

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 19.03.2019
Delivered on : 26.03.2019

CORAM :

THE HON'BLE MRS.VIJAYA K.TAHILRAMANI, CHIEF JUSTICE
AND

The HON'BLE MR.JUSTICE M.DURAI SWAMY

W.P.No.2645 of 2019 and
W.M.P.No.2930 of 2019

The Head, Fleet Management,
M/s.Sical Logistics Ltd.,
Branch Office (Trucking Division)
131, G.N.T.Road,
Poniammanmedu,
Madhavaram,
Chennai - 600 110. ... Petitioner

Vs.

- 1.The Debt Recovery Appellate Tribunal,
rep by its Registrar,
4th Floor, Indian Bank Circle Office,
55, Ethiraj Salai,
Chennai - 600 008,
Tamil Nadu.
- 2.State Bank of India,
rep by its Assistant General Manager,
Overseas Branch,
New No.86 (Old No.21),
Rajaji Salai,
Chennai - 600 001. ... Respondents

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of certiorarified mandamus to call for the records on the file of the 1st respondent in I.A.No.2 of 2019 in M.A.No.265 of 2010 culminating in the order dated 03.01.2019 passed by the 1st respondent dismissing the application for condonation of delay in filing the application for restoration of the appeal and consequently also dismissing the restoration application filed by the petitioner, quash the same as illegal, arbitrary and devoid of merits and consequently condone the delay in filing the restoration application and

restore appeal bearing M.A.No.265 of 2010 on the file of the 1st respondent.

For Petitioner : Mr.Vijay Narayan, Senior Counsel
for Mr.Anand Sashidharan

For Respondents: Mr.Om Prakash, Senior Counsel
for Mr.K.Chandrasekaran (R2)

O R D E R

THE HON'BLE CHIEF JUSTICE AND
M.DURAI SWAMY, J.

The petitioner has filed the above Writ Petition to issue Writ of certiorarified mandamus to call for the records on the file of the 1st respondent in I.A.No.2 of 2019 in M.A.No.265 of 2010 culminating in the order dated 03.01.2019 passed by the 1st respondent dismissing the application for condonation of delay in filing the application for restoration of the appeal and consequently also dismissing the restoration application filed by the petitioner and to quash the same and consequently condone the delay in filing the restoration application.

2.Challenging the order passed in I.A.Nos.798 and 799 of 2007 in O.A.No.51 of 2005 on the file of the Recovery Officer, the petitioner has filed an appeal in Appeal No.6 of 2008 before the Debts Recovery Tribunal - II, Chennai. The Debts Recovery Tribunal - II, Chennai, by order dated 24.12.2009, directed the Recovery Officer to initiate appropriate action for recovering a sum of Rs.4.7 crores, being the market value of the seized goods, after the State Bank of India gives details regarding the assets of the petitioner. Challenging the order passed by the Debts Recovery Tribunal - II, Chennai, the petitioner preferred an appeal in M.A.No.265 of 2010 on the file of the Debt Recovery Appellate Tribunal.

3.Earlier, since the petitioner failed to appear before the Debt Recovery Appellate Tribunal, the appeal was dismissed for non-prosecution on 25.07.2010. Thereafter, the petitioner filed an application in I.A.No.1265 of 2010 to restore the appeal and the Debt Recovery Appellate Tribunal, by order dated 05.08.2010, allowed the application and restored the appeal to file. Thereafter also, the petitioner again failed to appear before the Debt Recovery Appellate Tribunal, which resulted in the dismissal of the appeal for non-prosecution on 03.07.2013. Thereafter, the petitioner filed an application in I.A.No.2 of 2019 to restore the appeal which was dismissed for default on 03.07.2013. The application seeking for restoration of the

appeal was filed after a delay of 1970 days. The Debt Recovery Appellate Tribunal, by order dated 03.01.2019, dismissed the application finding that the petitioner has not given sufficient cause for the delay. Aggrieved over the same, the petitioner has filed the above Writ Petition.

4.Mr.Vijay Narayan, learned senior counsel appearing for the petitioner submitted that inspite of the petitioner explaining the reasons for the delay of 1970 days, the Debt Recovery Appellate Tribunal had erroneously dismissed the application and refused to condone the delay. The learned senior counsel further submitted that the Appellate Tribunal should have taken a liberal view and condoned the delay considering the merits of the appeal filed by the petitioner. The learned senior counsel appearing for the petitioner further submitted that the Management of the petitioner Company had changed hands in the year 2011 and therefore, the appeal pending before the Debt Recovery Appellate Tribunal was not properly followed, which resulted in the dismissal of the appeal for non-prosecution.

4.1.In support of his contention, the learned senior counsel relied upon a judgment of the Apex Court made in S.L.P.(C). No.23718 of 2018 [The Commissioner, Mysore Urban Development Authority vs. S.S.Sarvesh] dated 05.02.2019, wherein the Apex Court held as follows:

"...

19.Indeed, this case reminds us of the subtle observations of the learned Judge - Vivian Bose, J., which His Lordship made in one of the leading cases of this Court in Sangram Singh vs. Election Tribunal, Kotah, AIR 1955 SC 425.

...

22.In our view, the Courts below should have seen that the first appeal is a valuable right of the appellant and, therefore, the appellant-Authority was entitled for an opportunity to prosecute their appeal on merits. If the appellant's advocate did not appear may be for myriad reasons, the Court could have imposed some cost on them for restoration of their appeal to compensate the respondent (plaintiff) instead of depriving them of their valuable right to prosecute the appeal on merits. This is what Justice Vivian Bose has reminded to the Courts while dealing with the cases of this nature in Sangram Singh (supra) to do substantial justice to both the parties to the lis. Indeed, dismissal of the appeal in default and dismissal of the appeal on merits makes a difference. The former dismissal is behind the back of the litigant and latter dismissal is after hearing

the litigant. The latter is always preferred than the former."

5. Countering the submissions made by the learned senior counsel appearing for the petitioner, Mr. Om Prakash, learned senior counsel appearing for the 2nd respondent - Bank submitted that the petitioner has not given sufficient cause for condoning the inordinate delay of 1970 days, therefore, the Debt Recovery Appellate Tribunal had rightly dismissed the petition. Further, the learned senior counsel submitted that the petitioner has only blamed their counsel for the non-appearance, which cannot be accepted.

5.1. In support of his contention, the learned senior counsel appearing for the 2nd respondent - Bank relied upon an unreported judgment of the Hon'ble Supreme Court made in Civil Appeal Nos. 5051-5052 of 2009 [Estate Officer, Haryana Urban Development Authority & Anr. vs. Gopi Chand Atreja] dated 12.03.2019 wherein the Supreme Court held as follows:

18. If, according to the appellants-HUDA, their lawyer did not take timely steps, which resulted in causing delay in its filing/refiling, then, in our view, it cannot be regarded as a sufficient cause within the meaning of Section 5 of the Limitation Act.

19. In our view, it was equally the duty of the appellants (their legal managers) to see that the appeal be filed in time. If the appellants noticed their lawyer was not taking interest in attending to the brief in question, then they should have immediately engaged some other lawyer to ensure that the appeal be filed in time by another lawyer.

20. In our view, it is a clear case where the appellant-HUDA, i.e., their officers, who were in-charge of the legal cell failed to discharge their duty assigned to them promptly and with due diligence despite availability of all facilities and infrastructure. In such circumstances, the officers-in-charge of the case should be made answerable for the lapse on their part and make good the loss suffered by the appellants-HUDA.

21. A delay of 1942 days (4 years 6 months), in our view, is wholly inordinate and the cause pleaded for its condonation is equally unexplained by the appellants. In any case, the explanation given does not constitute a sufficient cause within the meaning of Section 5 of the Limitation Act. It was, therefore, rightly not condoned by the High Court and we concur with the finding of the High Court."

6.The only issue that arise for consideration in this Writ Petition is whether the petitioner has satisfactorily explained the reasons for the delay of 1970 days in filing the application for restoring the appeal before the Debt Recovery Appellate Tribunal. There is a delay of 1970 days in filing the application for restoring the appeal. This is the second application filed by the petitioner for restoring the appeal which was dismissed for non-prosecution. On the earlier occasion, the appeal was dismissed on 25.07.2010. Thereafter, the petitioner filed an application in I.A.No.1265 of 2010 to restore the appeal and the Debt Recovery Appellate Tribunal, by order dated 05.08.2010, allowed the application and restored the appeal to file.

7.According to the petitioner, the Management of the petitioner Company had changed hands in the year 2011 and the new Management had taken over the Company. In the affidavit filed in support of the petition, it is stated that one Mr.M.P.Muthukumar, employee of the petitioner Company was looking after the legal affairs and that he left the Company on 31.03.2013, therefore, the appeal, which was pending before the Debt Recovery Appellate Tribunal, was not followed up and ultimately, the appeal was dismissed for non-prosecution. Even though the Management of the Company had changed in the year 2011, they were prosecuting the appeal till 2013 before the Debt Recovery Appellate Tribunal without any difficulty whatsoever. The appeal was dismissed for non-prosecution only on 03.07.2013. Though the petitioner has blamed their counsel for non-appearance before the Debt Recovery Appellate Tribunal, the petitioner has not taken any action against their counsel for not appearing before the Appellate Tribunal. When the petitioner Company was prosecuting the appeal even after change of Management in the year 2011 till July 2013, the contention that their employee viz., Mr.M.P.Muthukumar had left the job on 31.03.2013, cannot be a ground to condone the inordinate delay of 1970 days. The inaction on the part of the petitioner for several years is a gross negligence on their part and they were not prosecuting the matter in a diligent manner.

8.In the judgment reported in (2015) 1 Supreme Court Cases 680 [H.Dohil Constructions Company Private Limited Vs. Nahar Exports Limited and another], the Hon'ble Supreme Court held as follows:

"...

24.When we apply those principles of Bhattacharjee case [Esha Bhattacharjee v. Raghunathpur Nafar Academy, (2013) 12 SCC 649 : (2014) 1 SCC (Civ) 713 : (2014) 4 SCC (Cri) 450 : (2014) 2 SCC (L&S) 595] to the case on hand, it has to be stated that the failure of the respondents in not showing due

diligence in filing of the appeals and the enormous time taken in the refiling can only be construed, in the absence of any valid explanation, as gross negligence and lacks in bona fides as displayed on the part of the respondents. Further, when the respondents have not come forward with proper details as regards the date when the papers were returned for refiling, the non-furnishing of satisfactory reasons for not refiling of papers in time and the failure to pay the court fee at the time of the filing of appeal papers on 6-9-2007, the reasons which prevented the respondents from not paying the court fee along with the appeal papers and the failure to furnish the details as to who was their counsel who was previously entrusted with the filing of the appeals cumulatively considered, disclose that there was total lack of bona fides in its approach. It also requires to be stated that in the case on hand, not refiling the appeal papers within the time prescribed and by allowing the delay to the extent of nearly 1727 days, definitely calls for a stringent scrutiny and cannot be accepted as having been explained without proper reasons. As has been laid down by this Court, courts are required to weigh the scale of balance of justice in respect of both the parties and the same principle cannot be given a go-by under the guise of liberal approach even if it pertains to refiling. The filing of an application for condoning the delay of 1727 days in the matter of refiling without disclosing reasons, much less satisfactory reasons only results in the respondents not deserving any indulgence by the court in the matter of condonation of delay. The respondents had filed the suit for specific performance and when the trial court found that the claim for specific performance based on the agreement was correct but exercised its discretion not to grant the relief for specific performance but grant only a payment of damages and the respondents were really keen to get the decree for specific performance by filing the appeals, they should have shown utmost diligence and come forward with justifiable reasons when an enormous delay of five years was involved in getting its appeals registered.

25. We, therefore, find total lack of bona fides in its approach and the impugned order [Nahar Exports Ltd. v. Hardeep Kaur, Civil Misc. Nos. 11354-55 of 2012 in RFA No. 268 of 2012, order dated 16-12-2013 (Del)] of the High Court in having condoned the delay in filing as well as refiling, of 9 days and 1727 days

respectively, in a casual manner without giving any reason, much less acceptable reasons, cannot therefore be sustained. The appeals are allowed and the impugned order is set aside. Direction to admit the appeals of the respondents in RFAs Nos. 268-88 of 2012 and 319 of 2012 is also set aside and shall stand dismissed. No costs."

9. When the petitioner had prosecuted the appeal effectively till 2013, the reasoning given in the affidavit filed in support of the petition that the petitioner came to know about the dismissal of the appeal for non-prosecution only on 28.11.2018 cannot be accepted. The petitioner, being a Company, should have diligently prosecuted the appeal. The explanation given by the petitioner for the inordinate delay of 1970 days was neither reasonable nor satisfactory, which is an essential pre-requisite to condone the delay. Unless sufficient cause is shown by the petitioner for condoning the delay, the delay cannot be condoned. In the case on hand, the reasoning given by the petitioner for condoning the inordinate delay of 1970 days cannot be accepted.

10. The ratio laid down in the judgment relied upon by the learned senior counsel appearing for the 2nd respondent - Bank and the judgment reported in (2015) 1 Supreme Court Cases 680 squarely applies to the facts and circumstances of the present case. In these circumstances, we do not find any ground to interfere with the order passed by the Debt Recovery Appellate Tribunal. The Writ Petition is liable to be dismissed. Accordingly, the same is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1. The Registrar,
Debt Recovery Appellate Tribunal,
4th Floor, Indian Bank Circle Office,
55, Ethiraj Salai, Chennai - 600 008,
Tamil Nadu.

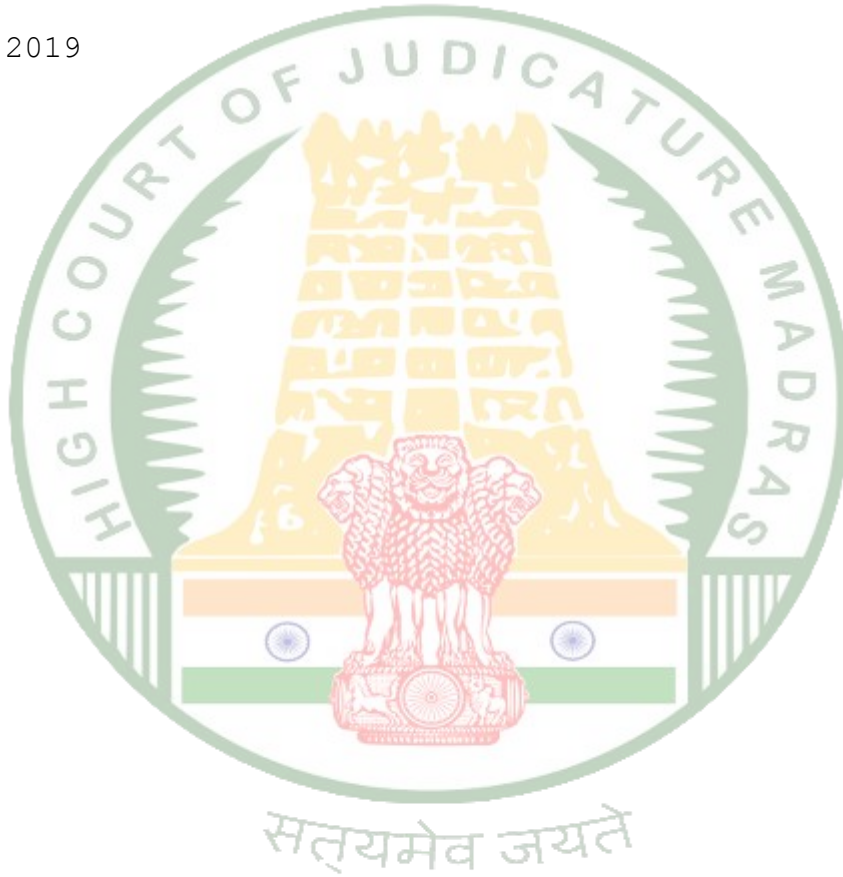
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2.The Assistant General Manager,
State Bank of India,
Overseas Branch,
New No.86 (Old No.21),
Rajaji Salai, Chennai - 600 001.

+1 cc to Mr.Anand Sashidaran, Advocate Sr.No.28248
+1 cc to M/s.K.Chandrasekaran, Advocate Sr.No.28265

Order made in
W.P.No.2645 of 2019 and
W.M.P.No.2930 of 2019

GJ(CO)
CSL/23.04.2019



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