

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP-2222-2019

Date of Decision: 12.3.2019

Manoj Kumar

...Petitioner

Versus

Debts Recovery Tribunal-II, Chandigarh and others

...Respondents

**CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.
HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL.**

PRESENT: Mr. Atul Sharma, Advocate for the petitioner.

None for respondent No.2.

AJAY KUMAR MITTAL, J.

1. Through the instant petition filed under Article 226 of the Constitution of India, the petitioner has prayed for issuance of a writ of certiorari for quashing the order dated 21.1.2019 (Annexure P-1) passed by respondent No.1-The Debts Recovery Tribunal (in short “the Tribunal”) vide which Securitization Application (SA) No. 02-2019 filed by him had been dismissed being time barred.

2. A few facts necessary for adjudication of the present writ petition as mentioned therein may be noticed. The petitioner and respondent No.3 got incorporated a company and started doing their commercial business after obtaining financial assistance from respondent No.2. Respondent No.3 siphoned off the goods of the company and also squared off all the funds so sanctioned by respondent No.2. Therefore, the company

dated 4.6.2018 under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short “the SARFAESI Act”) was issued to the petitioner and respondent No.3. The petitioner filed a civil suit on 24.9.2018 along with an application under Order 39 Rules 1 and 2 of the Code of Civil Procedure against respondents No.2 and 3. Thereafter, notice dated 12.11.2018 (Annexure P-2) was issued against the petitioner under Section 13(4) of the SARFAESI Act for taking possession of the mortgaged property. The trial Court vide order dated 4.1.2018 (Annexure P-3) dismissed the application for grant of stay filed by the petitioner. Against the order, Annexure P-3, the petitioner filed CR-357-2019 before this Court. This Court vide order dated 18.1.2019 (Annexure P-4) disposed of the said revision petition with liberty to the petitioner to avail off his remedy under the SARFAESI Act. Accordingly, the petitioner filed SA-2-2019 under Section 17 of the SARFAESI Act before the Tribunal. Since the SA was time barred, IA-47-2019 was filed for condonation of delay. The Tribunal vide order dated 21.1.2019 (Annexure P-1) dismissed the said IA and as such the SA was dismissed being time barred. Hence, the present writ petition.

3. We have heard learned counsel for the petitioner.

4. The primary question that arises for consideration in this writ petition is whether the delay of 15 days in filing the SA before the Tribunal was liable to be condoned in the facts and circumstances of the present case.

5. Examining the legal position relating to condonation of delay under Section 5 of the Limitation Act, 1963 (in short, the “1963 Act”), it may be observed that the Supreme Court in **Oriental Aroma Chemical**

Industries Ltd. v. Gujarat Industrial Development Corporation and

another, (2010) 5 SCC 459 laying down the broad principles for adjudicating the issue of condonation of delay, in paras 14 & 15 observed as under:-

“14. We have considered the respective submissions. The law of limitation is founded on public policy. The legislature does not prescribe limitation with the object of destroying the rights of the parties but to ensure that they do not resort to dilatory tactics and seek remedy without delay. The idea is that every legal remedy must be kept alive for a period fixed by the legislature. To put it differently, the law of limitation prescribes a period within which legal remedy can be availed for redress of the legal injury. At the same time, the courts are bestowed with the power to condone the delay, if sufficient cause is shown for not availing the remedy within the stipulated time.

15. The expression “sufficient cause” employed in Section 5 of the Indian Limitation Act, 1963 and similar other statutes is elastic enough to enable the courts to apply the law in a meaningful manner which sub serves the ends of justice. Although, no hard and fast rule can be laid down in dealing with the applications for condonation of delay, this Court has justifiably advocated adoption of a liberal approach in condoning the delay of short duration and a stricter approach where the delay is inordinate-Collector (L.A.) v. Katiji N.

Balakrishnan v. M. Krishnamurthy and Vedabai v. Shantaram Baburao Patil.”

6. It was further noticed by the Apex Court in **R.B. Ramlingam v. R.B. Bhavaneshwari 2009(1) RCR (Civil) 892** as under:-

“.....It is not necessary at this stage to discuss each and every judgment cited before us for the simple reason that Section 5 of the Limitation Act, 1963 does not lay down any standard or objective test. The test of “sufficient cause” is purely an individualistic test. It is not an objective test. Therefore, no two cases can be treated alike. The statute of limitation has left the concept of “sufficient cause” delightfully undefined, thereby leaving to the Court a well-intentioned discretion to decide the individual cases whether circumstances exist establishing sufficient cause. There are no categories of sufficient cause. The categories of sufficient cause are never exhausted. Each case spells out a unique experience to be dealt with by the Court as such.”

It was also recorded that:-

“For the aforestated reasons, we hold that in each and every case the Court has to examine whether delay in filing the special leave petition stands properly explained. This is the basic test which needs to be applied. The true guide is whether the petitioner has acted with reasonable diligence in the prosecution of his appeal/petition....”

7. From the above, it emerges that the law of limitation has been enacted which is based on public policy so as to prescribe time limit for availing legal remedy for redressal of the injury caused. The purpose behind enacting law of limitation is not to destroy the rights of the parties but to see that the uncertainty should not prevail for unlimited period. Under Section 5 of the 1963 Act, the courts are empowered to condone the delay where a party approaching the court belatedly shows sufficient cause for not availing the remedy within the prescribed period. The meaning to be assigned to the expression “sufficient cause” occurring in Section 5 of the 1963 Act should be such so as to do substantial justice between the parties. The existence of sufficient cause depends upon facts of each case and no hard and fast rule can be applied in deciding such cases.

8. The Apex Court in **Oriental Aroma Chemical Industries Ltd. and R.B. Ramlingam's cases (supra)** noticed that the courts should adopt liberal approach where delay is of short period whereas the proof required should be strict where the delay is inordinate. Further, it was also observed that judgments dealing with the condonation of delay may not lay down any standard or objective test but is purely an individualistic test. The court is required to examine while adjudicating the matter relating to condonation of delay on exercising judicial discretion on individual facts involved therein. There does not exist any exhaustive list constituting sufficient cause. The applicant/petitioner is required to establish that inspite of acting with due care and caution, the delay had occurred due to circumstances beyond his control and was inevitable.

9. The question regarding whether there is sufficient cause or not, depends upon each case and is to be decided taking totality of events which

had taken place in a particular case. Learned counsel for the petitioner submitted that the possession notice was issued to the petitioner on 12.11.2018. Earlier the petitioner filed a civil suit. The said civil suit was dismissed on 4.1.2019 and thereafter, the petitioner filed SA. According to the learned counsel for the petitioner, the delay, if any, has occurred in the aforesaid circumstances in filing the SA before the Tribunal. Learned counsel further argued that the delay was unintentional and due to the circumstances beyond the control of the petitioner.

10. The explanation furnished by the petitioner appears to be plausible and, therefore, leads to the conclusion that there was sufficient cause for delay in filing the SA. Once that was so, the delay in filing the SA before the Tribunal deserves to be condoned and SA heard on merits by the Tribunal.

11. This Court in **M/s. Aptech Engineers, Gurgaon v. State of Haryana and others, 2014 (2) PLR 102** while examining the legal position had condoned the delay of 70 days and remitted the matter to the Tribunal to adjudicate the dispute on merits in accordance with law.

12. In view of the above, the writ petition is allowed. The order dated 21.1.2019 (Annexure P-1) passed by the Tribunal is set aside and the matter is remitted to the Tribunal to adjudicate the dispute on merits in accordance with law.

(AJAY KUMAR MITTAL)
JUDGE

March 12, 2019
gbs

(MANJARI NEHRU KAUL)
JUDGE