16.04.2021
Item No. 07
Ct. No. 04
PG

M.A.T. 2080 of 2017
With
IA no. CAN 1 of 2020 (Old CAN no. 1869 of 2020)
With
IA no. CAN 2 of 2020 (Old CAN no. 1870 of 2020)
Shanta Pramanik
Vs.
Bangiya Gramin Vikash Bank & Ors.

Mr. Sanjay Saha …………for applicant

Md. Mokaram Hossain
Mr. Sandipan Maity….for respondents (bank)

C.A.N. 1869 of 2020 is application for condonation of delay in preferring the appeal. Prayer is to condone delay of 245 days. Since the appeal was filed without certified copy, upon leave granted, there is no report on the delay. We take the delay to be at 245 days.

Mr. Saha, learned advocate appears on behalf of applicant and submits, his client had lost his job, having been a clerk in the bank. He moved the writ Court and thereafter, upon being unsuccessful, he was unable to immediately move in appeal. Moreover having obtained certified copy of impugned order dated 6th March, 2017, unfortunately he lost it. He submits, his client has been a victim of circumstances. The delay be condoned and the appeal heard. Mr. Hossain, learned advocate appears on behalf of respondents (bank) and opposes the application. He submits, the delay has not been properly explained.

We have looked at, inter alia, paragraphs 5 to 8 in the application. Keeping in mind judgment of Supreme Court in **Collector Land Acquisition vs Mst. Katiji** reported in **AIR 1987 SC 1353**, we are inclined and do allow the application on condoning the delay. More so, because of record in earlier order dated 22nd March, 2021 regarding applicant's case.

On 22nd March, 2021, inter alia, following was said.

> *"Applicant wants setting aside of impugned order by this application. He was unsuccessful writ petitioner having had challenged order of dismissal from service, which would not prevent future employment. Mr. Saha, learned advocate appears for the applicant and submits, his client was made a scapegoat.*
>
> *On query from Court, we have been shown order dated 15th March, 2021, said to be by the disciplinary authority (page 3 missing). We reproduce a sentence from said order dated 15th March, 2012:*
>
> *"CSE replenished the defalcated amount on 28.06.2011 by way of borrowing from others."*
>
> *Respondent bank will produce enquiry report and extracts on the primary entries in its books, regarding replenishment of defalcated amount, the replenishment said to have happened on 28th June, 2011. The disclosure will be by affidavit. Copy to be served by 1st April, 2021. The affidavit is to be filed in Court on adjourned date.*
>
> *We require the above as additional evidence in this appeal to enable us to pass*

> *judgment. Requirement is because applicant contends, others had repaid the money.*
>
> *We record further that parties agree for the appeal being heard on papers that were before the first Court, as disclosed in this application and the additional evidence to be produced. Since the bank has appeared, we dispense with all formalities including service of notice of appeal."*

Mr. Hossain files affidavit in opposition. Mr. Saha points out from page 37 (extract from cash receipt/payment register as of 28.06.2011), serial numbers 251, 253 and 255 relate to entries regarding replenishment of aggregate sum of Rs. 2,05,000/-. Mr. Hossain does not dispute the entries.

Mr. Saha argues on basis of pleadings in the stay application. He submits, his client was made scapegoat upon having been made to act after closing hours on 27th June, 2011, in making payment without entries in bank's record. There was inspection made of cash available at the bank, before opening on 28th June, 2011 and the shortfall detected. The money was replenished. Confession was got extracted from his client. His client was advised to stick to his confession and hence, he suffered order of penalty for something he did not do.

Mr. Hossain relies on the inquiry report, orders of disciplinary and appellate authorities, confirmed by impugned order. He submits, case made out in the stay application was not made in the departmental proceedings. There is no case for interference.

Parties are agreed that papers disclosed in the stay application and affidavit in opposition were all before the first Court. There is no additional evidence produced in the appeal. Disciplinary authority in order dated 15th March, 2012 said, charge sheeted employee (CSE) replenished the defalcated amount on 28th June, 2011 by way of borrowing from others. We find from the entries in the cash payment register, produced by the bank in its affidavit, the aggregate replenished amount was deposited by three persons. Appellant did not deposit it. There appears to be complete non-application of mind on the part of the disciplinary authority in missing out such glaring discrepancy in what the authority construed to be a crucial fact in the case. It does therefore appear that appellant did never repay the amount though he had confessed to having taken it. In this context we reproduce the one sentence from the inquiry report regarding replenishment.

> *"On 28.06.2011, i.e. the immediate next day of the cash defalcation for Rs. 205000/-, Sri Pramanik (CSE) replenished the entire amount since he had misappropriated the Bank's money directly from cash of Hemtabad Branch on 27.06.2011…."*

There is sufficient reason, therefore, to interfere.

We set aside impugned order as well as the inquiry report and all orders passed pursuant thereto in the disciplinary proceeding. The bank will cause immediate fresh inquiry in the matter on disciplinary proceeding from the stage of charge sheet, keeping in mind what we have pointed out in this order. Inquiry and all proceedings pursuant thereto must be completed within period eight weeks from date. For purpose of resumption of disciplinary proceeding from the stage of charge sheet, suspension order of appellant will be deemed to have revived, only for the duration of it. There will be no claim of arrear subsistence allowance or anything else, at this stage.

The appeal and applications are disposed of as above.

(Arindam Sinha, J.)

(Kausik Chanda, J.)