



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.09.2021

CORAM :

THE HON'BLE MR.SANJIB BANERJEE, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE P.D.AUDIKESSAVALU

WP No.20786 of 2021

and

WMP No.22053 of 2021

K.B.Vijay
represented by his Power Agent
Mr.K.B.Vishal,
Singanallur,
Coimbatore-5.

... Petitioner

-vs-

- 1 Indian Overseas Bank
Rep by its Authorised Officer,
Spencer Plaza Branch, III Floor,
Spencer Plaza, No.762, Anna Salai,
Chennai- 600 002.
- 2 The Registrar
The Debts Recovery Appellate Tribunal
Shastri Bhavan, Nungambakkam
Chennai- 600 006.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari to call for the records culminated in the order dated 28-7-2021 passed by the second respondent in I.A. No. 131 of 2019 in AIR No.3 of 2019 and quash the same.

For the Petitioner : Mr.P.V.Balasubramaniam,
for Mr.T.Mahendran



ORDER

(Order of the Court was made by The Hon'ble Chief Justice)

WEB COPY

The petitioner has made out an arguable case against the condonation of the delay on the part of the first respondent here in challenging the order of the Debts Recovery Tribunal before the appellate tribunal.

2. The Debts Recovery Tribunal had dismissed the respondent bank's claim against the petitioner herein. The sixth respondent therein, the guarantor, challenged the order passed by the DRT in appeal, but that was confined to the certificate issued against such respondent. Though the bank did not initially file any appeal against the order by which the claim against the petitioner herein was dismissed, in course of the guarantor's appeal, the bank purported to apply for condonation of delay to challenge the common order by which the claim against the petitioner herein was dismissed. According to the petitioner, no cause was shown in the relevant application and, in such circumstances, the discretion available to the appellate tribunal could not have been exercised in the absence of any ground being shown.

3. The second ground urged is that in course of the guarantor's appeal against the order confirming that the bank was entitled to recover a certain amount from the guarantor, the issue as to whether anything was due and owing from the petitioner to the bank could not have come up. In such circumstances, merely because another appeal may be pending from the same common order may not be a good ground to condone the inordinate delay in carrying an appeal from another part of the common order which is unconnected with the appeal that has been filed within time.

4. The issue here is not as to whether this court would have condoned the delay or whether this court would have received the appeal merely because a challenge to the common order on such other aspect was pending. What is of importance is that the appellate tribunal considered the matter and, in such tribunal's view, found that adequate reasons had been furnished which warranted the condonation of the delay. The delay in the present case is of slightly more than a year. There was a discretion available to the appellate tribunal and the appellate tribunal has exercised such discretion. It was not as if there was a delay of several years altogether and the tribunal, without batting an eyelid, had condoned the delay for the mere asking. There appears to be the application of the tribunal's mind to the matters in issue and a conscious exercise of the



discretion that was available to the tribunal. In such a scenario, the Writ Court in exercise of its limited authority of judicial review which mandates the scrutiny of the decision-making process rather than the decision itself, may not be excited to interfere with the discretion exercised by the appellate tribunal in such regard.

Accordingly, WP No.20786 of 2021 is dismissed and the order impugned permitting the belated appeal to be received by condoning the delay therefor, is left undisturbed. There will be no order as to costs. Consequently, WMP No.22053 of 2021 is closed.

Sd/-
Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

sra

To:

- 1 The Authorised Officer,
Indian Overseas Bank,
Spencer Plaza Branch, III Floor,
No.762, Anna Salai,
Chennai- 600 002.
- 2 The Registrar,
The Debts Recovery Appellate Tribunal,
Shastri Bhavan, Nungambakkam,
Chennai- 600 006.

WP No.20786 of 2021

PM(CO)
SU(05/10/2021)