected.

14. On a consideration of the rival submissions in the facts and circumstances of the instant case, taking into account the reasons that have been explained through the application seeking condonation of delay in RCA No. 5267/18 coupled with the factum that qua the time from 10.10.2013 when the respondent received the certified copy of the order dated 24.09.2013, the reasons for delay, thereafter for institution of the appeal are submitted in a supplementary affidavit submitted before the Trial Court to the effect that there were variations in the legal opinion that had been given in relation to the institution of an appeal or otherwise and that the bonafides of the respondent in the instant case were not wanting, in the facts of the instant case, it is held that the delay in filing the appeal was not uncondonable in the facts and circumstances of the instant case where public interest is clearly involved.”,

is thus wholly misplaced.

A prayer is made on behalf of the appellant that time be granted to produce the additional documents in support of the contentions made in CMNo. 46819/2018 qua which it is fairly submitted by the learned counsel for the appellant that the documents would be only in relation to the averments made in the application itself.

On consideration of the reasons that have been put forth and explained in the application by the appellant seeking condonation of

delay which bring forth categorically that from 8.11.2016, till the date of institution of appeal there is no satisfactory cause for the reason of delay in institution of the appeal was thus the reasons mentioned in the application, thus the prayer seeking condonation of delay cannot be granted.

The prayer thus seeking condonation of delay is declined and consequently the RSA and the accompanying applications are declined.

ANU MALHOTRA, J

DECEMBER 11, 2018/sv