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

\+ W.P. (C) 5650/2020

STANDARD CHARTERED BANK ..... Petitioner
Through: Mr. Sanjeev Sagar, Standing Counsel with Ms. Nazia Parveen, Advocate

versus

SHRI RAJ KUMAR SHARMA & ANR. .... Respondents
Through: Mr. O.P. Mathur, Advocate

**CORAM:**
**HON'BLE MS. JUSTICE HIMA KOHLI**
**HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD**

**O R D E R**

% **26.08.2020**

**HEARD THROUGH VIDEO CONFERENCING**

**CM APPL 20463-20464/2020 (exemption)**

Allowed, subject to all just exceptions.

**W.P. (C) 5650/2020**

1. This writ petition challenges the order dated 7.11.2019, passed by the learned Debts Recovery Appellate Tribunal, Delhi (hereinafter referred to as "DRAT") in Appeal No.124/2019. By the impugned order, the learned DRAT has dismissed the application for condonation of delay filed by the petitioner and as a result, dismissed the appeal as time barred.

2. The brief facts of the case are that the respondents (husband and wife) had availed a loan of Rs.36,89,000/- from the petitioner/Bank. In order to secure the said loan, the respondents created an equitable mortgage in

respect of the property No.1/9544, Main Badarpur Road, Shahdara, Delhi.

3. The respondents defaulted in making repayment of the said loan and the account of the respondents was declared as a non-performing asset. A notice under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as "the SARFAESI Act") was issued by the petitioner/Bank on 29.08.2007, calling upon the respondents to pay an amount of Rs.36,00,551.96.

4. The petitioner/Bank filed an application under Section 14 of the SARFAESI Act and the learned CMM, Delhi, passed orders directing the petitioner to take possession of the mortgaged property.

5. The respondents filed an application under Section 17 of the SARFAESI Act before the learned Debts Recovery Tribunal (hereinafter referred to as "DRT"), challenging the action of the petitioner/Bank in taking possession of the mortgaged property, contending that the amount demanded in the notice issued under Section 13(2) of the SARFAESI Act, has not been calculated in accordance with law. It was averred by the respondents in the application that they had paid a total sum of Rs.25,83,921/- towards the principal amount of Rs.36,89,000/- and the petitioner/Bank has charged interest in violations of the rules and guidelines of the Reserve Bank of India.

6. After going through the material before it, vide order dated 20.02.2013 the learned DRT came to the conclusion that the accounting procedure adopted by the petitioner/Bank was not in accordance with the law laid down by the Supreme Court. The learned DRT held that the amount payable by the respondents under the notice issued under Section

13(2) of the SARFAESI Act had been calculated wrongly and therefore, the said notice is bad. Resultantly, the learned DRT allowed the application moved by the respondents under Section 17 of the SARFAESI Act and quashed the notice dated 29.08.2007, issued by the petitioner/Bank.

7. The petitioner/Bank challenged the order dated 20.02.2013 after 5 years and 11 months, by filing an appeal before the learned DRAT. The said appeal was accompanied by an application for condonation of delay in filing the said appeal, explaining the reasons for the delay. Paras 4 to 8 of the said application explaining the reasons for the delay of 5 years and 11 months read as follows:

> *"4. Present is a case where the appellant admits that it did not act as was required at the end of prudent litigant and similarly the counsels appointed by the bank did not do their duty dutifully. The plaintiff is aware that it ought to have effectively litigated but for circumstances beyond the control of the appellant appeal was not filed within time. It is to set right a wrong which is effecting the appellant bank's right to recover money from the respondent no.s against the loan as advanced by to them. Needless to say the bank is the custodian of public money and in order to recover that public money the present appeal is required to be adjudicated on merits regardless of delay in institution of the appeal.*
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> *5. The reason why appellant inadvertedly missed the timely institution of appeal was that the earlier officers handling the case despite being aware of the orders failed to give instructions to the counsel handling the case to file an appeal. The approval for filing appeal was internally taken however the same was not communicated due to negligence in this matter. At this stage no action against those officers handling the case can be taken because they have already left the services of the*

*appellant.*

*6. From the facts narrated above it is evident that though the appellant was negligent however the circumstances related to the case were such that the appellant bonafidely missed the institution of appeal. The delay is circumstantial and the appellant never expected this to happen what has happened to it.*

*7. The appellant states that the fact came to light when the appellant observed that no recovery was being made in the account and the possession of the property was not with the bank for recovery of the loan. The respondent when contacted refused to make payment and brought to the notice of the appellant the impugned order. Immediately after that the counsel was contacted who thereafter took steps to file the present appeal. Thereafter entire trial court record was obtained wherein all facts as narrated in the appeal above came to the knowledge of the appellant. The appellant states that the order passed by the court below is cryptic, illegal and bad in law. The same needs to be set aside on the basis of grounds as stated herein.*

*8. That in any case post handing over file to the counsel, the appellants counsel took some time to prepare the petition & file the same post receipt of instructions of the appellant bank. Thus during this period also sometime was lost in a reasonable manner particularly keeping in mind the issues involved."*

8. By the impugned order dated 7.11.2019, the learned DRAT dismissed the application for condonation of delay holding that no sufficient cause has been shown by the petitioner/Bank for condonation of a huge delay in filing of the appeal. The said order has been challenged in the present writ petition.

9. Mr. Sanjeev Sagar, learned counsel for the petitioner/Bank has tried to persuade us by arguing that the order of the learned DRAT is bad in law. By the impugned order, the learned DRAT has erroneously refused to condone the delay. A reading of the paras 4 to 8 of the application for condonation of delay as quoted above, shows sufficient cause to condone the delay of 5 years and 11 months.

10. It is admitted by the petitioner/Bank that it has been negligent in filing the appeal before the DRAT. There has been a feeble attempt made to put the blame on the officers of the Bank and the learned counsel who was appointed by the Bank. Learned DRAT has rightly pointed out that no action has been taken against either the officers, or the counsel. A reading of the application for condonation of delay would show that there is negligence and gross inaction on the part of the Bank in not taking steps to seek timely legal recourse.

11. Courts while dealing with the application for condonation of delay do not ordinarily come to the aid of lethargic and indolent litigants. In Dohil Constructions Company Pvt. Ltd. v. Nahar Exports Limited and Anr., **(2015) 1 SCC 680**, the Supreme Court has observed as under:

> *"**22.** In this context a Division Bench decision of the Madras High Court in T.N. Mercantile Bank Ltd. v. Appellate Authority [(1990) 1 LLN 457 (Mad)] can be usefully referred to paras 14 and 17 are relevant for our purpose, which read as under: (LLN pp. 462-64)*
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>> *"14. We are unable to agree with the reasoning of the learned Judge that no litigant ordinarily stands to benefit by instituting a proceeding beyond time. It is common knowledge that by delaying a matter, evidence relating to the matter*

*in dispute may disappear and very often the party concerned may think that preserving the relevant records would be unnecessary in view of the fact that there was no further proceeding. If a litigant chooses to approach the Court long after the time prescribed under the relevant provisions of the law, he cannot say that no prejudice would be caused to the other side by the delay being condoned. The other side would have in all probability destroyed the records thinking that the records would not be relevant as there was no further proceeding in the matter.* ***Hence to view a matter of condonation of delay with a presupposition that no prejudice will be caused by the condonation of delay to the respondent in that application will be fallacious.*** *In our view, each case has to be decided on the facts and circumstances of the case.* ***Length of the delay is a relevant matter to be taken into account while considering whether the delay should be condoned or not. It is not open to any litigant to fix his own period of limitation for instituting proceedings for which law has prescribed periods of limitation.***

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*17. ...* ***Once it is held that a party has lost his right to have the matter considered on merits because of his own inaction for a long time, it cannot be presumed to be non-deliberate delay, and in such circumstances of the case, he cannot be heard to plead that substantial justice deserved to be preferred as against technical considerations.*** *We are of the view that the question of limitation is not merely a technical consideration. Rules of limitation are based on principles of sound public policy and principles of equity. Is a litigant liable to have a Damocles' sword hanging over his head indefinitely for a* *period to be determined at the whims and fancies of the opponent?"*

***23.*** *We may also usefully refer to the recent decision of this Court in* ***Esha Bhattacharjee [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****] where several principles were culled out to be kept in mind while dealing with such applications for condonation of delay. Principles (iv), (v), (viii), (ix) and (x) of para 21 can be usefully referred to, which read as under: (SCC pp. 658-59)*

> *"21.4. (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.*
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> *21.5. (v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.*
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> *21.8. (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.***
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> ***21.9. (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.***

*21.10. (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."* (emphasis added)

12. Applying the aforesaid principles to the facts of the present case, it has to be stated that the failure of the petitioner/Bank in not showing due diligence in filing the appeal within time and instead, filing it after 5 years and 11 months, can only be construed as gross negligence and lacking in bonafides, in the absence of any valid explanation. We do not find any infirmity in the impugned order dated 7.11.2019, passed by the learned DRAT for interference. The writ petition is accordingly dismissed in *limine* as meritless.

**HIMA KOHLI, J**

**SUBRAMONIUM PRASAD, J**

**AUGUST 26, 2020**

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