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W.P.No.33233 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.03.2025

CORAM :

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

AND

THE HON'BLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P.No.33233 of 2024

&

W.M.P.Nos.36017 to 36020 & 36022 of 2024

M/s. Eswaran & Sons Engineers Limited

Rep. by tis Director

6th Floor, Temple Towers

No.672 (Old No.476)

Anna Salai, Nandanam

Chennai 600 035

Also at: A Block, Pasupathinath

26, Desika Road, Mylapore

Chennai 600 004.

.. Petitioner

Vs.

1. The Registrar

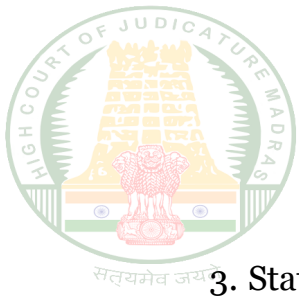
The Debt Recovery Appellate Tribunal

Chennai.

2. The Registrar

The Debts Recovery Tribunal – I

Chennai.



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3. State Bank of India
Rep. by its Assistant General Manager
Stressed Asset Management Branch
Red Cross Building, Montieth Road
Egmore, Chennai.

4. M/s. Easun Reyrolle Limited
Rep. by its Managing Director
6th Floor, Temple Towers
No.672 (Old No.476)
Anna Salai, Nandanam
Chennai 600 035
Also at: A Block Pasupathinath
26, Desika Road, Mylapore
Chennai 600 004.

5. Raj H.Eswaran

6. ERL International Pvt. Ltd.
Rep. by its Managing Director
A Block Pasupathinath
26, Desika Road, Mylapore
Chennai 600 004.
Also at: 10, Jalan Besar
10-12, SIM LIM Tower
Singapore 208787.

7. Switchcraft Europe
Rep. by its Managing Director
A Block Pasupathinath
26, Desika Road, Mylapore
Chennai 600 004.
Also at: GmbH
Thyssenstrabe 93
D-46535, Dinslaken
Germany.



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8. DBS Bank

Loans & Advances Dept.
806, Anna Salai
Chennai 600 002.

9. M/s. Axis Bank

Corporate Banking Branch
Karumuthu Nilayam
Ground Floor, No.192, Anna Salai
Chennai 600 002.

10. M/s. Standard Chartered Bank

4th Floor, No.19, Rajaji Salai
Chennai 600 001.

11. Canara Bank

MM Reddy Complex
Old Bangalore Road
Hosur 635 109.

.. Respondents

Prayer : Petition filed under Article 226 of the Constitution of India seeking a writ of Certiorarified Mandamus calling for the records relating to the order dated 25.07.2024 in I.A.No.513 of 2023 in AIR(SA) No.1202 of 2023 on the file of the 1st respondent, quash the same and consequentially direct it to hear the appeal bearing AIR(SA) No.1202 of 2023 on merits.

For Petitioner : Mr.T.K.Bhaskar

For Respondents : Mr.K.Chandrasekaran
for Respondent-3



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No appearance – for
Respondents 5, 8, 10 & 11

Not ready in notice – for
Respondents 4, 6, 7 & 9

Tribunal – Respondents 1 & 2

ORDER

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

This petition impugns an order dated 25.07.2024 passed by the Debt Recovery Appellate Tribunal rejecting petitioner's application to condone the delay of 52 days.

2. The Debt Recovery Appellate Tribunal observed that even if petitioner was taken to be unwell for two weeks, that would still leave 38 days unexplained.

3. Petitioner is an 85 year old individual. In the application for condonation of delay, petitioner has explained that he was under a reasonable impression that he would receive a copy of the impugned order



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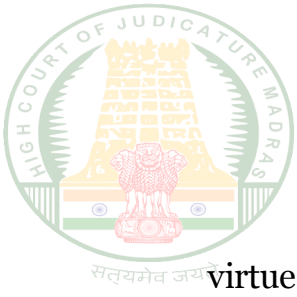
as envisaged under Section 20(3) of the Recovery of Debts and Bankruptcy Act, 1993, after which, he would instruct counsel to file an appeal. While waiting for the order, petitioner fell ill and was advised two weeks' bed rest.

4. It is also stated in the additional affidavit in support that thereafter, petitioner came to realise that he had to apply for the certified copy which he did on 24.07.2023 soon after his recovery from illness.

5. Considering the overall situation, in our view, the delay has been satisfactorily explained.

6. 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 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

¹ (2016) 1 SCC 444



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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*].

7. Delay is condoned to enable doing substantial justice to the parties. By delaying the filing of the appeal, petitioner 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.

8. 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 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



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case of an applicant is genuine, mere delay should not defeat the claim.

9. In the light of the aforesaid discussion, we are of the opinion that an acceptable explanation was offered by the petitioner 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 petitioner, it is clear that the delay was neither deliberate nor unexplained.

10. The Debt Recovery Appellate Tribunal shall proceed with the appeal on the basis that the delay has been condoned, 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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11. Petition is disposed of. There shall be no order as to costs.

Consequently, all the interim applications also stand disposed.

(K.R.SHRIRAM, CJ)

(MOHAMMED SHAFFIQ,J.)

05.03.2025

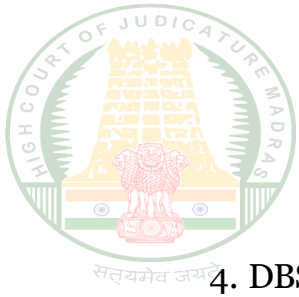
Index : Yes/No

Neutral Citation : Yes/No

kpl

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THE HON'BLE CHIEF JUSTICE
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