



CRP No.4187 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.10.2024

CORAM

THE HON'BLE MR.K.R.SHRIRAM, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

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1.Angel Educational Trust,
No.12, 21st Cross, Srinivagilu Ejipura
Vivekanagar Post Bengaluru 47
Rep.by its Managing Trustee Sri S.Sathyaraj

2.Angel Educational Trust,
No.12, 21st Cross, Srinivagilu Ejipura
Vivekanagar Post Bengaluru 47
Rep.by its Trustee/Principal Smt.S.Sunitha

3.G.Yashodamma : Petitioners

versus

1.Kotak Mahindra Bank Ltd
having its reg off at 27 BKC
C27, G-Block, Bandra Kurla complex
Bandra (E) Mumbai- 51
Also having its Branch off at
Kotak Mahindra Bank Ltd.
59, Sree Complex, BHSC T Block,
Banashankari III Stage, Bengaluru 85

2.Mukesh Kumar Jain
3.Punitha Jain

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4.Dr.Srinivas Babu, T.H.

: Respondents

Prayer: Petition filed under Article 227 of the Constitution of India to set aside the order dated 02.07.2024 in IA No.469 of 2023 in AIR (SA) No.944/2023, passed by the Debt Recovery Appellate Tribunal, Chennai against the order dated 31.05.2023 in SA No.464/2020 of the Debt Recovery Tribunal-II, Karnataka at Bengaluru.

For Petitioners : Mr.J.Rajmohan

For Respondent No.1 : Mr.T.Saikrishnan

ORDER

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

Petition challenges order dated 02.07.2024 passed by the Debt Recovery Appellate Tribunal, Chennai, rejecting petitioners' application to condone delay of 13 days. According to the Tribunal, petitioners are expected to show sufficient cause for delay of 13 days and the affidavit is very vague without giving details for satisfying delay of 13 days.

2. According to petitioners, the reason for the delay is under:

“8. I state that the above said order copy was made ready on 05.06.2023 and after paying necessary fees the registry has issued the order



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copy on 05.06.2023. I state that we are all residing at bengaluru and after getting opinion from our counsel, our counsel has advised to file appeal against the said order, but the said appeal has to be filed before Debt Recovery Appellate Tribunal at Chennai.

9. I state that we asked our counsel to file appeal before DRAT at Chennai but due to his age he told that he could not appear and through our relative we came down to Chennai and engaged this counsel for filing appeal against the order dated 31.05.2023 passed in SA No.464/2020 by the DRT-II, Karnataka at Bengaluru, there caused delay in filing the same. Hence, the delay for filing this appeal before the Hon'ble Appellate Tribunal is neither wilful nor wanton, but for the reasons stated above.”

3. We are satisfied with the explanation given.

4. Moreover, as held by the Apex Court in ***Baleshwar Dayal Jaiswal v Bank of India and others***¹, unless the scheme of the statute expressly excludes the power of condonation, there is no reason to deny such power to an Appellate Tribunal when the statutory scheme so warrants. The Apex Court further held that the Appellate Tribunal under

¹ (2016) 1 SCC 444



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the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 has the power to condone the delay in filing the appeal before it by virtue of Section 18(2) of the SARFAESI Act, 2002 and the proviso to Section 20(3) of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 [*now renamed as the Recovery of Debts and Bankruptcy Act, 1993*].

5. Delay is condoned to enable doing substantial justice to the parties. By delaying the filing of the appeal, petitioners did not stand to benefit. If we do not condone the delay, there is a possibility that a meritorious matter may be thrown out at the very threshold and the cause of justice could be defeated. As against this, when delay is condoned, the highest that can happen is that a cause would be decided on merits after hearing the parties.

6. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred, for the other side cannot claim to have vested right in injustice being done because of a non-deliberate action. A litigant does not stand to



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benefit by resorting to delay. In fact, he runs a serious risk. The approach of the authority should be justice-oriented so as to advance cause of justice. If the case of an applicant is genuine, mere delay should not defeat the claim.

7. In the light of the aforesaid discussion, we are of the opinion that an acceptable explanation was offered by the petitioners and a case of genuine hardship was made out. The refusal by the Debt Recovery Appellate Tribunal to condone the delay was a result of adoption of an unduly restrictive approach. The Debt Recovery Appellate Tribunal appears to have proceeded on the basis that the delay was deliberate, when from the explanation offered by petitioners, it is clear that the delay was neither deliberate nor unexplained.

8. The Debt Recovery Appellate Tribunal shall proceed with the appeal, subject to satisfying the other requirements in law. At the cost of repetition, we clarify that only the delay aspect has been considered and we have not made any observation on the merits of the matter.



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9. Petition is disposed of. There shall be no order as to costs.

10. Mr.T.Saikrishnan, undertakes to file vakalatnama within one week from today.

(K.R.SHRIRAM, C.J.) (SENTHILKUMAR RAMAMOORTHY, J.)
23.10.2024

Index : Yes/No
Neutral Citation : Yes/No
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To

The Debt Recovery Appellate Tribunal, Chennai



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THE HON'BLE CHIEF JUSTICE

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