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WPO/406/2024
IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

VAIDHAI AGARWAL ALIAS SONU KUMARI
VS
THE INDIAN BANK AND ORS.

BEFORE:
The Hon'ble JUSTICE SABYASACHI BHATTACHARYYA
Date: 15th May, 2024.

Appearance:
Mr. Sumitava Chakraborty, Adv.
...for the petitioner

Mr. Md. Danish Taslim, Adv.
Mr. Sidhartha Sharma, Adv.
...for the respondent no.1

Mr. Md. Galib, Adv.
Mr. Siddique Mallik, Adv.
...for the State

The Court: Affidavit of service filed today be kept on record.

Heard learned counsel for the parties.

The petitioner had previously approached this Court for certain reliefs which were not granted and the writ petition bearing W.P.A. No.1599 of 2024 was disposed of by granting liberty to the petitioner to approach the concerned Debts Recovery Tribunal with the same reliefs in respect of the disputed property as claimed in the writ petition. A limited status quo order was also granted and it was observed that if any portion of the property had already been sold, the same would be subject to any orders passed in that regard by the concerned Tribunal.

Subsequently, due to the demise of the father of the learned advocate appearing for the petitioner, an extension of the time granted by this Court to file the application was sought and granted in W.P.A. No.1599 of 2024 till April 8, 2024. The status quo was also extended till April 12, 2024.

However, learned counsel for the petitioner alleges that although the petitioner had affirmed the application to be filed before the Tribunal, that is, S.A. No.428 of 2022 on April 8, 2024 itself, the last date as per the time granted by this Court, due to certain technical glitches, the same could not be uploaded, resulting in no number being allotted to the application on such date.

However, on the very next date, the said application and a connected interlocutory application bearing IA/792/2024 was filed online. It is argued that the fact that the connected application was filed on the very next date shows that the petitioner had made an attempt to file the main petition before the Tribunal on the last date as granted by this Court. However, for such delay in filing the petition before the Tribunal, which was only of a single day, the applications were dismissed by the Tribunal by the impugned order dated April 29, 2024, for which the present writ petition has been preferred.

Learned counsel appearing for the bank strongly opposes the writ petition and submits that the petitioner does not have a right in law which has been infringed in the present case. Secondly, the petitioner, it is argued, was not vigilant. Despite having been granted opportunity twice, the petitioner failed to file the challenge before the Tribunal in time, leading to the dismissal which is in challenge.

Thirdly, it is argued that equities ought to be treated on an equal footing. If equities of both sides are equal, the law should prevail. In the present case, the bank argues that the sale of the disputed property has already been confirmed although due to certain technical reasons the sale certificate has not yet been issued.

It is argued that due to the conduct of the petitioner, who is a habitual defaulter, the writ petition ought to be dismissed. Upon a careful consideration, it transpires that on the first occasion the petitioner had approached this Court by way of a writ petition bearing W.P.A. No.1599 of 2024.

The said writ petition was dealt with at length upon hearing learned counsel for all the parties and vide order dated January 29, 2024, liberty was given to the petitioner to approach the appropriate Bench of the Kolkata Debts Recovery Tribunal with the same reliefs as taken in the writ. A perusal of the said order shows that this Court entered into a detailed consideration of the arguments advanced by the parties. It was also observed, inter alia, that a triable issue had been made out by the petitioner but it would be appropriate if the petitioner was given an opportunity to move the Tribunal. Thus, the said writ petition was not dismissed at first blush but the Court's observation was that a triable issue had been made out by the petitioner.

However, the petitioner failed to take such opportunity as granted to the petitioner due to reasons entirely beyond the control of the petitioner. The father of the petitioner's learned advocate at that juncture had met his demise, which made it impossible for the petitioner to file the application in time. The petitioner, however, had no role to play in such delay and, showing his bona fides, had taken out an application before this Court seeking a modification of the previous order. The said prayer for modification was granted by extending the time for filing the challenge before the Tribunal, which shows per se that the grounds cited by the petitioner for the delay were accepted. Thus, the said chapter cannot be reopened now by casting a doubt on the petitioner's bona fides at that juncture. Since this Court, by its order dated April 5, 2024, had accepted the grounds offered by the petitioner and extended the time for filing the application before the Debts Recovery Tribunal till April 8, 2024, the conduct of the petitioner previous to that date cannot be taken into consideration to attribute mala fides or deliberate dilatory tactics to the petitioner.

Coming to the last limb of the developments, the petitioner was delayed by a single day in presenting the application before the Tribunal. From the annexures to the writ petition, it is clear that the affidavit accompanying the application of the petitioner intended to be filed before the Tribunal was duly affirmed and notarized on April 8, 2024 itself, which was the last date for presenting the said application. However, due to some technical reasons, the petitioner submits that the online application was not registered on the portal of the Tribunal. Seeking to rectify such issue, the petitioner filed the application on the very next date before the Tribunal.

Although the Tribunal cannot be said to have been at fault in not entertaining the application of the petitioner due to the timeline fixed by this Court having expired, in the same breath, no fault can be attributed to the petitioner as well since the petitioner, although in the nick of time, had affirmed and had notarized the affidavit supporting the application of the petitioner before the Tribunal on the last late given by this Court. Thus, the delay of a single day in preferring the application physically before the Tribunal cannot be considered to be a sufficient deterrent for the Tribunal to take up the matter on merits.

Doing so would be unjust in the facts and circumstances of the present case and grossly disproportionate with the fault, if an,y committed by the petitioner.

Keeping in view the above considerations, WPO/406/2024 is allowed, thereby setting aside the impugned order dated April 29, 2024 passed in S.A. No.428 of 2022 and IA No.792 of 2024 and restoring the said applications to their original files and numbers. The Tribunal shall immediately proceed to decide the applications on merits by acting on a server copy of this order.

No order as to costs.

Urgent certified website copy of this order, if applied for, be made available to the parties subject to compliance with the requisite formalities.

(SABYASACHI BHATTACHARYYA, J.)

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