



W.P.No.32648 of 2023

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.02.2024

CORAM :

THE HON'BLE MR.SANJAY V.GANGAPURWALA, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.No.32648 of 2023

R.Ganesh

.. Petitioner

Vs.

1. The Authorised Officer
Equitas Small Finance Bank Ltd.
No.769, Spencer Plaza
4th Floor, Phase 2, Anna Salai
Chennai 600 002.

2. The Presiding Officer
Debt Recovery Appellate Tribunal
7th Floor, Additional Office Building
Shastri Bhawan, Haddows Road
Nungambakkam, Chennai 600 006.

.. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India seeking a writ of Certiorarified Mandamus to call the records in proceedings MA(SA) No.32 of 2022 on the file of the 2nd respondent dated 06.10.2023 and quash the same as illegal, incompetent and without jurisdiction.



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For the Petitioner : Mr.V.Ashok Kumar
For the Respondents : Mr.T.Jayakumar
For Mr.T.K.M.Sai Krishnan
for Respondent-1

ORDER
(Made by the Hon'ble Chief Justice)

We have heard Mr.V.Ashok Kumar, learned counsel for the petitioner and Mr.T.Jayakumar, learned counsel for Mr.T.K.M.Sai Krishnan, learned counsel for the first respondent.

2. The petitioner herein had filed Securitisation Application No.99 of 2021 challenging the measures under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. The said application was dismissed on 13.12.2021 for non-prosecution. The petitioner filed an application for restoration with delay condonation application bearing M.A.No.8 of 2022. The delay was 44 days. The Tribunal dismissed the said condonation application by order dated 16.06.2022. Aggrieved



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thereby, the petitioner filed an appeal bearing M.A.(SA)No.32 of 2022 and the same is also dismissed.

3. Learned counsel for the respondent bank submits that while dismissing the application for restoration, the Tribunal also considered the merits of the matter and passed the order. No error has been committed by the Debts Recovery Tribunal. Similarly, the Appellate Tribunal has also considered all the relevant facts. The petitioner was admitted in the hospital on 21.10.2021 and was discharged on 19.11.2021 and the matter was dismissed on 13.12.2021 for non-prosecution. But, the petitioner was actually admitted only from 19.11.2021 to 21.11.2021. No plausible reason is given for not prosecuting the matter after his discharge on 21.11.2021.

4. It is trite that while considering the application for condonation of delay, the merits of the matter cannot be gone into. The main application was not decided on merits. The same was dismissed for non-prosecution. The restoration application was filed with an application for condonation of delay of 44 days. The Tribunal



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was required to consider the application for condonation of delay and the reasons for the same. Without condoning the delay and restoring the main application, the merits of the main application could not have been a ground to reject the application for condonation of delay. The merits of the main application can only be considered if the delay in filing the restoration application is condoned and the main application is restored to its original position.

5. It is admitted that the petitioner was admitted in the hospital and discharged only on 21.11.2021 and the S.A. is dismissed for non-prosecution on 13.12.2021. The case of the petitioner is that he was advised bed rest for one month. On hyper technical ground that no certificate is produced to demonstrate that he was advised bed rest, the Appellate Tribunal refused to condone the delay. The discharge advice also states to take some tablets and attend hospital for review after five days.

6. The Tribunal and the Appellate Tribunal have taken a hyper technical approach. The petitioner was not to gain by delay. On the



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contrary, he was facing a measure under Section 14 of the Act of 2002 for taking over the physical possession of the asset. An opportunity needs to be given to him to contest the appeal on merits. Plausible reasons have been given by the petitioner. The delay in filing an application for restoration is also not an abnormal one.

7. In the light of the above, the impugned order of the Appellate Tribunal and the order of the Presiding Officer of the Debts Recovery Tribunal rejecting the application for condonation of delay in restoring the S.A. are set aside. M.A.(SA)No.32 of 2022 stands allowed. So also the application for restoration of main appeal is allowed. It would appear that the petitioner has also deposited Rs.2.00 lakh (Rupees two lakh only) with the bank, as directed by this Court. Learned counsel for the bank also accepts the same.

8. In the light of the above admitted facts and the bona fide shown by the petitioner of depositing the amount, S.A.No.99 of 2021 is restored to its original position. The petitioner and the first respondent shall appear before the Debts Recovery Tribunal I, Chennai



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9. The writ petition accordingly allowed. There shall be no order as to costs. Consequently, W.M.P.No.32254 of 2023 is closed.

(S.V.G., CJ.)

(D.B.C., J.)

19.02.2024

Index : Yes/No

Neutral Citation : Yes/No

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To

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THE HON'BLE CHIEF JUSTICE
AND
D.BHARATHA CHAKRAVARTHY, J

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