

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
(Original Side)

APOT 68 of 2022
With
WPO 524 of 2017
IA No. GA 1 of 2022
GA 2 of 2022

Reserved on: 05.08.2022
Pronounced on: 22.08.2022

Star Battery Limited and Anr.

...Appellants

-Vs-

State Bank of India and Ors.

...Respondents

Present:-

Mr. S. Chakraborty,
Mr. A. Mondal, Advocates

... for appellants

Mr. K. Bhattacharya,
Mr. S. Guha Roy,
Mr. P. Ganguly,
Ms. S. Bairagi, Advocates

... for SBI

Coram: THE HON'BLE JUSTICE PRAKASH SHRIVASTAVA,
CHIEF JUSTICE
THE HON'BLE JUSTICE RAJARSHI BHARADWAJ,
JUDGE

Prakash Shrivastava, CJ:

1. Learned Counsel for the parties are heard on GA 1 of 2022 which is an application for condonation of delay of 1110 days in filing this appeal.
2. Submission of the learned Counsel for the appellant is that the appellant is entitled to exclusion of the period from 15th of March, 2020

to 28th of February, 2022 and that there was proper explanation for the delay.

3. Learned Counsel for the respondent has opposed the application by submitting that there is delay of 1110 days in filing the appeal and no proper explanation has been furnished.

4. Having heard the learned Counsel for the parties and on perusal of the record, it is noticed that this is an intra-court appeal against the order of the learned Single Judge dated 28th of February, 2019 and this appeal has been filed on 13th of April, 2022, i.e. more than 3 years after the impugned order.

5. It is undisputed that in view of the order of the Hon'ble Supreme Court dated 10th of January, 2022 passed in *Suo Motu Writ Petition (C) No. 3/2020*, the appellant is entitled to exclusion of the period from 15th of March, 2020 to 28th of February, 2022 on account of the COVID-19 Pandemic.

6. Even if the aforesaid period is excluded, the appellant is required to explain the delay of more than one year from 28th of February, 2019 till 15th of March, 2020.

7. A perusal of the application for condonation of delay reveals that no satisfactory explanation has been furnished by the appellant for the said delay. It has merely been stated that the appellant could not communicate with the erstwhile advocate and he came to know about the fate of proceedings on or about January, 2020. No reason for inability to communicate with the advocate during this period has been disclosed which clearly shows that the appellant was grossly negligent and was not vigilant in taking up steps to file the appeal. Even it has not been disclosed that how the appellant came to know about the fate of the

proceedings in January, 2020 from representative of the respondent bank. The explanation for the subsequent period also does not inspire confidence. The vague plea of the petitioner No. 2 being bed ridden due to medical problem without any supporting document and without disclosing the nature of illness has been taken. A careful perusal of the application for condonation of delay clearly reveals that the appellant has failed to furnish any satisfactory explanation for such an inordinate delay in filing this intra-court appeal.

8. Counsel for the appellant has placed reliance upon the judgment of the Hon'ble Supreme Court in the matter of **Bhag Singh and Others vs. Union Territory of Chandigarh Through The Land Acquisition Collector, Chandigarh** reported in (1985) 3 SCC 737, but that was a case of acquisition of land and payment of compensation under the Land Acquisition Act, 1894 and there was failure to pay the requisite Court fee, therefore, Hon'ble Supreme Court had observed that the Court cannot deprive the petitioner of his rightful claim on technical ground. Hence, that case has no application in the present issue of condonation of delay.

9. Learned Counsel for the appellant has also placed reliance upon the judgment of the Hon'ble Supreme Court in the matter of **N. Balakrishnan vs. M. Krishnamurthy** reported in (1998) 7 SCC 123, but in that case also it has been held that condonation of delay is a matter of discretion of the Court and acceptability of the explanation is the only criterion and that the rules of limitation are not meant to destroy the rights of the parties. But in the present case having regard to the inordinate unexplained delay, the appellant cannot be extended the benefit of the judgment.

10. Counsel for the appellant has also placed reliance upon the judgment of this Court in the matter of **The State of West Bengal & Ors. vs. Sri Kalyan Ganguly & Ors.** reported in **2014 SCC OnLine Cal 18741** and has submitted that the merits of the appeal are also required to be looked into while considering the application for condonation of delay. In the present case, the impugned order reveals that the appellant had filed the petition seeking a direction to the respondent bank to release the fixed deposit of about Rs. 18.5 lacs and the learned Single Judge has found that there was outstanding on account of Kali Pigment Pvt. Ltd. and that the father of the second petitioner was a director of the first petitioner as well as Kali Pigment Pvt. Ltd., therefore, learned Single Judge has concluded that the bank is not wrong in exercising lien over the fixed deposit. Learned Single Judge has given detailed reason for reaching to such a conclusion.

11. Hon'ble Supreme Court in the matter of **Esha Bhattacharjee vs. Managing Committee of Raghunathpur Nafar Academy and Others** reported in **2013 AIR SCW 6158** has held that gross negligence on the part of the Counsel or the litigant is required to be taken note of and that lack of bona fides imputable to a party seeking condonation of delay is significant and that there is a distinction between inordinate delay and delay of short duration or a few days and that conduct and behaviour or attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It has further been clarified that 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.

12. There is no dispute that the application for condonation of delay is required to be considered liberally but when there is such an inordinate delay of more than 3 years, the appellant is required to furnish sufficient explanation for the same which in the present case he has failed to furnish.

13. Hence, we are of the opinion that no ground for allowing the prayer for condonation of delay is made out. Accordingly, GA 1 of 2022 is dismissed. Subsequently, the appeal being APOT 68 of 2022 is also dismissed.

(PRAKASH SHRIVASTAVA)
CHIEF JUSTICE

(RAJARSHI BHARADWAJ)
JUDGE

Kolkata
22.08.2022

PA(SS)

(A.F.R. / N.A.F.R.)