

10.09.2024
Court No.13
Item No.2
sp

FA 122 of 2006
With
I.A. CAN 3 of 2018 (Old No. CAN 3450 of 2018)
With
I.A. CAN 4 of 2018 (Old No. CAN 3452 of 2018)

Bank of Baroda & Ors.
Vs.
Reba Maity

Mr. Victor Dutta,
Mr. Sourajit Dasgupta

..for the appellants

Mr. Dhilon Sengupta,
Mr. Ayan Chakraborty,
Ms. Sohini Mukherjee

..for the respondent

CAN 3052 of 2018

1. Affidavit-in-reply filed by the appellant is taken on record.
2. CAN 3452 of 2018 is an application for condonation of delay of nearly 1200 days in filing CAN 3450 of 2018.
3. The appeal was dismissed for default by a Co-ordinate bench on 18th February, 2015 when none of the parties were represented.
4. It is submitted in paragraph 5 of the application that the appellants came to know of the same from a letter received from the learned Advocate for the respondents Mr. R.N. Maity dated 19th March, 2018.

5. Even after receipt of notice of dismissal, the application for recall of the order was filed after nearly about 80 days. There is absolutely no explanation whatsoever even for the delay of 80 days in paragraph nos. 5 and 6 of the application which are set out hereinbelow,

“5. That your appellants/petitioners were intimated about the dismissal of the appeal from the letter dated 19.03.2018 issued by the Learned Advocate Sri Ranendra Nath Maity on behalf of the respondent No. 1 and for the first time the appellants/petitioners were aware of the fact that the appeal was dismissed for default on 18.02.2015 by this Hon’ble Court.

6. Immediately after receiving of the letter from the Learned Advocate for the respondent no. 1, your petitioners/appellants contacted the Learned Advocate on Record for the petitioners/appellants and intimated the status of the matter. The Learned Advocate on Record for the appellants/petitioners were on the knowledge that the matter was not listed and even the matter was also not in the monthly list of February 2015. The matter was inadvertently overlooked by the clerk of the Advocate on Record and therefore the appellants/petitioners could not able to pray for any accommodation on behalf of the appellants/petitioners on 18.02.2015. The matter was immediately taken up by the Advocate on Record for the appellant/petitioner for filing of the restoration application. That due to the above circumstances, a delay of 1176 days have been occurred in filing the restoration application by the appellants/petitioners.

The copy of the letter dated 19.03.2018 issued by Sri Ranendra Nath Maity is annexed hereto and marked as annexure “P-2”.

6. It is now well-settled that Section 3 of the Limitation Act is the general rule. By reason of Section 3, on expiry of the period of limitation for asserting rights, such rights get extinguished and corresponding

rights accrue to the other side. Section 5 of the Limitation Act is an exception to Section 3 as held by the Hon'ble Supreme Court recently in the case of ***Pathapati Subba Reddy (Died) By L.Rs. & Ors. Vs. The Special Deputy Collector (LA)*** reported in **2024 INSC 286**. Paragraph 14 of the said decision is set out hereinbelow.

“14. It may also be important to point out that though on one hand, Section 5 of the Limitation Act is to be construed liberally, but on the other hand, Section 3 of the Limitation Act, being a substantive law of mandatory nature has to be interpreted in a strict sense. In *Bhag Mal alias Ram Bux and Ors. vs. Munshi (Dead) by LRs. and Ors.*¹, it has been observed that different provisions of Limitation Act may require different construction, as for example, the court exercises its power in a given case liberally in condoning the delay in filing the appeal under Section 5 of the Limitation Act, however, the same may not be true while construing Section 3 of the Limitation Act. It, therefore, follows that though liberal interpretation has to be given in construing Section 5 of the Limitation Act but not in applying Section 3 of the Limitation Act, which has to be construed strictly.”

7. This Court finds gross negligence on the part of the appellant, a nationalized bank in not even keeping track of its own litigation. The appeal was filed by the bank albeit through learned Advocate. The bank is required to diligently follow its own litigation and cannot rely upon its Advocate to pursue the same. There is no document produced along with the application as to whether the bank was at all pursuing the appeal in question, with its advocates.

8. Even after coming to know of the dismissal of the appeal for default in the year 2018, it took nearly

80 days for the bank to file the application for recall of the order dated 18th February, 2015. The bank is required in law to explain each day of delay. Far from any proper explanation in paragraph nos. 5 and 6 set out hereinabove the bank did not even indicate a suggestion or word qualifying as an explanation.

9. Learned counsel for the appellant bank relies upon a decision of this Court in the case of ***Mst. Nurnahar Bewa & Anr. Vs. Rabindra Nath Dev & Ors.*** reported in ***AIR 1988 Calcutta 358***. The Full Bench was of the view that in respect of the first application for restoration of the suit of a proceeding dismissed for default, the period under Article 122 would variably apply. It is only in the case of an application for recall of an order dismissing an application for restoration that was held to fall under Article 147 of the Limitation Act.

10. Before the Full Bench, the facts of the case were that a suit was decreed ex parte by the trial Court. The defendants therein made an application for recall of the ex parte decree under Order IX Rule 13. The said application for recall of the order decreeing the suit ex parte itself came to be dismissed for default. The revisional application filed before this Court was challenging the rejection of an application seeking recall of an order dismissing an application under Order IX Rule 13. Such application was held to fall

outside the scope of Article 122 consequently Article 144 of the Limitation Act.

11. Even assuming for the sake of argument, the said decision would apply to the facts of the case, the delay of 80 days has no valid or lawful explanation whatsoever.

12. In the above circumstances, this Court refuses condonation of delay in filing CAN 3450 of 2018.

13. The decretal dues deposited in an account by the bank with itself shall abide by the result of any orders in the proceedings in the court below.

14. Hence, CAN 3452 of 2018 shall stand dismissed.

15. In view of the above, CAN 3450 of 2018 shall also stand dismissed.

16. Let a copy of this order be sent by the Registry to the trial Court.

17. There shall be no order as to costs.

18. Let the TCR, if any, be sent to the Court below.

19. Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of all formalities.

(Rajasekhar Mantha, J.)

(Ajay Kumar Gupta, J.)