

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No.27 of 2019 (O&M)
Date of Decision.04.01.2019

M/s Ajmer Enterprises and others

...Petitioners

Vs

Debt Recovery Tribunal and another

...Respondents

**CORAM: HON'BLE MR. JUSTICE AMIT RAWAL
HON'BLE MR. JUSTICE ARUN KUMAR TYAGI**

Present: Mr. S.S. Mor, Advocate
for the petitioner.

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AMIT RAWAL J. (ORAL)

The present writ petition is directed against the impugned order dated 01.01.2019 (Annexure P-15) passed by the Debts Recovery Tribunal-II, Chandigarh whereby an application for condonation of delay accompanied by Securitization Application has been dismissed, being barred by 52 days.

Mr. Mor, learned counsel appearing on behalf of the petitioners submits that the vide order dated 29.10.2018 passed by Division Bench of this Court in CWP No.21519 of 2018 titled as “M/s Oswal Spinning and Weaving Mills Limited and others Vs. UCO Bank and another”, it has been held that DRT has jurisdiction to entertain the application for condonation of delay in case it is accompanied along with Securitization Application. The explanation given in the application was falling within the expression and parameters of 'reasonable explanation'. The Debt Recovery Tribunal ought not to have dismissed the application rather laid focus on adjudication of the *lis*. According to them, substantial amount of liability has been discharged. As per the auction notice

(Annexure P-14), auction is slated for 05.01.2019. The DRT did not even issue notice to respondent No.2-Magma Housing Finance Limited but decided the application *in limine*.

In support of aforementioned submissions, relied upon judgment of Hon'ble Supreme Court in **Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy and others (2013) 12 SCC 649** wherein the principles applicable to an application for condonation of delay are culled out, which are reproduced as under:-

(i) There should be a liberal, pragmatic, justice-oriented, non-pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice.

(ii) The terms "sufficient cause" should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact-situation.

(iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.

(iv) No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.

(v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.

(vi) It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice.

(vii) The concept of liberal approach has to encapsulate the conception of reasonableness and it cannot be allowed a totally unfettered free play.

(viii) There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.

(ix) The conduct, behaviour and attitude of a party relating to its

inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.

(x) If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation.

(xi) It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation.

(xii) The entire gamut of facts are to be carefully scrutinised and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.

(xiii) The State or a public body or an entity representing a collective cause should be given some acceptable latitude.

(xiv) An application for condonation of delay should be drafted with careful concern and not in a haphazard manner harbouring the notion that the courts are required to condone delay on the bedrock of the principle that adjudication of a lis on merits is seminal to justice dispensation system.

(xv) An application for condonation of delay should not be dealt with in a routine manner on the base of individual philosophy which is basically subjective.

(xvi) Though no precise formula can be laid down regard being had to the concept of judicial discretion, yet a conscious effort for achieving consistency and collegiality of the adjudicatory system should be made as that is the ultimate institutional motto.

(xvii) The increasing tendency to perceive delay as a non-serious matter and, hence, lackadaisical propensity can be exhibited in a nonchalant manner requires to be curbed, of course, within legal parameters.

We have heard learned counsel for the petitioners, perused the record as well as the impugned order. The genesis of the order reveals that the securitization application filed against the measures taken under Section 13(4) of the Securitization Act was dismissed being barred by 52 days.

There is no dispute that DRT has jurisdiction to entertain an

application under Section 5 of the Limitation Act and should not have adopted a harsh approach in not condoning the delay as mentioned above, particularly in view of the principles culled out in **Esha Bhattacharjee's** case (supra).

Resultantly, without commenting upon the liability and outstanding dues, the impugned order is set aside. The securitization application bearing No.83 of 2018 is restored to its original number and the Debt Recovery Tribunal (II), Chandigarh is directed to decide the same on merits.

Since the mortgaged property has been put to auction for 05.01.2019, we deem it appropriate to defer the auction, in case the petitioners deposit ₹15 lakhs within a period of two weeks from today. In case of default, the Bank shall be at liberty to proceed with the auction proceedings.

The writ petition stands disposed of.

A copy of this order be given to the counsel appearing for the petitioners under the signatures of Court Secretary attached to this Bench.

(AMIT RAWAL)
JUDGE

(ARUN KUMAR TYAGI)
JUDGE

January 04, 2019
Pankaj*

Whether speaking/reasoned Yes

Whether reportable No